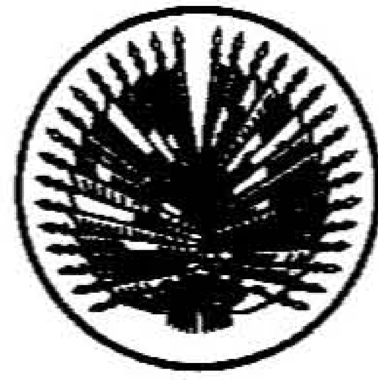
ORGANIZATION OF AMERICAN STATES

INTER-AMERICAN COURT OF HUMAN RIGHTS



OEA/Ser.L/III.15
Doc. 13
29 August 1986
Original: Spanish

ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 1986

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006

1986

COURT

TABLE OF CONTENTS

PAGE

I. ORIGIN, STRUCTURE AND COMPETENCE OF THE COURT

A. Creation of the Court.................................... 1
B. Organization of the Court................................ 1
C. Composition of the Court................................. 2
D. Competence of the Court.................................. 3

1. The Court's contentious jurisdiction.................. 3
2. The Court's advisory jurisdiction..................... 5
3. Acceptance of the jurisdiction of the Court........... 6

E. Budget... 7
F. Relations with other organs of the system and with regional and worldwide agencies of the same kind................ 7

II. ACTIVITIES OF THE COURT

A. Fourth Special Session of the Court 8
B. Fourteenth Special Session of the OAS General Assembly..... 8
C. Fifteenth Regular Session of the General Assembly 9
D. Fourteenth Regular Session of the Court.................. 10
E. Fifteenth Regular Session of the Court 10
F. Fifth Special Session of the Court 11

APPENDICES

I. Advisory Opinion (OC-6) of May 9, 1986 13

II. Request for Advisory Opinion (OC-7), presented by the Government of Costa Rica 25

III. Resolutions of the Inter-American Commission on Human Rights on the cases submitted by it to the Court

A. Angel Manfredo Velázquez Rodríguez v. Honduras 29
B. Francisco Fairén Garbi and Yolanda Solís Corrales v. Honduras 37
C. Saúl Godínez Cruz v. Honduras 39

IV. Observations of the Court on the Preliminary Draft Additional Protocol to the American Convention.......... 41

V. Remarks of the President of the Court on the occasion of the visit of four Presidents of the Americas 47

VI. Advisory Opinion (OC-7) of August 29, 1986 49

VII. Present status of the American Convention on Human Rights.. 91

I. ORIGIN, STRUCTURE AND COMPETENCE OF THE COURT

A. Creation of the Court

The Inter-American Court of Human Rights was brought into being by the entry into force of the American Convention on Human Rights (Pact of San José, Costa Rica), which occurred on July 18, 1978 upon the deposit of the eleventh instrument of ratification by a member state of the Organization. The Convention had been drafted at the Specialized Inter-American Conference on Human Rights, which took place November 7-22, 1969 in San José, Costa Rica.

The two organs provided for under Article 33 of the Pact are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. They have competence on matters relating to the fulfillment of the commitments made by the States Parties to the Convention.

B. Organization of the Court

In accordance with the terms of its Statute, the Inter-American Court of Human Rights is an autonomous judicial institution which has its seat in San José, Costa Rica and whose purpose is the application and interpretation of the American Convention on Human Rights.

The Court consists of seven judges, nationals of the member states of the Organization of American States, 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 states of which they are nationals or the state that proposes them as candidates." (Article 52 of the Convention).

The judges serve for a term of six years. They are elected by an absolute majority vote of the States Parties to the Convention. The election is by secret ballot in a General Assembly of the Organization.

Upon entry into force of the Convention and pursuant to its Article 81, the Secretary General of the Organization requested the States Parties to the Convention to nominate candidates for the position of judge of the Court. In accordance with Article 53 of the Convention, each State Party may propose up to three candidates.

The judicial term runs from January 1 of the year in which a judge assumes office until December 31 of the year in which he completes his term. However, judges continue in office until the installation of their successors or to hear cases that are still pending (Article 5 of the Statute).

Election of judges takes place, insofar as possible, at the OAS General Assembly immediately prior to the expiration of the term of the judges. In the case of vacancies on the Court caused by death, permanent disability, resignation or dismissal, an election is held at the next General Assembly. (Article 6).

In order to preserve a quorum of the Court, interim judges may be appointed by the States Parties. (Article 6.3).

In the event that one of the judges called upon to hear a case is the national of one of the States Parties to the case, the other States Parties to the case may appoint an **ad hoc** judge. If none of the States Parties to a case is represented on the Court, each may appoint an **ad hoc** judge. (Article 10).

The judges are at the disposal of the Court and, pursuant to the Rules of Procedure, meet in two regular sessions a year and in special sessions when convoked by the President or at the request of a majority of the judges. Although the judges are not required to reside at the seat of the Court, the President renders his services on a permanent basis. (Article 16 of the Statute 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 they may be reelected. (Article 12 of the Statute).

There is a permanent commission composed of the President, Vice President and a judge named by the President. The Court may appoint other commissions for special matters. (Article 6 of the Rules of Procedure).

The Secretariat of the Court functions under the direction of the Secretary, who is elected by the Court.

C. Composition of the Court

As of the date of this report, the Court was composed of the following judges, in order of precedence:

Thomas Buergenthal (United States), President
Rafael Nieto-Navia (Colombia), Vice President
Rodolfo Piza Escalante (Costa Rica)
Pedro Nikken (Venezuela)
Héctor Fix-Zamudio (Mexico)
Héctor Gros Espiell (Uruguay)
Jorge R. Hernández Alcerro (Honduras)

The Secretary of the Court is Mr. Charles Moyer and the Deputy Secretary is Lic. Manuel E. Ventura.

D. Competence of the Court

The American Convention confers two distinct functions on the Inter-American Court of Human Rights. One involves the power to adjudicate disputes relating to charges that a State Party has violated the Convention. In performing this function, the Court exercises its so-called contentious jurisdiction. In addition, the Court also has power to interpret the Convention and certain other human rights treaties in proceedings in which it is not called upon to adjudicate a specific dispute. This is the Court's advisory jurisdiction.

1. The Court's contentious jurisdiction

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

> 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding **ipso facto**, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
>
> 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
>
> 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the states parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by special agreement.

As these provisions indicate, a State Party does not subject itself to the contentious jurisdiction of the Court by ratifying the Convention. Instead, the Court acquires that jurisdiction with regard to the state only when it has filed the special declaration referred to in paragraphs 1 and 2 of Article 62 or concluded the special agreement mentioned in paragraph 3. The special declaration may be made when a state ratifies the Convention or at any time thereafter; it may also be made for a specific case or a series of cases. But since the states parties are free to accept the Court's jurisdiction at any time in a specific case or in general, a case need not be rejected **ipso facto** when acceptance has not previously been granted, as it is possible to invite the state concerned to do so for that case.

A case may also be referred to the Court by special agreement. In speaking of the special agreement, Article 62.3 does not indicate who may conclude such an agreement. This is an issue that will have to be resolved by the Court.

In providing that "only the States Parties and the Commission shall have the right to submit a case to the Court," Article 61.1 does not give private parties standing to institute proceedings. Thus, an individual who has filed a complaint with the Commission cannot bring that case to the Court. This is not to say that a case arising out of an individual complaint cannot get to the Court; it may be referred to it by the Commission or a State Party, but not by the individual complainant.

The Convention, in Article 63.1, contains the following stipulation 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.

This provision indicates that the Court must decide whether there has been a breach of the Convention and, if so, what rights the injured party should be accorded. Moreover, the Court may also determine the steps that should be taken to remedy the breach and the amount of damages to which the injured party is entitled.

Paragraph 2 of Article 68 of the Convention exclusively concerns compensatory damages. It provides that the "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."

In addition to regular judgments, the Court also has the power to grant what might be described as temporary injunctions. The power is spelled out in Article 63.2 of the Convention, which reads as follows:

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

This extraordinary remedy is available in two distinct circumstances: the first consists of cases pending before the Court and the second involves complaints being dealt with by the Commission that have not yet been referred to the Court for adjudication.

In the first category of cases, the request for the temporary injunction can be made at any time during the proceedings before the Court, including simultaneously with the filing of the case. Of course, before the requested relief may be granted, the Court must determine if it has the necessary jurisdiction.

The judgment rendered by the Court in any dispute submitted to it is "final and not subject to appeal." Moreover, the "States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." (Articles 67 and 68 of the Convention).

Enforcements of judgments of the Court are ultimately for the General Assembly of the Organization. The Court submits a report on its work to each regular session of the Assembly, specifying the cases in which a state has not complied with the judgments and making any pertinent recommendations. (Article 65 of the Convention).

2. <u>The Court's Advisory Jurisdiction</u>

The jurisdiction of the Inter-American Court of Human Rights to render advisory opinions is set forth in Article 64 of the Convention, which 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 instrument.

Standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention; instead, any OAS Member State may ask for it as well as all OAS organs, including the Inter-American Commission on Human Rights, specialized bodies such as the Inter-American Commission of Women and the Inter-American Institute of Children, within their fields of competence. Secondly, the advisory opinion need not deal only with the interpretation of the Convention; it may also be founded on a request for an interpretation of any other treaty "concerning the protection of human rights in the American states."

As to the meaning and scope of this phrase, the Court, in response to a request of the Government of Peru, was of the opinion:

Firstly: By unanimous vote, that the advisory jurisdiction of the Court can be exercised, in general, with

regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have a right to become parties thereto.

Secondly: By unanimous vote, that, for specific reasons explained in a duly motivated decision, the Court may decline to comply with a request for an advisory opinion if it concludes that, due to the special circumstances of a particular case, to grant the request would exceed the limits of the Court's advisory jurisdiction for the following reasons, **inter alia:** because the issues raised deal mainly with international obligations assumed by a non-American State or with the structure or operation of international organs or bodies outside the inter-American system; or because granting the request might have the effect of altering or weakening the system established by the Convention in a manner detrimental to the individual human being.

(I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art.64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1).

The Court's advisory jurisdiction power enhances the Organization's capacity to deal with complex legal issues arising under the Convention, enabling the organs of the OAS, when dealing with disputes involving human rights issues, to consult the Court.

Finally, Article 64.2 permits OAS Member States to seek an opinion from the Court on the extent to which their domestic laws are compatible with the Convention or with any other "American" human rights treaty.

Under the provision, this jurisdiction also extends, in certain circumstances, to pending legislation. (See I/A Court H.R., Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4). Resort to this provision may contribute to the uniform application of the Convention by national tribunals.

3. Acceptance of the jurisdiction of the Court

A total of eight States Parties have recognized the jurisdiction of the Court "on all matters relating to the interpretation and application" of

the Convention (Article 62.1 of the Convention). They are Costa Rica, Peru, Venezuela, Honduras, Ecuador, Argentina, Uruguay and Colombia.

It should be pointed out that, according to the provisions of Article 62, any State Party to the Convention may accept the jurisdiction of the Court in a specific case without recognizing it for all cases. Cases may also be submitted to the Court by special agreement between States Parties to the Convention.

By Decree No. 281-86 of May 20, 1986, the Government of Guatemala withdrew the reservation to Article 4(4) that it had made at the time of ratification. This type of reservation was the subject of an advisory opinion of the Court (See "Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)," Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3.)

A table showing the status of ratifications of the American Convention may be found at the end of this report (Appendix VI).

E. Budget

The presentation of the budget of the Court is governed by Article 72 of the American Convention which states 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.

The General Assembly of the Organization, at its Fifteenth Regular Session, approved a budget for the Court of $293,700 for 1986 and $284.200 for 1987. These amounts represent reductions, based on its 1983 budget, of 10% in 1986 and another 10% in 1987.

These reductions are seriously hindering the Court from meeting its obligations, especially in view of its increased workload as it begins to consider the first contentious cases presented to it.

F. Relations with other organs of the system and with regional and worldwide agencies of the same kind

The Court has close institutional ties with its sister organ of the American Convention, the Inter-American Commission on Human Rights. These ties have been solidified by a series of meetings between members of the two bodies. The Court also maintains cooperative relations with other OAS bodies working in the area of human rights, such as the Inter-American Commission of Women and the Inter-American Juridical Committee. It has established especially strong ties with the European Court of Human Rights, which was established by the Council of Europe and exercises functions within the framework of that organization comparable to those of the Inter-American Court. The Court also maintains relations with the pertinent bodies of the United Nations such as the Commission and Committee on Human Rights and the Office of the High Commissioner for Refugees.

II. ACTIVITIES OF THE COURT

A. Fourth Special Session of the Court

This session was held November 4-14, 1985 at the seat of the Court. Judge Carlos Roberto Reina could not attend for reasons beyond his control and was duly excused by the President.

The meeting, which lasted ten days, was devoted entirely to the drafting of the advisory opinion (OC-5) that had been requested by the Government of Costa Rica on the interpretation of Articles 13 and 29 of the American Convention of Human Rights regarding the compulsory licensing of journalists and the compatibility of Law No. 4420 of September 22, 1969, Organic Law of the Association of Journalists of Costa Rica, with the aforementioned articles.

On November 8, 1985, the Court held a public hearing on that part of the request governed by the provisions of Article 64(1) of the Convention, at which representatives of the Government of Costa Rica and the Delegates of the Inter-American Commission on Human Rights presented their views on the interpretation of Articles 13 and 29 of the Convention with respect to the compulsory licensing of journalists.

The Court issued Advisory Opinion OC-5/85, entitled "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)," on November 13, 1985. This opinion was distributed as an annex to the Court's Annual Report during the last session of the General Assembly of the Organization.

At this meeting, the Court also began a preliminary discussion on the request for advisory opinion (OC-7) presented by the Government of Costa Rica on the interpretation of Article 14(1) of the Convention, which deals with the right of reply (Appendix II) and continued its study of OC-6, requested by the Government of Uruguay, on the meaning of the expression "laws" in Article 30 of the Convention.

B. Fourteenth Special Session of the OAS General Assembly

This Special Session of the General Assembly was held in Cartagena, Colombia during the four days immediately prior to its Regular Session and was convoked to consider the adoption of a Protocol amending the Charter of the Organization. At this session, as well as at the Regular Session, the Court was represented by its Permanent Commission, composed of the President, Judge Thomas Buergenthal; the Vice President, Judge Rafael Nieto-Navia and Judge Pedro Nikken.

Of special interest to the Court was its inclusion in the Charter as one of the organs by which the OAS accomplishes its purposes. Despite an

agreement at the final meeting of the Commission on Political and Juridical Matters to this effect, the Court was not included, through an apparent misunderstanding, in the Protocol that was opened for signature of the Member States.

This matter is now being studied by the Permanent Council of the Organization in order to find the best way to rectify this omission and to include the Court as one of the principal organs through which the Organization carries out its goals.

C. Fifteenth Regular Session of the OAS General Assembly

This Regular Session of the General Assembly was held December 5-9, 1985 in Cartagena, Colombia.

The President of the Court, Judge Thomas Buergenthal, in his report on the activities of the Court during the year 1985 to the Commission on Juridical and Political Matters of the Assembly, pointed out that "the Court's jurisprudence is already widely cited and lauded by international lawyers for the important contributions it is making to the international law of human rights not only in our hemisphere but world wide." Judge Buergenthal stated that the strengthening of the institutional foundations of the inter-American human rights system "can only be achieved by the full implementation of the mechanism of the right of individual appeal to the Commission ... and by reference of appropriate cases to the Court" and also urged all of the Member States to avail themselves of their right to submit their views to the Court on the legal questions raised in advisory opinion requests.

In its Resolution on the Annual Report of the Court (AG/RES.780 (XV-0/85), the Assembly resolved:

> 1. To express the appreciation of the Organization for the work performed by the Inter-American Court of Human Rights, as reflected in its Annual Report.
>
> 2. To urge the member states of the OAS which have not yet done so to ratify or accede to the American Convention on Human Rights.
>
> 3. To express its hope that all of the states which are parties to the American Convention on Human Rights will acknowledge the Court's compulsory jurisdiction.
>
> 4. To urge the member states of the Organization and the organs listed in Chapter X of the Charter, especially the Inter-American Commission on Human Rights, to make full use of the Court's competence to the extent they are empowered to do so by the Pact of San José, particularly with reference to hearing and deciding cases involving interpretation and application of the Convention.

5. To urge the member states of the Organization to make use to the best of their ability of the authority accorded to them in the procedural rules of the Court, by presenting their views of the advisory opinions requested of the Court.

The Assembly also adopted the budget of the Court for the biennium 1986-87, approving $293,700 for the year 1986 and $284,200 for the year 1987.

Three new judges were elected and Judge Thomas Buergenthal, a distinguished expert in the area of international protection of human rights, was reelected to six-year terms by the States Parties to the Convention during this Assembly. Judges Héctor Fix-Zamudio (Mexico), a leading specialist on the right of amparo; Héctor Gros Espiell (Uruguay), a recognized expert on international law; and Jorge R. Hernández Alcerro (Honduras), former Vice Minister of Foreign Affairs, replaced, as of January 1, 1986, Judges Huntley Eugene Munroe (Jamaica), Máximo Cisneros Sánchez (Peru) and Carlos Roberto Reina (Honduras) whose terms had lapsed.

D. Fourteenth Regular Session of the Court

This meeting of the Court was held January 13-20, 1986 at the seat of the Court in San José, Costa Rica. All of the judges attended this session, at which two pending requests for advisory opinions were considered: that presented by the Government of Uruguay on the meaning of the expression "laws" employed in Article 30 of the Convention, which deals with the restrictions that may be placed on the enjoyment and exercise of the freedoms recognized by the Convention; and that requested by the Government of Costa Rica on the interpretation of Article 14(1) of the Convention regarding the right of reply or correction. On January 16, the Court held public hearings on each request at which time it heard the views of the representatives of the Government of Costa Rica and the Delegates of the Inter-American Commission on Human Rights.

The Court also received a delegation of the European Court of Human Rights, composed of its President, Rolv Ryssdal, Judges John Cremona and Ronald St. J. Macdonald and its Registrar, Marc-André Eissen, as part of the regular program of joint consultation between the two regional jurisdictional organs in the field of human rights. The judges of the two Courts analyzed points of common interest regarding the two Conventions that guide their activities as well as on their jurisprudence and the advisory opinions. There was general agreement among of the judges that the meetings were very valuable for the work of the regional courts.

E. Fifteenth Regular Session of the Court

All of the judges attended this session, which was held April 26-May 9, 1986 at its seat. At this meeting, the Court issued Advisory Opinion OC-6/86 of May 9, 1986, entitled "The Word 'Laws' in Article 30 of the Amer-

ican Convention on Human Rights," that had been requested by the Government of Uruguay. (The text of this Advisory Opinion may be found in Appendix I).

The Court also carefully analyzed the request for advisory opinion (OC-7) presented by the Government of Costa Rica on the right of reply or correction and decided to issue the opinion at its next session. The Court adopted the observations that will be presented to the Sixteenth Regular Session of the OAS General Assembly on the Additional Protocol to the American Convention regarding Economic, Social and Cultural Rights (Appendix IV). This marks the second occasion that the Court has responded to a petition of the General Assembly in this regard.

Four presidents of the Americas, Belisario Betancur (Colombia), José Azcona del Hoyo (Honduras), Vinicio Cerezo Arévalo (Guatemala) and Julio María Sanguinetti (Uruguay), honored the Court with their presence in a ceremony held on May 8, 1986 in which the presidents expressed their support for the regional system of protection of human rights and, in particular, for the Court. The President of Guatemala announced that his country would accept the compulsory jurisdiction of the Court and would also withdraw the reservation to Article 4(4) of the Convention which had been made at the time of ratification . The President of the Court, Judge Thomas Buergenthal, in the name of his colleagues, welcomed the distinguished visitors and underlined the importance of the occasion. (His remarks may be found in Appendix V of this Report).

The Court was informed during this session by the Inter-American Commission on Human Rights that the latter was sending for its consideration three contentious cases which refer to the Republic of Honduras (Appendix III).

F. Fifth Special Session of the Court

This Special Session was held August 25-29, 1986 at the seat of the Court in San José, Costa Rica. All of the judges attended this meeting, at which the Court issued Advisory Opinion OC-7/86 of August 29, 1986, entitled "Enforceability of the Right to Reply or Correction," which had been requested by the Government of Costa Rica.

The Court also studied in a preliminary fashion the three contentious cases that the Inter-American Commission on Human Rights had submitted to its consideration under Article 61(1) of the Convention and which bear the following case numbers of the Commission: 7920, 7951 and 8097. All of these cases refer to Honduras. Dr. Rigoberto Espinal Irias, named judge ad hoc by the Government of Honduras in view of the fact that Judge Hernández Alcerro asked to be recused in these matters, participated in the discussion of these cases.

The President of the Court reported that he had participated in the Colloquium on Democracy and Latin America, sponsored by the Council of Europe

during the first week of June, which brought together important personages of Europe and the Americas.

Several of the judges of the Court gave conferences at the Inter-disciplinary Course on Human Rights that the Inter-American Institute on Human Rights offers annually to selected participants from the hemisphere and which was held August 18-29 in San José.

APPENDIX I

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-6/86
OF MAY 9, 1986

THE WORD "LAWS" IN ARTICLE 30
OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

REQUESTED BY THE GOVERNMENT OF URUGUAY

Present:

Thomas Buergenthal, President
Rafael Nieto-Navia, Vice President
Rodolfo E. Piza E., Judge
Pedro Nikken, Judge
Héctor Fix-Zamudio, Judge
Héctor Gros Espiell, Judge
Jorge R. Hernández Alcerro, Judge

Also present:

Charles Moyer, Secretary, and
Manuel Ventura, Deputy Secretary

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The Government of Uruguay (hereinafter "the Government" or "Uruguay"), by means of communication of August 14, 1985, submitted to the Inter-American Court of Human Rights (hereinafter "the Court") a request for an advisory opinion on the scope of the word "laws" used in Article 30 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. In a note of October 31, 1985, the Secretariat of the Court, acting pursuant to Article 52 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requested written observations on the issues involved in the instant proceeding from the Member States of the Organization of American States (hereinafter "the OAS") as well as, through the Secretary General, from the organs listed in Chapter X of the Charter of the OAS.

3. The President of the Court directed that the written observations and other relevant documents be filed in the Secretariat before January 10, 1986 for consideration by the Court during its Fourteenth Regular Session, which was held January 13-21, 1986.

4. Responses to the Secretariat's communication were received from the Governments of Costa Rica and Jamaica. Furthermore, Raúl Emilio Vinuesa, an Argentinian Professor of Law, presented his points of view on the request as **amicus curiae.**

5. A public hearing was held on Thursday, January 16, 1986 to enable the Court to receive the oral arguments of the Member States and the OAS organs on the issues raised in the request.

6. The following representatives appeared at this hearing:

For the Government of Costa Rica:

Carlos José Gutiérrez, Agent and Minister of Foreign Affairs,

Manuel Freer Jiménez, Agent and Legal Adviser of the Ministry of Foreign Affairs

For the Inter-American Commission on Human Rights:

Edmundo Vargas Carreño, Executive Secretary, by virtue of the representation conferred on him by the President of the Commission.

I

7. In the considerations that gave rise to the request, the Government points out that

> (t)he question is whether the word "laws" used (in Article 30) refers to laws in the formal sense --legal norms passed by the Legislature and promulgated by the Executive Branch in the manner prescribed by the Constitution-- or in the material sense, as a synonym for the entire body of law, without regard to the procedure followed in creating such norms and the normative rank assigned to it within the hierarchical order of the particular legal system (para. 2).

8. Those same considerations suggest that

> (a)nother factor to be taken into account is the indispensable harmonization of the Pact of San José with the other basic instruments of the inter-American juridical system, especially the Charter, which makes "the effective exercise of representative democracy" (Art. 3(d)), one of the principles of the American States.
>
> Obviously, representative democracy is based on the Rule of Law which presupposes that human rights are protected by law (para. 8).

II

9. This request for an advisory opinion has been presented to the Court by the Government of Uruguay, a State Party to the American Convention and a Member State of the OAS. Under Article 64(1) of the Convention, "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." The request of the Government seeks an interpretation of Article 30 of the Convention and therefore comes under the terms of Article 64.

10. The instant request for an advisory opinion must be considered within the framework provided by paragraph 1 of Article 64 of the Convention, even though that clause has not been specifically invoked. This conclusion is evident because what has been requested is the interpretation of an article of the Convention and no question has been raised regarding the "compatibility of any of its domestic laws with the aforesaid international instruments" (Art. 64.2).

11. We are here dealing with a request for the interpretation of a particularly relevant norm that concerns the application of the restrictions that may be placed on the enjoyment or exercise of the rights or freedoms recognized in the Convention. It is, therefore, admissible pursuant to the terms of the Convention and the Rules of Procedure. On the other hand, there is no reason for the Court to invoke the discretionary powers implicit in its advisory jurisdiction, which would have enabled it to decide against rendering the opinion (**"Other treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 31; **Restrictions to the Death Penalty (Arts. 4.2 y 4.4 American Convention on Human Rights)**, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 28). The Court, therefore, admits the request for advisory opinion and will now proceed to answer it.

III

12. The Convention establishes:

> **Article 30. Scope of Restrictions**
>
> The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

13. This article must be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of this treaty in their context and in the light of its object and purpose" (Art. 31, Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention")). The terms used limit the restrictions that may be placed on the rights or freedoms recognized in the Convention to those cases where such restrictions derive from laws that meet the requirements imposed by the article itself.

14. Article 30 refers to the restrictions that the Convention itself authorizes with respect to the different rights and freedoms recognized therein. It must be emphasized that, under the Convention (Art. 29(a)), all acts directed toward the supression of any one of the rights set forth therein are illicit. In exceptional circumstances and under conditions precisely spelled out, the Convention allows the temporary suspension of some of the obligations assumed by the states (Art. 27). Under normal circumstances, there can only be "restrictions" to the enjoyment and exercise of such rights. The distinction between restriction and supression of the enjoyment or exercise of rights and freedoms derives from the Convention itself (Arts. 16(3), 29(a) and 30). We are here dealing with an important distinction and the amendment introduced on the matter during the last stage of the drafting of the Convention, at the Specialized Conference of San José, to include the words "to the enjoyment or exercise," clarified this point conceptually (**Conferencia**

Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre de 1969, Actas y Documentos, OEA/Ser.K/XVI/1.2, Washington, D.C. 1973 (hereinafter "Actas y Documentos") repr. 1978, esp. at 274).

15. The Court will now analyze the question of whether "the word 'laws' used (in Article 30) refers to laws in the formal sense --a legal norm passed by the Legislature and promulgated by the Executive Branch in the manner prescribed by the Constitution--" or whether, on the other hand, it is used "in the material sense, as a synonym for the entire body of law (ordenamiento jurídico), without regard to the procedure followed in creating such norms and the normative rank assigned to it within the hierarchical order of the particular legal system."

16. The question before us does not go beyond inquiring as to the meaning that the word "laws" has in Article 30 of the Convention. It is, therefore, not a question of giving an answer that can be applied to each case where the Convention uses such terms as "laws," "law," "legislative provisions," "provisions of the law," "legislative measures," "legal restrictions," or "domestic laws." On each occasion that such expressions are used, their meaning must be specifically determined.

17. Notwithstanding the above, the criteria of Article 30 are applicable to all those situations where the word "laws" or comparable expressions are used in the Convention in referring to the restrictions that the Convention itself authorizes with respect to each of the protected rights. In effect, the Convention does not limit itself to setting forth a group of rights and freedoms whose inviolability is assured to each individual, but also refers to the special circumstances in which it is possible to restrict the enjoyment or exercise of such rights or freedoms without violating them. Article 30 cannot be regarded as a kind of general authorization to establish new restrictions to the rights protected by the Convention, additional to those permitted under the rules governing each one of these. The purpose of the article, on the contrary, is to impose an additional requirement to legitimize individually authorized restrictions.

18. In reading Article 30 in conjunction with other articles in which the Convention authorizes the application of limitations or restrictions to specific rights or freedoms, it is evident that the following conditions must be concurrently met if such limitations or restrictions are to be implemented:

a) that the restriction in question be expressly authorized by the Convention and meet the special conditions for such authorization;

b) that the ends for which the restriction has been established be legitimate, that is, that they pursue "reasons of general interest" and do not stray from the "purpose for which (they) have been established." This teleological criterion, the analysis of which has not here been requested, establishes control through the deviation of power;

c) that such restrictions be established by laws and applied pursuant to them.

19. The meaning of the word "laws" must be sought as a term used in an international treaty. It is not, consequently, a question of determining the meaning of the word "laws" within the context of the domestic law of a State Party.

20. In this regard, the Court takes into account the fact that the legal regimes of the States Parties to the Convention each have their source in a different tradition. Some States Parties can be said to form part of the Common Law system while others follow the Civil Law system. Their constitutional systems evince peculiarities which can be traced to their individual juridical and political developments. The concept of "laws" employed cannot be interpreted in the abstract and, consequently, must not be divorced from the context of the legal system which gives meaning to the term "laws" and affects its application (Cf. Eur. Court H. R., **The Sunday Times case,** judgment of 26 April, 1979. Series A no. 30, para. 47).

21. The meaning of the word "laws" in the context of a system for the protection of human rights cannot be disassociated from the nature and origin of that system. The protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. These are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.

22. In order to guarantee human rights, it is therefore essential that state actions affecting basic rights not be left to the discretion of the government but, rather, that they be surrounded by a set of guarantees designed to ensure that the inviolable attributes of the individual not be impaired. Perhaps the most important of these guarantees is that restrictions to basic rights only be established by a law passed by the Legislature in accordance with the Constitution. Such a procedure not only clothes these acts with the assent of the people through its representatives, but also allows minority groups to express their disagreement, propose different initiatives, participate in the shaping of the political will, or influence public opinion so as to prevent the majority from acting arbitrarily. Although it is true that this procedure does not always prevent a law passed by the Legislature from being in violation of human rights --a possibility that underlines the need for some system of subsequent control-- there can be no doubt that it is an important obstacle to the arbitrary exercise of power.

23. The above may be inferred from the "principle" --a term used by the Permanent Court of International Justice (**Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City,** Advisory Opinion, 1935, P.C.I.J., Series A/B, No. 65, p. 56)-- of legality. This princi-

ple, which is found in almost all the constitutions of the Americas drafted since the end of the 18th century, is one and the same as the idea and the development of law in the democratic world and results in the acceptance of the existence of the so-called requirement of law (reserva de ley), by which fundamental rights can only be restricted by law, the legitimate expression of the will of the people.

24. Under democratic constitutionalism, the requirement of law (reserva de ley) in cases of interference in the realm of freedom is essential to the legal protection and full existence of human rights. For the principles of legality and requirement of law (reserva de ley) to be an effective guarantee of the rights and freedoms of the individual, not only must the latter be formally proclaimed but there must also be a system that will effectively ensure their application and an effective control of the manner in which the organs exercise their powers.

25. As far back as 1789, the Declaration of the Rights of Man and the Citizen stated in its Article 4 that

> Liberty consists in the power to do anything that does not injure others; accordingly, the exercise of the natural rights of each man has for its only limits those that secure to the other members of society the enjoyment of these same rights. These limits can be determined only by law.

Since that time, this concept has been a fundamental principle of democratic constitutional development.

26. From that perspective, one cannot interpret the word "laws," used in Article 30, as a synonym for just any legal norm, since that would be tantamout to admitting that fundamental rights can be restricted at the sole discretion of governmental authorities with no other formal limitation than that such restrictions be set out in provisions of a general nature. Such an interpretation would lead to disregarding the limits that democratic constitutional law has established from the time that the guarantee of basic human rights was proclaimed under domestic law. Nor would it be consistent with the Preamble to the American Convention, according to which "the essential rights of man are ... based upon attributes of the human personality and ... they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states."

27. Within the framework of the protection of human rights, the word "laws" would not make sense without reference to the concept that such rights cannot be restricted at the sole discretion of governmental authorities. To affirm otherwise would be to recognize in those who govern virtually absolute power over their subjects. On the other hand, the word "laws" acquires all of its logical and historical meaning if it is regarded as a requirement of the necessary restriction of governmental interference in the area of individual rights and freedoms. The Court concludes that the word "laws," used in Article 30, can have no other meaning than that of formal law, that is, a legal

norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State.

28. The Convention not only requires a law in order to legitimate restrictions to the enjoyment or exercise of rights or freedoms, but also demands that such laws be enacted "for reasons of general interest and in accordance with the purpose for which such restrictions have been established." The concept that those restrictions which are permitted must be applied "with the purpose for which such restrictions have been established" was already recognized in the Draft Convention on Human Rights drawn up by the Inter-American Council of Jurists (1959). That Draft stated that such restrictions "shall not be applied with any other purpose or design than that for which they have been established" (**Inter-American Yearbook on Human Rights, 1968**, Washington, D.C.: General Secretariat, OAS, 1973, at 248). On the other hand, the requirement that the application of the restrictions be in accordance with "laws enacted for reasons of general interest" is the result of an amendment introduced in the final draft at the Specialized Conference of San José in 1969 (Actas y Documentos, **supra** 14 at 274).

29. The requirement that the laws be enacted for reasons of general interest means they must have been adopted for the "general welfare" (Art. 32(2)), a concept that must be interpreted as an integral element of public order (ordre public) in democratic states, the main purpose of which is "the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness" (American Declaration of the Rights and Duties of Man (hereinafter "American Declaration"), First Introductory Clause).

30. "General welfare" and "public order" are terms of the Convention that must be interpreted with reference to the treaty, which has its own philosophy under which the American States "require the political organization of these States on the basis of the effective exercise of representative democracy" (Charter of the OAS, Art. 3(d)); and the rights of man, which "are based upon attributes of his human personality," must be afforded international protection (American Declaration, Second Introductory Clause; American Convention, Preamble, para. 2).

31. In this connection, the Court has already stated that

> Within the framework of the Convention, it is possible to understand the concept of general welfare as referring to the conditions of social life that allow members of society to reach the highest level of personal development and the optimum achievement of democratic values. In that sense, it is possible to conceive of the organization of society in a manner that strengthens the functioning of democratic institutions and preserves and promotes the full realization of the rights of the individual.... The Court must recognize, nevertheless the difficulty inherent in the attempt of defining with precision the concepts of "public order" and "general welfare." It also recognizes that both concepts can be

used as much as to affirm the rights of the individual against the exercise of governmental power as to justify the limitations on the exercise of those rights in the name of collective interests. In this respect, the Court wishes to emphasize that "public order" or "general welfare" may under no circumstances be invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true content (See Art. 29(a) of the Convention). Those concepts, when they are invoked as a ground for limiting human rights, must be subjected to an interpretation that is strictly limited to the "just demands" of "a democratic society," which takes account of the need to balance the competing interests involved and the need to preserve the object and purpose of the Convention (**Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)**, Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 66 and 67).

32. Law in a democratic state is not merely a mandate of authority cloaked with certain necessary formal elements. It denotes a content and is directed towards a specific goal. The concept of "laws" referred to in Article 30, interpreted in the context of the Convention and in the light of its object and purpose, cannot be examined solely in terms of the principle of legality (See **supra** 23). In the spirit of the Convention, this principle must be understood as one in which general legal norms must be created by the relevant organs pursuant to the procedures established in the constitutions of each State Party, and one to which all public authorities must strictly adhere. In a democratic society, the principle of legality is inseparably linked to that of legitimacy by virtue of the international system that is the basis of the Convention as it relates to the "effective exercise of representative democracy," which results in the popular election of legally created organs, the respect of minority participation and the furtherance of the general welfare, **inter alia** (See **supra** 22).

33. The Declaration of Mexico affirmed that the "purpose of the State is the happiness of man in society. The interests of the community should be harmonized with the rights of the individual. The American man cannot conceive of living without justice, just as he cannot conceive of living without liberty" ("Declaration of Mexico" of March 6, 1945, para. 12. **The International Conferences of American States**, Second Supplement, 1942-1954. Washington, D.C.: Pan American Union, Department of Legal Affairs, 1958 at 75).

34. The meaning of the word "laws" in Article 30 cannot be disassociated from the intention of all the American States, as expressed in the Preamble to the Convention, "to consolidate in the hemisphere within the framework of democratic institutions a system of personal liberty and social justice based on respect for the essential rights of man" (Preamble of the Convention, para. 1). Representative democracy is the determining factor throughout the system of which the Convention is a part. It is a "principle" reaffirmed by

the American States in the OAS Charter, the basic instrument of the inter-American system. The Convention itself expressly recognizes political rights (Art. 23), which are included among those rights that cannot be suspended under Article 27. This is indicative of their importance in the system.

35. The "laws" referred to in Article 30 are, therefore, normative acts directed towards the general welfare, passed by a democratically elected legislature and promulgated by the Executive Branch. This meaning is fully consistent with the general context of the Convention, in line with the philosophy of the inter-American system. Only formal law, as the Court understands that term, can restrict the enjoyment and exercise of the rights recognized by the Convention.

36. The above does not necessarily negate the possibility of delegations of authority in this area, provided that such delegations are authorized by the Constitution, are exercised within the limits imposed by the Constitution and the delegating law, and that the exercise of the power delegated is subject to effective controls, so that it does not impair nor can it be used to impair the fundamental nature of the rights and freedoms protected by the Convention.

37. The necessary existence of the elements inherent in the concept of law in Article 30 of the Convention leads to the conclusion that, for purposes of the interpretation of this Article, the concepts of legality and legitimacy coincide, inasmuch as only a law that has been passed by democratically elected and constitutionally legitimate bodies and is tied to the general welfare may restrict the enjoyment or exercise of the rights or freedoms of the individual.

IV

38. Consequently, in reply to the question presented by the Government of Uruguay on the interpretation of the word "laws" in Article 30 of the Convention,

THE COURT IS OF THE OPINION

Unanimously,

That the word "laws" in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this ninth day of May, 1986.

Thomas Buergenthal
President

Rafael Nieto-Navia

Rodolfo E. Piza E.

Pedro Nikken

Héctor Fix-Zamudio

Héctor Gros Espiell

Jorge R. Hernández Alcerro

Charles Moyer
Secretary

APPENDIX II

REQUEST FOR ADVISORY OPINION (OC-7), PRESENTED BY THE GOVERNMENT OF COSTA RICA

(TRANSLATION)

MINISTRY OF FOREIGN RELATIONS AND RELIGION
(Office of the Minister)

San José, October 1, 1985

The President of the
Inter-American Court of Human Rights

The Government of Costa Rica, as a Member State of the Organization of American States and in use of the power granted it by Article 64 of the American Convention on Human Rights, hereby consults the Inter-American Court of Human Rights regarding the interpretation and scope of one of the articles of that Convention.

In accordance with the provisions of Article 49 of the Rules of Procedure of the Court, the Government of Costa Rica formulates its request for an advisory opinion in the following terms:

I
PROVISION TO BE INTERPRETED

The provision on which the interpretation is requested is, precesely, that found in Article 14 of the American Convention on Human Rights, regarding the Right to Reply, the first paragraph of which stipulates:

> 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

II
CONSIDERATIONS WHICH GIVE RISE TO THE REQUEST FOR ADVISORY OPINION

The Government of Costa Rica requests the advisory opinion of the Inter-American Court of Human Rights inasmuch as there exists a doubt that should be resolved as to whether in Costa Rica anyone who is injured by inaccurate or offensive statements or ideas desseminated to the public by a medium of communication can exercise the right of reply established by Article 14 of the American Convention on Human Rights, or if that right can only be exercised once a formal law has been issued establishing the conditions for the specific exercise of such right.

There is, in effect, a first thesis or opinion that would be the following:

1. The Constitution of Costa Rica, in its Article 7, first paragraph, establishes:

> **Article 7.** Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws from their promulgation or from the day that they designate.

2. Costa Rica ratified the American Convention on Human Rights by means of Legislative Decree No. 4534 of February 23, 1970.

3. Therefore, from the date of promulgation of the Convention by means of Law 4534, the provisions of the American Convention on Human Rights form part of the internal law of Costa Rica and have a greater hierarchy than the common domestic laws.

The foregoing demonstrates that all of the civil and political rights set out in the Convention are already guaranteed and protected in our regime of law and can be claimed by such persons who hold those rights.

The "law" that is mentioned in Article 14, first paragraph **in fine,** of the Convention concerning the RIGHT OF REPLY does not have a **constitutive** character obliging the organs and media of communication to publish the reply, but rather said "law" would have a **merely instrumental and operative** character, a procedure that is then susceptible to be established by means of provisions of a **reglamentary nature,** as is foreseen in Article 2 of the Convention when it refers to "legislative or **other measures** as may be necessary to give effect to those rights or freedoms."

There is a second thesis or opinion that can be stated in the following manner:

The provisions included in Article 14 of the American Convention on Human Rights are not of a self-executing nature (in the sense that this expression has in Common Law) and require the promulgation of a formal DOMESTIC LAW so that the rights or guarantees set out in Article 14 are effectively protected.

III
SPECIFIC QUESTIONS ON WHICH THE OPINION OF THE COURT IS SOUGHT

First: Can it be assumed that the full and free exercise of the right protected by Article 14 of the American Convention on Human Rights is already guaranteed to all persons under the jurisdiction of the State of Costa Rica by virtue of the obligations assumed by our country under Article 1 of that Convention?

Second: If the preceding question is answered in the negative, does the State of Costa Rica have an international obligation under Article 2 of the American Convention on Human Rights to adopt, in accordance with its constitutional processes, the legislative **or other measures** that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention?

Third: If it is decided that the State of Costa Rica is under the obligation to adopt the legislative **or other measures** that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention, would it be proper to conclude that the term "law," which appears at the end of the first paragraph of the said Article 14, is used in its broadest sense so as to encompass provisions of a regulatory type promulgated by executive decree, keeping in mind the instrumental character of such legal provisions?

IV
DESIGNATION OF THE AGENTS FOR THE GOVERNMENT

The Government of Costa Rica names as its Agent in the proceedings arising from this request Carlos José Gutiérrez Gutiérrez, Minister of Foreign Affairs, and Gerardo Trejos Salas and Manuel Freer Jiménez, Vice Minister of Foreign Affairs and Legal Adviser of the Ministry of Foreign Affairs, respectively, as Alternate Agents, and designates the Ministry as its address to receive notifications and asks that this request be given the handling set forth in the Rules of Procedure of the Inter-American Court of Human Rights.

/s/Gerardo Trejos
Acting Minister of Foreign Affairs

APPENDIX III

RESOLUTIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE CASES SUBMITTED BY IT TO THE COURT

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 22/86
CASE 7920 (HONDURAS)

HAVING SEEN the following background information in this case:

1. The Inter-American Commission on Human Rights, in a communication dated October 7, 1981, received the following complaint:

> We condemn the arbitrary detention since September 12 of this year of **Angel Manfredo Velásquez Rodríguez**, which took place, for unknown reasons, in Tegucigalpa. We accuse Colonels Leonides Torres Arias (G-2), Gustavo Alvarez (FUSEP), Juan López Grijalba (National Department of Investigation) and Hubbert Bodden (Commander of the First Infantry Battalion of Tegucigalpa) of these acts. We have exhausted the legal remedies without success. We have been informed that he is in the First Infantry Battalion of Tegucigalpa, together with many "disappeared" political prisoners who are of Honduro-Salvadoran origin, but the authorities deny that they have been detained. The "Langueña" community and the country in general are disturbed by this situation. We hope for his early release;

2. By cable of October 14, 1981, the Commission transmitted the pertinent parts of the complaint to the Government of Honduras with the request that it submit the pertinent information on the case;

3. The Commission, by note of November 24, 1981, transmitted to the Government of Honduras the following additional information provided by the claimant in this case and requested that the Government take the measures deemed suitable so that the Commission might have all of the data on the case as soon as possible.

> Angel Manfredo Velásquez Rodríguez, a student at the National Autonomous University of Honduras, was detained in a violent manner and without a judicial order for his arrest by members of the National Department of Investigation and of G-2 (Intelligence) of the Armed Forces of Honduras and taken to an unknown spot.
>
> He was detained in Tegucigalpa on the afternoon of September 12, 1981 by the aforementioned persons in the presence of several eyewitnesses who saw him being put into a vehicle which took him to the police cells where he has been subjected to harsh interrogation and cruel torture, having been accused of alleged political crimes.

He was initially taken with other persons who had been detained to the cells of Station No. 2 of the Public Security Force located in the Barrio El Manchén of this city, where agents specialized in torture mercilessly endeavored to force him to confess crimes that they have attributed to him without giving him any right to defend himself.

On September 17, 1981 he was transferred to the First Infantry Battalion where the aforementioned interrogations continued and where there was no possibility to visit him because in all the police and security forces it was systematically denied that he had been detained.

For this reason we ask the Inter-American Commission on Human Rights that it intercede with the appropriate authorities so that justice prevail and that the life and personal security of Angel Manfredo Velásquez Rodríguez be guaranteed.

4. In view of the fact that it had not received a response, the Commission, by note of May 14, 1982 repeated its request for information to the Government of Honduras, pointing out that if it did not receive the information within a reasonable period, it would consider applying Article 42 (formerly Art. 39) of the Regulations of the Commission and presume the truth of the allegations;

5. By note of June 4, 1982, the Government of Honduras, in acknowledging receipt of the note of May 14, 1982, informed "that the appropriate authorities are carrying out all possible investigations on the matter and that as soon as we have a response on your request we will immediately forward it so that it receives the appropriate handling;"

6. By notes of October 6, 1982, March 23, 1983 and August 9, 1983, the Commission repeated its request for information on this case to the Government of Honduras, once again pointing out that if it did not receive the information the Commission would apply Article 42 (formerly Art. 39) of its Regulations;

7. At its 61st Session (October 1983), the Commission, taking into account that the Government of Honduras had not supplied the information that had been repeatedly requested, decided to presume as true the allegations in this case in application of the terms of Article 42 (formerly Art. 39) of its Regulations, adopting Resolution 30/83 (OEA/Ser.L/V/II.61, doc. 44), whose operative parts read as follows:

1. By application of Article 39 of the Regulations, to presume as true the allegations contained in the communication of October 7, 1981 concerning the detention and later disappearance of Angel Manfredo Velásquez Rodríguez in the Republic of Honduras.

2. To point out to the Government of Honduras that such acts are most serious violations of the right to life (Art. 4) and of

the right to personal liberty (Art. 7) of the American Convention on Human Rights.

3. To recommend to the Government of Honduras: a) that it order a thorough and impartial investigation to determine who is responsible for the acts denounced; b) that it punish those responsible, in accordance with Honduran law; c) that it inform the Commission within 60 days, especially with respect to the measures taken to carry out these recommendations.

4. If within the time-limit set out in paragraph 3 of this Resolution the Government of Honduras does not submit its observations, the Commission shall include this Resolution in its Annual Report to the General Assembly pursuant to Article 59(g) of the Regulations of the Commission.

8. The Commission communicated this resolution to the Government of Honduras by note of October 11, 1983, noting that the time-limit in paragraph 3 to present observations to Resolution 30/83 would begin from the date of that note.

9. The Government of Honduras, in a note of November 18, 1983 (Document No. 1504) and within the time-limit presented observations to Resolution 30/83, which may be summarized as follows:

a) That the internal legal remedies of Honduras have not been exhausted in this case, according to Document No. 2586 of the Supreme Court of Justice of this country in which it is shown that there is pending before said Court a Writ of "Exhibición Personal" on behalf of Angel Manfredo Velásquez and others, a copy of which is included in the note of November 18;

b) That the same Document of the Court certifies that "It is not true that the Director of said Department said that more persons were detained or that they were investigating them for attempts against State Security, except for María Odilia Medrano or Inés Consuelo Murillo Chaweder, who were placed at the order of the Courts. The officials of DNI, therefore, do not know the whereabouts of the other persons mentioned in the complaint, although they are making every effort to locate them in spite of the fact that it is difficult for the police to obtain this information from the communist countries of Nicaragua, Cuba, Russia and other Marxist countries."

c) That, on the other hand, the Government of Honduras wished to note that "it has continued, and shall continue, to make every effort that would allow it to shed light in a factual manner on the whereabouts of Angel Manfredo Velásquez Rodriguez. As proof of this the appropriate authorities have followed up on the information supplied by the Mayor of Langue, Department of Valle,

who states that Velásquez Rodriguez, according to rumors 'passed through these parts,' and according to local rumors the people say that they have seen him, in disguise, with guerrilla groups from El Salvador and when they are harassed by the Salvadoran Military he takes refuge in this area because he is familiar with it. There are also rumors that the people from Nacaome say the same thing and that they saw him in March of this year; that he has contact with other communists from this town and travels furtively between Nicaragua and El Salvador...";

d) That for these reasons the Government requests that the Commission reconsider the Resolution adopted;

10. The Commission, by communication of January 17, 1984, transmitted to the claimant the pertinent parts of the observations of the Government of Honduras with the request that he forward any new or complementary information on the case;

11. The claimant, in a communication of February 17, 1984, made the following comments to the observations of the Government:

The Director General of the National Department of Investigation (DNI) says he does not know the whereabouts of the subject of the complaint "although they are making every effort to locate them." Nevertheless, no special attention has been given to this individual case of Angel Manfredo Velásquez and one of the persons who detained him was José Isaís Vilorio, which was made known to the then Director of DNI and now head of Military Intelligence (G-2), General Juan López Grijalba.

The Government does not mention the name of the Mayor of Langue, Valle, who repeated the rumor that Velásquez is a Salvadoran guerrilla. That Mayor could be either Fidel Díaz (1981) or Antonio Yanez (1982 until December 1983);

12. The Commission, at its 62nd Session (May 1984), studied the request for reconsideration of the Government of Honduras and decided to continue study of the case;

13. Pursuant to that decision the Commission, by note of May 30, 1984, requested of the Government of Honduras the following information on the status of this case before the appropriate authorities of the country:

a) If the domestic legal remedies have now been exhausted;

b) If the procedure of the Writ of "Exhibición Personal" brought on behalf of Angel Manfredo Velásquez and others has been concluded and what has been the result;

c) If the report of the Mayor of Langue, a copy of which the Government of Honduras forwarded with its note of November 18,

1983, had been presented as part of the judicial proceedings held to determine the whereabouts of Velásquez;

d) If the Government had investigated the complaint against José Isaías Vilorio, allegedly involved in the disappearance of Velásquez, and which was brought to the attention of the then National Director of Investigation, General Juan José López Grijalba, as appears in the files of the IACHR and,

e) If the testimony of the persons who supposedly stated that they saw Velásquez has been given in accordance with legal formalities before the competent authorities;

14. In that note the Commission indicated to the Government of Honduras that it hoped to have a response before the opening of its next session (63rd), scheduled for October 1984, in order to conclude the examination of this case; this request was repeated on January 29, 1985 and the Commission pointed out that it would adopt a final decision in its session scheduled to begin March 4 of that year;

15. At its 64th Session (October 1984), the Commission decided to postpone final examination of this matter and give the Government of Honduras 30 days to forward the results that the Investigatory Commission might have arrived at and the data requested in the note of May 30, 1984;

16. The Government of Honduras, by cable of March 1, 1985, requested that the consideration of this case be postponed until the next session in view of the fact that, by Decision No. 232 of June 14, 1984, a high-level investigatory commission had been formed with powers "to analyze thoroughly the complaints of alleged violations of human rights, to shed light on said acts and to identify those responsible so that they might be punished according to the law" and that that Commission had asked the Government for an extension of 90 days to make a report of the result of its activities, a period which had not yet elapsed";

17. The extension requested was granted to the Government of Honduras on March 11, 1985;

18. The Government of Honduras, by note of April 8, 1985, acknowledged receipt of the cable of March 11 but did not forward the data and reports requested by the Commission in its note of May 30, 1984, nor the results of the investigation that the Special Commission, created by Decree No. 232 of June 14, 1984, might have conducted;

19. In a cable of April 4, 1986 (No. 717), the Government of Honduras informed the Commission as follows:

> As a result of reports in the written and oral press, this Court (Juzgado de Letras) proceeded to initiate the necessary legal action and thus the investigations on the disappearance of persons

in the national territory and specifically, through complaints of Gertrudiz Lanza González, Juana Paula Valladares Lanza, Vertilia Cerrato Alena, legal action was initiated against Gustavo Alvarez Martínez, Daniel Bali Castillo, Juan López Grijalba, Juan Blas Salazar, Alexander Fernández, Marcos Hernández and another by the name of Gradiz for the crimes of murder, torture, abuse of authority and disobedience against José Eduardo Lanza, Reinaldo Díaz, Manfredo Velásquez, Rafael Antonio Pacheco, Marco Antonio Fino, Jorge Eureque, Rolando Vindel Zavala, Gustavo Morales and others; these actions having been dismissed by this Court whose decision has been confirmed by the First Court of Appeals with the exception of General Gustavo Alvarez Martínez, who did not testify, since he was out of the country."

WHEREAS:

1. The new evidence presented by the Government of Honduras in the cable of April 4, 1986 on the investigations carried out in this case, submitted to the Commission almost two years after having been requested, is not sufficient, in the judgment of the Commission, to warrant a new examination of the case nor merit a reconsideration of Resolution 30/83, adopted at the 61st Session of the Commission;

2. All of the evidence in this case points to the fact that Angel Manfredo Velásquez Rodríguez is still "missing" and the Government of Honduras -in spite of the repeated requests of the Commission and especially the detailed request of reports contained in the note of May 30, 1984- has not offered convincing proof that would allow the Commission to state that the allegations are not true;

3. The information submitted by the Government of Honduras in its cable of April 4, 1986 does not respond to the points requested by the Commission nor can it be inferred from that cable that the Government of Honduras is disposed to continue the investigations so as to shed light on the allegations. This cable only states that the Juzgado de Letras before which the acts denounced in Case 7920 had been brought, had dismissed the legal action and that decision, moreover, had been confirmed by the First Court of Appeals;

4. There has been, moreover, an unjustified delay in the administration of justice in this case;

5. It can be concluded from paragraphs 2 and 3, that the Government of Honduras has not adopted the recommendations of the Commission;

6. In the case under examination, the Commission has not been able, given the nature of the complaint, to apply the friendly settlement procedure set out in Article 48(1)(f) of the American Convention on Human Rights and in Article 45 of its Regulations;

7. The friendly settlement procedure not being applicable, the Commission must comply with the terms of Article 51(1) of the Convention and send this case to the Inter-American Court of Human Rights;

8. The information submitted by the Government of Honduras, moreover, has been insufficient in that the result of the investigation of the Special Commission on Disappearances has not yet been divulged and sufficient time has elapsed since the presentation of the allegations that gave rise to this complaint;

9. The friendly settlement procedure not being applicable, the Commission may, under Article 50 of its Regulations, submit the case to the Inter-American Court of Human Rights, if the Government has not adopted the recommendations, and

10. The Government of Honduras on September 9, 1981, deposited the instrument whereby it recognized the jurisdiction the Inter-American Court of Human Rights, pursuant to Article 62 of the Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To confirm, in its entirety, Resolution 30/83 of October 1983, denying, consequently, the request for reconsideration presented by the Government of Honduras.

2. To refer the matter to the Inter-American Court of Human Rights for the effects set out in Article 63(1) of the Convention so that the Court may decide whether there was a violation of the right to life (Art. 1), to personal security (Art. 5) and to personal freedom (Art. 7) of the American Convention on Human Rights and that the consequences of this situation that constituted the breach of those rights be remedied and that the injured party or parties be paid fair compensation.

3. To communicate this Resolution to the Inter-American Court of Human Rights, to the claimant and to the Government of Honduras, pursuant to the terms of Article 50(2) of the Regulations of the Commission.

APPENDIX III-B

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 23/86
CASE 7951 (HONDURAS)

HAVING SEEN:

1. Resolution 16/84, adopted by the Commission at its 63rd Session (October 1984), by means of which, in application of the terms of Article 42 (formerly Art. 39) of its Regulations, the Commission decided to presume the truth of the allegations concerning the detention and disappearance in Honduras on December 11, 1981 of **Francisco Fairén Garbi** and **Yolanda Solís** while they were in transit in that country and recommended that the Government of Honduras adopt the appropriate measures on the case, that is: a) order an exhaustive investigation of the acts denounced; b) punish those responsible for such acts and c) inform the Commission on the measures taken to put into effect these recommendations;

2. That the Government of Honduras, in a note dated October 29, 1984 (Document No. 3004), submitted its observations to Resolution 16/84 and requested reconsideration of the Resolution in view of the fact that a Special Investigatory Commission was conducting an investigation to shed light on the presumed violations of human rights, to establish who was responsible for the acts and to punish those responsible. The Government offered to send to the IACHR the reports on the result of the work of that Special Investigatory Commission;

3. That the Government of Honduras has not submitted the information that it offered on the result of the work of the Special Investigatory Commission nor on others that the IACHR has requested in order to continue its study of the case;

4. That, therefore, the request for reconsideration of Resolution 16/84 is unfounded and lacks information or other evidence, different than that already examined by the Commission, that might have merited a reconsideration of the decision taken by the Commission;

5. That the Government of Honduras has not adopted the recommendations of the Commission or taken effective measures to put into practice such recommendations or has not shed light on the allegations and the punishment of those responsible,

WHEREAS:

1. The evidence presented in this case, both that submitted by the Government of Honduras as well as that offered by the claimant, shows that the presumed victims or those who claim in their name and on their behalf did not have access to the domestic legal remedies of Honduras or were impaired from exhausting them;

2. In the case under examination, the Commission has not been able, given the nature of the complaint, to apply the friendly settlement procedure set out in Article 48(1)(f) of the American Convention on Human Rights and in Article 45 of its Regulations;

3. The friendly settlement procedure not being applicable, the Commission must comply with the terms of Article 51(1) of the Convention by setting forth its opinion and conclusions concerning the question submitted for its consideration;

4. The Commission, at its 67th Session (April 1986), pursuant to the terms of Article 51(1) of the Convention and in application of the third paragraph of that article and, moreover, the time-limits set for the Government to adopt the recommendations of the Commission contained in Resolution 16/84 and inform on the measures adopted having elapsed, decided that the State of Honduras has not taken adequate measures to remedy the situation under consideration;

5. The friendly settlement procedure not being applicable, the Commission may, under Article 50 of its Regulations, submit the case to the Inter-American Court of Human Rights, if the Government has not adopted the recommendations, and

6. The Government of Honduras, on September 9, 1981, deposited the instrument whereby it recognized the jurisdiction of the Inter-American Court of Human Rights, pursuant to Article 62 of the Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To publish, in its entirety, Resolution 16/84, as well as the text of the instant Resolution.

2. To refer the matter to the Inter-American Court of Human Rights for the effects set out in Article 63(1) of the Convention so that the Court may decide whether there was a violation of the right to life (Art. 1), to personal security (Art. 5) and to personal freedom (Art. 7) of the American Convention on Human Rights and that the consequences of this situation that constitute the breach of those rights be remedied and that the injured party or parties be paid fair compensation.

3. To communicate the instant Resolution to the Inter-American Court of Human Rights, to the claimant and to the Government of Honduras, pursuant to the terms of Article 50(2) of the Regulations of the Commission.

APPENDIX III-C

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 24/86
CASE 8097 (HONDURAS)

HAVING SEEN:

1. Resolution 32/83, adopted by the Commission at its 61st Session (October 1983), by means of which, in application of the terms of Article 42 (formerly Art. 39) of its Regulations, the Commission decided to presume the truth of the allegations concerning the detention and disappearance of Professor **Saúl Godinez Cruz** on July 22, 1982 in Choluteca, Honduras and recommended that the Government of Honduras adopt the appropriate measures on the case, that is: a) order a complete and impartial investigation to determine who was responsible for the acts denounced; b) punish those responsible for such acts and c) inform the Commission on the measures taken to put into effect these recommendations, which were communicated to the Government of Honduras by note of October 11, 1983;

2. That the Government of Honduras, in a note dated December 1, 1983 (Document No. 1543), submitted its observations to Resolution 32/83 and requested reconsideration of the Resolution in view of the fact that a Special Investigatory Commission was conducting an investigation to shed light on the presumed violations of human rights, to establish who was responsible for the acts and to punish those responsible. The Government offered to send to the IACHR the reports on the result of the work of that Special Investigatory Commission;

3. That the Government of Honduras has not submitted the information that it offered on the result of the work of the Special Investigatory Commission nor on others that the IACHR has requested in order to continue its study of the case;

4. That, therefore, the request for reconsideration of Resolution 32/83 is unfounded and lacks information or other evidence, different than that already examined by the Commission, that might have merited a reconsideration of the decision taken by the Commission;

5. That the Government of Honduras has not adopted the recommendations of the Commission,

WHEREAS:

1. The evidence presented in this case, both that submitted by the Government of Honduras as well as that offered by the claimant, shows that the presumed victims or those who claim in their name and on their behalf did not have access to the domestic legal remedies of Honduras or were impaired from exhausting them;

2. In the case under examination, the Commission has not been able, given the nature of the complaint, to apply the friendly settlement procedure set out in Article 48(1)(f) of the American Convention on Human Rights and in Article 45 of its Regulations;

3. The friendly settlement procedure not being applicable, the Commission must comply with the terms of Article 51(1) of the Convention by setting forth its opinion and conclusions concerning the question submitted for its consideration;

4. The Commission, at its 67th Session (April 1986), pursuant to the terms of Article 51(1) of the Convention and in application of the third paragraph of that article and, moreover, the time-limits set for the Government to adopt the recommendations of the Commission contained in Resolution 32/83 and inform on the measures adopted having elapsed, decided that the State of Honduras has not taken adequate measures to remedy the situation under consideration;

5. The friendly settlement procedure not being applicable, the Commission may, under Article 50 of its Regulations, submit the case to the Inter-American Court of Human Rights, if the Government has not adopted the recommendations, and

6. The Government of Honduras, on September 9, 1981, deposited the instrument whereby it recognized the jurisdiction of the Inter-American Court of Human Rights, pursuant to Article 62 of the Convention,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To publish, in its entirety, Resolution 32/83, as well as the text of the instant Resolution.

2. To refer the matter to the Inter-American Court of Human Rights for the effects set out in Article 63(1) of the Convention so that the Court may decide whether there was a violation of the right to life (Art. 1), to personal security (Art. 5) and to personal freedom (Art. 7) of the American Convention on Human Rights and that the consequences of this situation that constituted the breach of those rights be remedied and that the injured party or parties be paid fair compensation.

3. To communicate the instant Resolution to the Inter-American Court of Human Rights, to the claimant and to the Government of Honduras, pursuant to the terms of Article 50(2) of the Regulations of the Commission.

APPENDIX IV

(Translation)

OBSERVATIONS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS ON THE DRAFT ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS

I

At its Fifteenth Regular Session held in San José, Costa Rica on April 26 through May 10, 1986, the Inter-American Court of Human Rights took note of Resolution AG/RES. 781 (XV-0/85) adopted by the General Assembly of the Organization of American States on December 9, 1985, in which it asked the Court for further observations on the draft Additional Protocol to the American Convention on Human Rights, concerning economic, social and cultural rights.

The Court has already stated its views on the matter in a set of earlier observations made during its Eleventh Regular Session held in Buenos Aires, Argentina (October 1-9, 1984), which it duly forwarded in compliance with General Assembly Resolution AG/RES. 657 (XIII-0/83).

II

In response to this further request, the Court now has the honor to forward its views on the question put before it.

1. The Court's opinion on the need for the inter-American system to give effective protection to and guarantees of economic, social and cultural rights was clearly stated in its previous observations. It said at that time:

> The Court considers plausible the idea taken up in the preliminary draft of giving greater recognition and protection within the inter-American system to the economic, social and cultural rights than those that result from the standards of that nature incorporated into the Charter of the OAS by the Protocol of Buenos Aires in 1967 or contained in the American Declaration of the Rights and Duties of Man and the Inter-American Charter of Social Guarantees, which are instruments of a general nature on that subject adopted within the inter-American system. In this regard, the Court fully shares the conviction that those are authentic fundamental human rights. As the Universal Declaration of Human Rights states, the people have determined "to promote social progress and better stan-

dards of life in larger freedom," because "since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible" (Declaration of Teheran).

Nothing needs to be added. However, it should be pointed out that this need is becoming increasingly evident, and that the present lacuna in the inter-American system's regional protection of economic, social and cultural rights must be filled.

2. Economic, social and cultural rights are the same in substance as political and civil rights. All derive from the essential dignity of man, all are inalienable right of the individual, and all must be promoted, guaranteed and protected nationally, regionally and globally. But the differences between them may require different protective systems or mechanisms. Some economic, social and cultural rights cannot be protected by a judicial or quasi-judicial system identical to the present system to protect civil and political rights. With reference to the American Convention, that means that those economic, social and cultural rights cannot have a system of protection equivalent to the system protecting civil and political rights, particularly as it refers to the possibility of the type of oversight that the American Convention on Human Rights attributes to the Court.

However, because of the nature of some rights that have traditionally been classified as economic, social and cultural rights, it is feasible to apply to them a system of protection analagous to the system for other civil and political rights. This distinction, to which the Court will make particular reference below, is crucial, and must be taken into account in drafting a regional system for the protection of economic, social and cultural rights. At its present stage, the work on the draft Additional Protocol to the Pact of San José cannot fail to take into account the most modern theories on the subject, and should also bear in mind the **travaux préparatoires** in the Council of Europe for what was initially designed as draft Protocol No. 6.

The Court already made this distinction in its observations in 1984, as will be seen from the quotation in paragraph 7.

3. The Protocol to be drafted must list and define those economic, social and cultural rights that are protected, but naturally, will not exclude other rights "that are inherent in the human personality or derived from representative democracy as a form of government" (Art. 29(c) of the American Convention). The Protocol must also set out the regional system of protection of the rights that are listed and defined.

4. The Court indicated in its previous observations which points would need to be examined in an adequate study of the draft Additional Protocol, both as regards the listing and definition of economic, social and cultural rights, and the system of protection. We refer to our earlier indications on this point.

5. The Court will make few observations on the listing and definition of economic, social and cultural rights. Although the draft could clearly be improved --and some very interesting suggestions have been made in that direction-- the Court believes that the work of perfecting the list and the definitions of the protected rights may come out of the observations that may be made by the Inter-American Commission on Human Rights and the member governments, in particular.

6. On the other hand, it believes that there is a clear interest in having the Court comment on the procedure for the protection of the rights listed, with particular reference to the possible jurisdiction that the Court might have on the matter, in relation to the adjudicatory jurisdiction granted it by the American Convention on Human Rights (Art. 62), and the effect of the new Protocol on the advisory jurisdiction that the Convention also grants to the Court (Art. 64).

7. In its earlier observations, the Court stated:

> The so-called civil and political rights, in general, are easier to individualize and make required in accordance with a legal procedure capable of resulting in a jurisdictional protection. The Court considers that, among the so-called economic, social and cultural rights, there are also some that act or can act as subjective rights jurisdictionally requirable...

8. That is to say, there are economic, social and cultural rights, such as trade-union freedom, the right to strike, the freedom to teach, and so forth, that may be the object of an international system of protection just like political and civil rights.

As regards the Court in particular, protection of the Court could be sought for those rights in the same way as for the other rights now included in the Convention and the rights covered by the provisions of Articles 61, 62 and 63 of the American Convention.

9. The procedure for protection of the other economic, social and cultural rights --and it is obvious that most of such rights will be included here-- may be similar to that included in the draft Additional Protocol.

However, while the Protocol's listing and definition of protected rights is more or less acceptable --although open to improvement--, its shortcomings and defects as far as the system of protection is concerned are evident. The draft should be improved substantially in order to make the procedure a truly effective one, and, with the appropriate adaptations, should follow the general lines of the very well-known and efficient procedures used by the International Labour Organization, as well as those applied under the European Social Charter, as well as the experiences of how they have worked in practice.

10. In the Court's opinion, there are no legal grounds against the drafting of a protocol to the American Convention on Human Rights to cover

economic, social and cultural rights. It should be an additional protocol, and not a separate convention. If the intention is to include "other rights" under the Convention's system of protection, what must of necessity be done is to draft an additional protocol (Arts. 31 and 77). This is true not only because of the essential unity, interdependence and mutual conditioning of all human rights, and not only because some economic, social and cultural rights can be protected by the same system as is used to protect political and civil rights, in which the Inter-American Court must play a necessary role (Arts. 61-63 of the Convention); it is also true because the body that must play the predominant role in the protection of economic, social and cultural rights must be the Inter-American Commission of Human Rights, an organ of the inter-American system, to which the Pact of San José specifically refers (Arts. 33-51). It must be borne in mind, in light of what has been said in paragraphs 7, 8 and 9 above, that the economic, social and cultural rights in this group --which cannot yet have a system of protection identical to the system protecting political and civil rights-- will have to be protected by a system in which it is the Inter-American Commission, by its very nature, that takes on the essential work.

11. The dividing line between those economic, social and cultural rights that may come to enjoy an international protection on a regional basis in which the Inter-American Court may intervene, and the remaining rights, which cannot today be covered by a judicial protection system that is part of the Court's adjudicatory jurisdiction, is not an immutable and fixed line resulting from an ontological distinction. Rather, in large part, the dividing line will be the product of the historical circumstances surrounding the development of the law, as stated in the **travaux préparatoires** in the Council of Europe. This must be taken into account in drafting the Additional Protocol, and must be specifically borne in mind in regulating the system of protection for the economic, social and cultural rights being contemplated.

12. The procedure for the drafting of the Protocol must be that contemplated in Articles 31 and 77 of the American Convention on Human Rights.

13. The Additional Protocol to be drafted must set out a specific system of protection for economic, social and cultural rights, a system based on what the Court has said in paragraphs 7, 8 and 9 above. Nonetheless, given their specific characteristics, some of them, to which the Court has also made and earlier reference, may be included in the system of protection established in Part II (Means of Protection) of the Pact of San José.

14. As the Court suggested in its earlier observations, it may have an important role to play in the promotion and protection of economic, social and cultural rights, by virtue of its advisory jurisdiction (Art. 64 of the Convention) in reference to "the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States (Art. 64(1)), or to the "compatibility of any of its domestic laws with the aforesaid international instruments" (Art. 64(2)). This is particularly clear in light of what Article 29 says about the interpretation of

the Convention. All the criteria of the Article (a), (b), (c), and (d) are applicable, but paragraph (d) should be particularly noted, since the Inter-American Charter of the Rights and Duties of Man includes economic, social and cultural rights, and the American Declaration of Social Guarantees is an international declaratory act approved by the same supreme organ of the system that adopted the Charter of the Organization and the American Declaration of the Rights and Duties of Man.

15. The Court will not analyze either the preamble or the various articles of the draft.

Rather, it has focused its comments on the more general questions, and has also made some specific and precise references to the means of protection, in light of its own possible jurisdiction on the matter.

The Court finds that there are historical antecedents on the theory of the rights protected and the approach that the draft has taken to listing them, some of which have already been published (in particular, the papers presented to the Seminar on the International Protection of Economic, Social and Cultural Rights, in **Anuario Jurídico**, XIII, 1985, UNAM, México). The work of adjusting and improving both the preamble of the draft Protocol and the operative part referring to the rights listed will not, therefore, be an overly complex task.

16. However, the Court believes that the part of the Protocol that addresses the procedure for the protection of rights should be completely rewritten, as stated earlier (paragraphs 7, 8, 9, 10 and 11 above).

III

1. In the context of the ideas contained in paragraphs 1, 4 and 5 of the Preamble to the American Convention on Human Rights, the Court believes that the work of drafting this Additional Protocol must be urgently completed, so that it may enter into force promptly, and thus complete the regional system for the protection of human rights, all of which are necessarily interdependent and mutually conditioning. Only the true enjoyment of all human rights under the guarantee of an effective system of international protection in a framework of the political, economic, social and cultural development of the Americas can ensure the "effective exercise of representative democracy" in the hemisphere (Art. 3(d) of the amended Charter of the Organization of American States).

The Inter-American Court of Human Rights thus submits its observations on the draft Additional Protocol in reference to economic, social and cultural rights, as requested of it by the Resolution of December 9, 1985 of the General Assembly of the Organization.

APPENDIX V

REMARKS OF JUDGE THOMAS BUERGENTHAL, PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, ON THE OCCASION OF THE VISIT OF THE PRESIDENTS OF COLOMBIA, URUGUAY, GUATEMALA AND HONDURAS.

Your Excellencies, the Presidents of Colombia, Uruguay, Guatemala and Honduras; Your Excellencies, Mr. Ministers; Your Excellencies, Mr. Ambassadors; Fellow Judges, Ladies and Gentlemen:

I have the great honor of conveying the joy of the Inter-American Court of Human Rights in welcoming you to this house, which is the permanent seat of the Inter-American Court of Human Rights and also of the Inter-American Institute of Human Rights.

The Court is the most recent of the institutions created in our hemisphere to protect human rights. In that sense, it represents a milestone in the long and heroic fight of those who believe in democracy in the Americas to establish an international system which would complement the national instruments that protect human rights. In more than one desperate hour in some of our countries, the international remedy has been the only hope of the victims of tyranny and abuse of power.

Today this Court is the only judicial organ in the Americas that functions to protect and guarantee human rights. Owing to the help received from your governments it has been possible to push forward with our work and to advance on the road towards an effective international protection of human rights.

Allow me, Your Excellencies, to introduce the other judges of the Court: Judge Rafael Nieto, Colombian, Vice President of the Court; Judge Rodolfo Piza, Costa Rican, former President of the Court; Judge Pedro Nikken, Venezuelan, former President of the Court; Judge Héctor Fix-Zamudio, of Mexico; Judge Héctor Gros Espiell, of Uruguay, and Judge Jorge Hernández Alcerro, of Honduras.

Your Excellencies, democracy cannot exist without full respect for human rights, and there cannot be full respect for human rights without democracy. That explains this Court's commitment to democracy. This house exists for the ideal of liberty on which it is founded. Your presence here is an event charged with historic significance, a testimony of solidarity with democracy and with human rights.

We interpret your visit to the Court as a symbol of the strength of your commitment to democratic values and to the dignity of the human being, those same values that justify the existence of this Court. Your visit is a strong endorsement of that which the Court represents and of its role in fulfilling

the common ideal we all share: the institutionalization of democracy, freedom and justice in the Americas.

I would like to say, Mr. Presidents, that the Court would be very pleased to hear any reflections that you might have on the occasion of your visit to this house, which as the House of Human Rights, is also your house.

(Translation)

APPENDIX VI

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-7/85
OF AUGUST 29, 1986

ENFORCEABILITY OF THE RIGHT OF REPLY OR CORRECTION
(ARTS. 14(1), 1(1) AND 2 AMERICAN CONVENTION ON HUMAN RIGHTS)

REQUESTED BY THE GOVERNMENT OF COSTA RICA

Present:

Thomas Buergenthal, President
Rafael Nieto-Navia, Vice President
Rodolfo E. Piza E., Judge
Pedro Nikken, Judge
Héctor Fix-Zamudio, Judge
Héctor Gros Espiell, Judge
Jorge R. Hernández Alcerro, Judge

Also present:

Charles Moyer, Secretary, and
Manuel Ventura, Deputy Secretary

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. By note of October 1, 1985, the Government of Costa Rica (hereinafter "the Government" or "Costa Rica") submitted to the Inter-American Court of Human Rights (hereinafter "the Court") an advisory opinion request regarding the interpretation and scope of Article 14(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in relation to Articles 1(1) and 2 of that instrument.

2. In a note of October 31, 1985, the Secretariat of the Court, acting pursuant to Article 52 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requested written observations on the issues involved in the instant proceeding from the Member States of the Organization of American States (hereinafter "the OAS") as well as, through the Secretary General, from the organs listed in Chapter X of the Charter of the OAS.

3. The President of the Court directed that the written observations and other relevant documents be presented in the Secretariat before January 10, 1986 in order to be considered by the Court during its Fourteenth Regular Session, which was held January 13-21, 1986.

4. Responses to the Secretariat's communication were received from the Government of Costa Rica.

5. Furthermore, the following non-governmental organizations submitted an **amici curiae** brief: the Inter-American Press Association, World Press Freedom Committee, American Newspaper Publishers Association, Federation Internationale des Editeurs de Journaux, The Copley Press, Inc., The Miami Herald, Newsweek, USA Today, The Wall Street Journal and The International Herald Tribune.

6. A public hearing was held on Thursday, January 16, 1986 to enable the Court to receive the oral arguments of the Member States and the OAS organs on the issues raised in the request.

7. At this public hearing the Court heard the following representatives:

For the Government of Costa Rica:

Carlos José Gutiérrez, Agent and Minister of Foreign Affairs,

Manuel Freer Jiménez, Agent and Legal Adviser of the Ministry of Foreign Affairs

For the Inter-American Commission on Human Rights:

Edmundo Vargas Carreño, Executive Secretary, by virtue of the representation conferred on him by the President of the Commission.

8. The Court continued its study of the instant request at its Fifteenth Regular Session, held April 26-May 9, 1986, and at its Fifth Special Session, held August 25-29, 1986.

I

ADMISSIBILITY

9. This request for an advisory opinion has been submitted to the Court by the Government of Costa Rica, which is a State Party to the Convention and a Member State of the OAS. Under Article 64 of the Convention any Member State of the OAS may seek an "interpretation of this Convention or of any other treaties concerning the protection of human rights in the American states." The Costa Rican request deals with the interpretation of Article 14(1) of the Convention in relation to Articles 1(1) and 2 of that instrument and, as such, falls within the purview of Article 64.

10. The request of the Government seeks an advisory opinion under Article 64(1) of the Convention rather than under Article 64(2). This conclusion may be deduced from the fact that the request of the Government refers expressly to Article 49 of the Rules of Procedure, which deals with proceedings filed under Article 64(1), and not to Article 51 of the Rules which is applicable to advisory opinion requests filed under Article 64(2) of the Convention. Moreover, the Government does not seek an opinion of the Court regarding the compatibility of any of its laws with the Convention; instead, the object of the request is the interpretation of Article 14(1) in relation to Articles 1(1) and 2 of the Convention.

11. The mere fact that a request for an advisory opinion is filed by a Member State of the OAS and that it invokes, expressly or by implication, the provisions of Article 64(1) does not mean that the Court has jurisdiction, **ipso facto**, to deal with the questions submitted to it. If the Court were asked to respond to questions concerned exclusively with the application or interpretation of the domestic law of a Member State or which involved issues unrelated to the Convention or the other treaties referred to in Article 64, the Court would lack jurisdiction to render the opinion.

12. The manner in which a request is drafted may require the Court, in exercising its functions under Article 64 of the Convention, to define or clarify and, in certain cases, to reformulate the questions submitted to it in order to ascertain what, precisely, is being asked. This is particularly

true when, as in the instant case, the request, nothwithstanding the form in which the questions are articulated, seeks the Court's opinion with regard to issues that the Court believes fall within its jurisdiction. In this connection, the Court should emphasize that, in general, when an advisory opinion request contains questions whose analysis and interpretation fall within its jurisdiction, the Court is called upon to give its answer even though the request might contain issues outside the scope of its jurisdiction, unless these extraneous issues are completely inseparable from the former or unless there are other reasons which would justify a decision by the Court to abstain from rendering its opinion.

13. The first question reads as follows:

> Can it be assumed that the full and free exercise of the right protected by Article 14 of the American Convention on Human Rights is already guaranteed to all persons under the jurisdiction of the State of Costa Rica by virtue of the obligations assumed by our country under Article 1 of that Convention?

14. The Court is of the opinion that the question, as formulated, contains two different issues which are clearly distinguishable. The first concerns the interpretation of Article 14(1) of the Convention in relation to Article 1(1), while the second deals with the application of Article 14(1) in the internal legal system of Costa Rica. The Court shall address only the first issue with reference to Article 64(1) of the Convention which, as has been stated, is the relevant provision. The second issue, as it has been set out, falls outside the advisory jurisdiction of the Court.

15. The Court consequently concludes that this question, understood in the sense indicated above, is admissible since it concerns the interpretation of the Convention, and the Court so holds.

16. The second question reads as follows:

> If the preceding question is answered in the negative, does the State of Costa Rica have an international obligation under Article 2 of the American Convention on Human Rights to adopt, in accordance with its constitutional processes, the legislative <u>or other measures</u> that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention?

The interpretation given to the first question eliminates the causal tie that links the second question to the first. The above question, therefore, seeks to determine what obligations, if any, Article 2 of the Convention imposes on Costa Rica to give effect to the right which Article 14(1) guarantees. It furthermore calls on the Court to interpret the Convention and, consequently, is admissible.

17. The third question reads as follows:

> If it is decided that the State of Costa Rica is under the obligation to adopt the legislative <u>or other measures</u> that may be neces-

> sary to give effect to the right of reply or correction set out in Article 14 of the Convention, would it be proper to conclude that the term "law," which appears at the end of the first paragraph of said Article 14, is used in its broadest sense so as to encompass provisions of a regulatory type promulgated by executive decree, keeping in mind the instrumental character of such legal provisions?

To the extent that this question seeks an interpretation of the meaning of the word "law," as that concept is used in Article 14(1) of the Convention, it is admissible for the reasons indicated above.

18. Having ruled that the three questions presented in the Costa Rican application are admissible insofar as they concern the interpretation of the Convention, and considering that no other reasons justify a decision to abstain from rendering the advisory opinion requested pursuant to what the Court has expressed in its jurisprudence (**"Other treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 2, para. 31; **Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)**, Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 21; **The Word "Laws" in Article 30 of the American Convention on Human Rights**, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 11), the Court will now proceed to an examination of the merits of the application.

II

MERITS

19. The first question seeks a determination concerning the legal effect of Article 14(1), given the obligations assumed by a State Party under Article 1(1) of the Convention.

20. Article 14 reads as follows:

> 1. Anyone injured by inaccurate or offensive statements or ideas* disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

---

* - The word "ideas" does not appear in the Spanish, Portuguese or French texts of this provision, which refer to "informaciones inexactas o agraviantes," "informaçôes inexatas ou ofensivas" and to "données inexactes ou des imputations diffamatoires."

> 2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
>
> 3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 1(1) declares:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

21. The foregoing provisions must be interpreted using

> the rules of interpretation set out in the Vienna Convention, which may be deemed to state the relevant international law principles applicable to this subject (**Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)**, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 48).

These rules are spelled out in Article 31(1) of the Vienna Convention on the Law of Treaties, which reads as follows:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Under Article 32 of the Vienna Convention, recourse may be had to other sources of interpretation only when the interpretation resulting from the application of Article 31 "a) leaves the meaning ambiguous or obscure; or b) leads to a result which is manifestly absurd or unreasonable."

22. In the instant case, the expression "Anyone... has the right," found in Article 14(1), must be interpreted in good faith in accordance with its ordi- nary meaning. The Convention guarantees a "right" of reply or correction, which explains why paragraphs (2) and (3) of Article 14 are so categorical when they speak of "the legal liabilities" of those who make inaccurate or offensive statements and of the requirement that someone be responsible for such statements. This interpretation is not ambiguous or obscure nor does it lead to a manifestly absurd or unreasonable result.

23. The argument that the phrase "under such conditions as the law may establish," used in Article 14(1), merely empowers the States Parties to adopt

a law creating the right of reply or correction without requiring them to guarantee it if their internal legal system does not provide for it, is not consistent with the "ordinary meaning" of the terms used nor with the "context" of the Convention. It is worth noting, in this connection, that the right of reply or correction for inaccurate or offensive statements disseminated to the public in general is closely related to Article 13(2) on freedom of thought and expression, which subjects that freedom to the "respect of the rights and reputations of others" (See **Compulsory Membership of Journalists, supra** 18, paras. 59 and 63); to Article 11(1) and 11(3), according to which

> 1. Everyone has the right to have his honor respected and his dignity recognized.
>
> 3. Everyone has the right to the protection of the law against such interference or attacks.

and to Article 32(2) which states that

> The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

24. The obligations of the States Parties set out in Articles 1(1) and 2 of the Convention are applicable to the right of reply or correction. It could not be otherwise, since the purpose of the Convention is to recognize individual rights and freedoms and not simply to empower the States to do so (American Convention, Preamble; **The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)**, Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 33).

25. The fact that the right of reply or correction (Art. 14) follows immediately after the right to freedom of thought and expression (Art. 13) confirms this interpretation. The inescapable relationship between these articles can be deduced from the nature of the rights recognized therein since, in regulating the application of the right of reply or correction, the States Parties must respect the right of freedom of expression guaranteed by Article 13. They may not, however, interpret the right of freedom of expression so broadly as to negate the right of reply proclaimed by Article 14(1) (**Compulsory Membership of Journalists, supra** 18, para. 18). It is appropriate to recall that Resolution (74) 26 of the Committee of Ministers of the Council of Europe based the right of reply on Article 10 of the European Convention, which deals with freedom of expression.

26. Having concluded that the Convention guarantees a right of reply or correction, the Court will now turn its attention to the consequences of the above.

27. Article 14(1) does not indicate whether the beneficiaries of the right are entitled to an equal or greater amount of space, when the reply once re-

ceived must be published, within what time frame the right can be exercised, what language is admissible, etc. Under Article 14(1), these conditions are such "as the law may establish," a phrase that employs a wording that, unlike that used in other articles of the Convention ("shall be protected by law," "in accordance with the law," "expressly established by law," etc.), requires the establishment of the conditions for exercising the right of reply or correction by "law." The contents of the law may vary from one State to another, within certain reasonable limits and within the framework of the concepts stated by the Court. This is not yet the moment to address the question of what is meant by the word "law" (**infra** 33).

28. The fact that the States Parties may fix the manner in which the right of reply or correction is to be exercised does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1). That Article contains an undertaking by the States Parties "to respect the rights and freedoms" the Convention recognizes and "to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms...." If for any reason, therefore, the right of reply or correction could not be exercised by "anyone" who is subject to the jurisdiction of a State Party, a violation of the Convention would result which could be denounced to the organs of protection provided by the Convention.

29. The soundness of this conclusion gains added support from the language of Article 2 of the Convention, which reads:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

30. This Article, which is referred to in the second question, codifies a basic rule of international law that a State Party to a treaty has a legal duty to take whatever legislative or other steps as may be necessary to enable it to comply with its treaty obligations. In the context of the Convention, this conclusion is in line with Article 43, which reads:

> The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

31. The Court is now in a position to address the third question contained in the Costa Rican request. It seeks the Court's opinion on the meaning of "law" as that concept is used in Article 14(1).

32. In its Advisory Opinion **The Word "Laws"** (**supra** 18), the Court has provided an extensive analysis of the meaning of "law" as that concept is used in Article 30 of the Convention. In that opinion the Court notes that

the word "laws" is not necessarily used throughout the Convention to express one and the same concept and that, consequently, its meaning has to be ascertained on a case-by-case basis, drawing on the relevant international law standards for the interpretation of treaties. In that Opinion, the Court stated the following:

> The question before us does not go beyond inquiring as to the meaning that the word "laws" has in Article 30 of the Convention. It is, therefore, not a question of giving an answer that can be applied to each case where the Convention uses such terms as "laws," "law," "legislative provisions," "provisions of the law," "legislative measures," "legal restrictions," or "domestic laws." On each occasion that such expressions are used, their meaning must be specifically determined.

In another of its advisory opinions, the Court declared that:

> whenever an international agreement speaks of "domestic laws" without in any way qualifying that phrase, either expressly or by virtue of its context, the reference must be deemed to be to all national legislation and legal norms of whatsoever nature, including provisions of the national constitution (**Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica**, Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 14).

33. The Court has already determined that Article 14(1) establishes a right of reply or correction and that the phrase "under such conditions as the law may establish" refers to the various conditions related to the exercise of that right. That phrase has reference, consequently, to the effectiveness of that right on the domestic plane and not to its creation, existence or enforceablility on the international plane. This being so, it is relevant to look to Article 2 because it deals with the obligations of the States Parties "to adopt ... such legislative or other measures as may be necessary to give effect to those rights or freedoms." If Article 14(1) is read together with Articles 1 and 2 of the Convention, any State Party that does not already ensure the free and full exercise of the right of reply or correction is under an obligation to bring about that result, be it by legislation or whatever other measures may be necessary under its domestic legal system. This justifies the conclusion that the concept "law," as used in Article 14(1), includes all those measures designed to regulate the exercise of the right of reply or correction. If, however, those measures restrict the right of reply or correction or any other right recognized by the Convention, they would have to be adopted in the form of a law, complying with all of the conditions contained in Article 30 of the Convention (**The Word "Laws", supra** 18).

34. In any case, in regulating those conditions the States Parties have an obligation to ensure the enjoyment of the guarantees necessary for the exercise of the rights and freedoms, including the rights to a fair trial and to judicial protection (Arts. 8 and 25 of the Convention).

35. Therefore

THE COURT

1. **With respect to the admissibility of the advisory opinion request presented by the Government of Costa Rica,**

DECIDES

By four votes to three, **to admit the request.**

Dissenting:

Judges Buergenthal, Nieto-Navia and Nikken.

2. **With respect to the questions contained in the request submitted by the Government of Costa Rica regarding the interpretation of Article 14(1) of the American Convention on Human Rights in relation to Articles 1(1) and 2 of that instrument,**

IS OF THE OPINION

Unanimously

A. That Article 14(1) of the Convention recognizes an internationally enforceable right to reply or to make a correction which, under Article 1(1), the States Parties have the obligation to respect and to ensure the free and full exercise thereof to all persons subject to their jurisdiction.

Unanimously

B. That when the right guaranteed by Article 14(1) is not enforceable under the domestic law of a State Party, that State has the obligation, under Article 2 of the Convention, to adopt, in accordance with its constitutional processes and the provisions of the Convention, the legislative or other measures that may be necessary to give effect to this right.

By six votes to one

C. That the word "law," as it is used in Article 14(1), is related to the obligations assumed by the States Parties in Article 2 and that, therefore, the measures that the State Party must adopt include all such domestic measures as may be necessary, according to the legal system of the State Party concerned, to ensure the free and full exercise of the right recognized in Article 14(1). However, if any such measures impose restrictions on a right recognized by the Convention, they would have to be adopted in the form of a law.

Dissenting:

Judge Piza Escalante.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this twenty-ninth day of August, 1986.

Thomas Buergenthal
President

Rafael Nieto-Navia

Rodolfo E. Piza E.

Pedro Nikken

Héctor Fix-Zamudio

Héctor Gros Espiell

Jorge R. Hernández Alcerro

Charles Moyer
Secretary

(Translation)

SEPARATE OPINION OF JUDGE HECTOR GROS ESPIELL

1. I concur completely in the advisory opinion rendered by the Court. I, therefore, neither disagree with the manner in which the Court answered the questions formulated by the Government of Costa Rica nor with the arguments on which the Court based its decision.

2. However, I think that the Court should consider in the development of the reasoning of its opinion, criteria not analyzed in this advisory opinion. I regard these criteria, to which I will refer later to be essential to the understanding of the character and the scope of the right of reply or correction recognized in Article 14(1) of the American Convention. It is necessary to have a clear understanding of the questions formulated by the Government of Costa Rica to be able to answer them completely, since the answers could vary according to the different criteria that one uses with regard to the essential elements of the meaning of the right of reply or correction. For that reason, I believe that the Court should rule on these criteria, the consideration of which is absolutely necessary to completely answer the questions posed by the Government of Costa Rica.

3. The right of reply or correction is recognized to "anyone" --a concept specified in Article 1(2) of the Convention-- "injured by inaccurate or offensive statements." The exercise of the right of reply or correction is inevitably related to the right of all persons to "seek, receive, and impart information" (Art. 13(1)). However, this right to "seek, receive, and impart information" may result in the subsequent imposition of liability established by law for failure to "respect the rights or reputations of others" (Art. 13(2)(a)), and "the right of everyone to have his honor respected" (Art. 11). A judicial proceeding may be necessary to ensure the existence of each of these rights, in those cases where there is a dispute, and to resolve whether the statements are inaccurate or offensive. Since "the rights of each person are limited by the rights of others" (Art. 32(2)), a judicial proceeding should guarantee a just balance and harmony, in each case, between freedom of information, the right of reply or correction and the right to protection of honor. In a concrete case or situation in which the right of reply or correction is claimed but disputed, the judicial proceeding will serve to guarantee all of the rights at stake and will determine the nature of the inaccurate or offensive statements. The foregoing is fundamental because if there were no judicial proceeding capable of determining, with full guarantees, whether the right of reply or correction were applicable in a particular disputed case, there would be a violation of Article 8 of the Convention. This Article recognizes the right to a hearing "with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, ... for the determination of (the) rights and obligations of a civil, labor, fiscal, or other nature." A right of reply or correction that for practical effectiveness would only allow recourse to an automatic proceeding, without a judicial determination as to the truth of

the statements and without the guarantees of due process in the case of a dispute, would not constitute an expression of the protection of honor and dignity (Art. 11) or an integral element of freedom of information (Art. 13), but rather, to the contrary, would constitute an abridgement of freedom of thought and expression (Art. 13(1)).

4. The inaccurate or offensive statements must be "disseminated to the public in general by a legally regulated medium of communication." The expression "legally regulated medium of communication," which appears in what now is Article 14(1) of the Convention, was incorporated in the last stage of the drafting of the text, during the 1969 Specialized Conference. The wording was proposed by the Working Group that drafted the final version of this article. However, there is no explanation as to why this expression was included (**Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre de 1969, Actas y Documentos,** OEA/Ser.K/XVI/ 1.2, Washington, D.C. 1973 (hereinafter "Actas and Documentos") repr. 1978, pp 280-82). Examining first the text of Article 14 in accordance with the principles of the Vienna Convention (Art. 31), one must conclude that this expression specifies all of the media of communication that are in one form or another regulated by the domestic law of the States Parties. It does not refer to a specific or concrete form of regulation, nor can it be interpreted to include only those media of communication which are required by law to have a prior authorization, concession or license. The Convention does not make this distinction and, therefore, there is no basis whatsoever to interpret it in that manner. Moreover, if a distinction were made between the different media of communication, to include, for example, radio and television but to exclude the written press, it would be discriminatory and, consequently, forbidden as a violation of the principle of non-discrimination and the right to equality which are guaranteed by the Convention (Arts. 1(1) and 24).

5. The right of reply or correction can only be understood and explained in conjunction with freedom of thought, expression and information. These rights form an inseparable and yet independent whole. As the Court has stated:

> Article 13 indicates that freedom of thought and expression "includes freedom to seek, receive and impart information and ideas of all kinds...." This language establishes that those to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas... (**Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)**, Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30).

In the individual dimension, the right of reply or correction guarantees that a party injured by inaccurate or offensive statements has the opportunity to express his views and thoughts about the injurious statements. In the social dimension, the right of reply or correction gives every person in the community the benefit of new information that contradicts or disagrees with the previous inaccurate or offensive statements. In this manner, the right of reply or correction permits the reestablishment of a balance of information, an element which is necessary to the formation of a true and correct public opinion. The formation of public opinion based on true information is indispensable to the existence of a vital democratic society. This understanding is fundamental to the interpretation of the American Convention on Human Rights, whose purpose is to consolidate the democratic institutions in this hemisphere (Preamble, para. 1). The democracy to which the Convention refers is representative and pluralistic and presumes "a system of personal liberty and social justice based on respect for the essential rights of man" (**Ibid.**).

Freedom of thought and expression (Art. 13) is one of the essential functions of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. It is a right which must be recognized even when its exercise provokes conflicts or disturbances. As the European Court of Human Rights has stated, it is a requirement of "pluralism, tolerance and broadmindedness without which there is no 'democratic society'" (Eur. Court H.R., **Lingens case**, judgment of 8 July 1986, Series A no. 103, para. 41). However, within the limits permitted in a democratic society, the right to freedom of thought and expression must be balanced with the responsibility to respect the reputation and the rights of others (Art. 13). This balance is brought about through the recognition, in the Convention, of the right of reply or correction (Art. 14), which comes into play in the case of "inaccurate or offensive statements." The existence of the right of reply or correction provides a means to impose liability (Art. 13(2)) in those cases in which the freedom of thought, expression or information is used to violate "the rights or reputation of others."

6. Article 2 of the Convention provides that:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

It is evident that this article of the Convention imposes a duty on the States Parties to adopt the measures necessary to make the rights and freedoms recognized by the Convention effective. These rights are not conditioned on the existence of pertinent norms in the domestic law of the States Parties. Rather, the States Parties are obligated to adopt legislative or other means, if they do not already exist, to make these rights and freedoms effective. This obligation is in addition to that imposed by Article 1 of

the Convention. It is intended to make respect for the rights and freedoms recognized by the Convention more definite and certain. The obligation that results from Article 2 thus complements, but in no way substitutes or replaces, the general unconditional obligation imposed by Article 1. The Government of Chile, which proposed the inclusion of Article 2, stated in its Observations to the Draft Inter-American Convention on Human Rights:

> The argument that inclusion of this clause in the Inter-American Convention might warrant the allegation by a State that it was not obligated to respect one or more rights not contemplated in its domestic legislation, is not supported by the terms of the Preliminary Draft; it is even less likely to find support if the scope of the Convention is expressly established at the Conference (**Actas y Documentos, supra** 4, p. 38).

Article 2 of the Convention appeared in the last stage of the drafting of the Convention. It is not found in the initial drafts nor in the final draft prepared by the Inter-American Commission on Human Rights. The article had not initially been included because it was originally thought, understandably, that a commitment of the type referred to in the current Article 2 exists naturally under International Law, as a logical consequence of international treaty obligations. For that reason, when Article 2 was proposed, it was explained that its only purpose was to emphasize and clarify that the requirement to comply with that obligation was immediate, direct and obligatory, and not to signify a change or ignore the special obligation that results from Article 1. Without this logical interpretation of why Article 2 is included in the Convention, it would not make sense. Further, it would lead to the irrational and absurd result that Article 1 would be inapplicable if the measures referred to in Article 2 had not been promulgated. This conclusion is inadmissible, because it would paralyze the functioning of the system established by the Convention and it would practically eliminate the essential obligations to protect human beings imposed on the States Parties by Article 1 of the Convention. In this respect, it must be remembered that the source of Article 2 of the Convention is Article 2(2) of the United Nations International Covenant on Civil and Political Rights, which, as much by its location in the instrument as by its text, constitutes an obvious complement to the essential obligation imposed by the first paragraph of said Article 2. On the other hand, the European Convention for the Protection of Human Rights and Fundamental Freedoms does not contain a reference analogous to that of Article 2 of the American Convention or to Article 2(2) of the International Covenant. In Article 1 of the European Convention, the States Parties merely recognize that every person subject to the jurisdiction of the States Parties has the rights and freedoms defined in its Section I. Moreover, this recognition implies that the States Parties have a duty to respect and guarantee these rights and, should it be necessary, to adopt measures in its internal law to better and more effectively comply with the obligations that result from the recognition of these rights and freedoms.

7. I believe that it is in the light of the above reasoning that the opinion rendered by the Court, regarding the questions formulated by the Govern-

ment of Costa Rica, acquires its true significance. And I further believe that the right of reply or correction is best defined and understood in relation to the other rights recognized by the Convention, taking into account the obligations that the States Parties have acquired as a consequence of the requirements of Articles 1(1) and 2.

HECTOR GROS ESPIELL

CHARLES MOYER
Secretary

(Translation)

**JOINT DISSENTING OPINION OF JUDGES
RAFAEL NIETO-NAVIA AND PEDRO NIKKEN**

We regret that we must dissent from the majority opinion of the Court on the matter of the admissibility of this Advisory Opinion, notwithstanding the fact that we have no doubt whatsoever regarding the nature of the international obligations assumed by the States Parties under Article 14 of the American Convention on Human Rights. Nor do we have any doubt that, in a case in which the right of reply or correction could not be exercised by "anyone" in Costa Rica, there would be a violation of the Convention which could be the subject of a complaint on the international plane.

Our dissent is strictly limited to the question of admissibility and is based on the following reasons:

1. The function of the Court is not to interpret domestic law but rather international law, which in the case of its contentious jurisdiction would include only the provisions of the Convention itself and in the case of its advisory jurisdiction would include both the Convention and other treaties concerning the protection of human rights in the American States (**"Other treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 42).

2. Notwithstanding the above, it must be recognized that the domestic law of the American States is not completely outside the consideration of the Court. In the area of its contentious jurisdiction, the Court may consider the domestic law of a State Party when it is called upon to decide whether that State has specifically violated the obligations it has assumed under the Convention. It is a matter, after all, of assuming that the fundamental question that the Court would have to decide is whether there was a violation of the Convention. In that case, it would be the norms of the Convention that would have to be interpreted in order to define their scope and to determine whether they have been violated.

3. In the area of its advisory jurisdiction, under Article 64(2) of the Convention, the Court is also called upon, if so requested by any Member State of the OAS, to decide on the compatibility of a particular law of that State with the Convention or with other treaties concerning the protection of human rights in the American States. The object of this function is to aid the Member States of the OAS to fulfill, as completely as possible, their international obligations in the field of human rights by bringing their domestic legal system in line with the Convention.

4. Even in this case, the Court must essentially focus on international law, that is, it must interpret the Convention or other treaties concerning the protection of human rights. It is once again a question of establishing

the scope of the guarantee offered by the Member State requesting the advisory opinion with respect to the treaty that is being interpreted. Having settled this point, it is neccessary to compare the interpretation of the domestic law with the international law to determine to what extent there is a contradiction between it and the international commitment of the requesting State in the area of human rights.

5. In the instant case, it is especially important to determine whether, as has been stated, the request for the advisory opinion refers to the interpretation of the Convention or whether, on the other hand, what is being asked is the possibility of an interpretation of Costa Rican law. In the first case, the Court would have jurisdiction to answer and the request would be admissible; in the second, the interpretation requested would be outside the scope of Article 64 of the Convention and, therefore, outside the jurisdiction of the Court which would make the request inadmissible.

6. In order to resolve the problem thus presented, the Court must examine the issues which might be contained in the questions formulated by the Government to determine whether the questions refer to matters under its jurisdiction. To that end, it must be pointed out that the questions have been posed in such a way that they are conditioned one upon another, since the third question depends on the answer given to the second and the second on the answer to the first. In that way, according to the Government of Costa Rica, the first question is determinative and if it is not admissible, it would not make sense, given the manner in which the Government has presented the request, to respond to the others.

7. The Government posed the following questions:

First: Can it be assumed that the full and free exercise of the right protected by Article 14 of the American Convention on Human Rights is already guaranteed to all persons under the jurisdiction of the State of Costa Rica by virtue of the obligations assumed by our country under Article 1 of the Convention?

Second: If the preceding question is answered in the negative, does the State of Costa Rica have an international legal obligation under Article 2 of the American Convention on Human Rights to adopt, in accordance with its constitutional processes, the legislative **or other measures** that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention?

Third: If it is decided that the State of Costa Rica is under the obligation to adopt the legislative **or other measures** that may be necessary to give effect to the right of reply or correction set out in Article 14 of the Convention, would it be proper to conclude that the term "law," which appears at the end of the first paragraph

> of said Article 14, is used in its broadest sense so as to encompass provisions of a regulatory type promulgated by executive decree, keeping in mind the instrumental character of such legal provisions?

8. In addition, in the considerations that gave rise to the opinion, the Government pointed out:

> The Government of Costa Rica requests the advisory opinion of the Inter-American Court of Human Rights inasmuch as there exists a doubt that should be resolved as to whether in Costa Rica anyone who is injured by inaccurate or offensive statements or ideas disseminated to the public by a medium of communication can exercise the right of reply established by Article 14 of the American Convention on Human Rights, or if that right can only be exercised once a formal law has been issued establishing the conditions for the specific exercise of such right.

9. The Government, likewise, cited the first paragraph of Article 7 of its Constitution, which provides:

> **Article 7.** Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws from their promulgation or from the day that they designate.

10. From the questions themselves as well as from the considerations which give rise to the request, as manifested by the Government, it is obvious that the legal problems posed in the request are related to the fact that in Costa Rica there is no law that **establishes the conditions** in which the right of reply or correction recognized by Article 14 of the Convention can be exercised. A doubt exists as to whether such a law is necessary in Costa Rica, given the aforementioned provision of its Constitution.

11. The central question is whether the right set out in Article 14 can be assumed as already guaranteed in its free and full exercise to all persons under the jurisdiction of the State of Costa Rica. Although it might be added that the question is posed in light of Article 1 of the Convention, it is not possible to answer it without express reference to the domestic law of Costa Rica since it concerns the system by which the international commitments of the State can be guaranteed in the domestic legal system. This requires a determination of whether in light of the domestic legal system of Costa Rica it is possible to give effect, on the domestic plane, to a right already recognized in a treaty.

12. The question is not formulated in terms of the compatibility or incompatibility of a specific domestic law with the Convention, nor is it formulated in terms of the scope of the rights and duties established in the Convention, particularly in Article 14, in which case the response would be generally valid with respect to any State Party. In this sense, it is not

expressly asked what, in our opinion, is beyond any doubt: for instance, whether the impossibility of exercising the right contained in Article 14 in any State Party is a violation of the Convention which could eventually be brought before the organs of protection established by the Convention. What is being sought rather is a determination of whether such rights are or are not guaranteed within the jurisdiction of Costa Rica.

13. The reference to Article 1(1) of the Convention does not change this conclusion since, in order to understand that the question refers to the nature of this Article and not to the domestic Costa Rican law, it is necessary to reformulate it by removing the respective references. We believe that reformulation is possible in certain cases, always taking into account the mission that the Convention confers on the Court, which is "as extensive as may be required to safeguard such rights, limited only by the restrictions that the Convention itself imposes" (**Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica,** Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 25). In this case, however, such a reformulation does not appear necessary since the immediate international enforcement of the rights recognized by Article 14 is beyond doubt and has not been questioned by Costa Rica.

14. Nor does it have anything to do with the self-executing nature of the Convention or with the role which the Convention plays in the legal system of the States Parties. Notwithstanding the reference to this problem made in the considerations which give rise to the request, this question has not been raised. Furthermore, the self-executing nature of a treaty is, in general and unless there is a special provision on the matter, a problem of domestic and not international law, since it is a matter of whether such treaty acquires, given the specific domestic mechanics of its approval, the nature of a domestic norm.

15. We believe, therefore, that the first question cannot be answered by means of an interpretation of the Convention but rather only with regard to the domestic law of Costa Rica. The Court must especially take into consideration its Constitution and the power of the Constitution or the approval of the Legislative Assembly to give effect to treaties in which Costa Rica is a party, as well as the competence of its courts to apply them. That is a function of the domestic organs of Costa Rica and is outside the scope of the jurisdiction of the Court.

16. If the first question is inadmissible for the reason given, and can not be answered, the other two, intimately tied and dependent on a response to the first, are also inadmissible. We, therefore, believe that the reformulation by the Court which allowed it to avoid any pronouncement on the domestic law of Costa Rica was not necessary in this case and the proper course would have been to declare the request inadmissible and to refrain from answering.

17. The normal consequence of our disagreement on the question of admissibility would be to abstain on the substantive part of the opinion rendered

by the Court. However, within the context of this opinion, we believe we cannot avoid voting in favor of the conclusions of the opinion for the following reasons:

A. Article 15(1) of the Rules of Procedure of the Court expressly states that the vote of each judge shall be "either in the affirmative or the negative; abstentions shall not be permitted." That rule entirely eliminates the possibility of abstaining on the substantive part of the opinion.

B. As has been stated, we have no doubt whatsoever regarding the international enforceability of the obligations assumed under Article 14, as they have been analyzed by the Court in its opinion and with which we are in agreement.

C. Even though we have disagreed, for the reasons expressed, with the Court's exercise of its power to reformulate advisory opinion requests that are submitted to it, we recognize that in the present case reformulation did not lead the Court to consider matters, such as the interpretation of domestic law, which are outside its jurisdiction and we also recognize that the opinion is limited to the analysis of the Convention for which the Court has full competence.

RAFAEL NIETO-NAVIA

PEDRO NIKKEN

CHARLES MOYER
Secretary

DISSENTING AND CONCURRING OPINION OF JUDGE THOMAS BUERGENTHAL

1. I agree with my colleagues Nieto-Navia and Nikken that the instant advisory opinion request is inadmissible and associate myself with the arguments advanced in their opinion to support that conclusion. Accordingly, I dissent from that part of the Court's opinion which holds that the request is admissible.

2. Having concluded that the Costa Rican request is inadmissible because it asks the Court to render an opinion on a subject that is outside its jurisdiction, I regard it as inappropriate that I should have to address the merits of the request and would have preferred to abstain in the vote thereon. However, Article 15(1) of the Court's Rules of Procedure does not allow me to do so. That provision reads as follows:

> The President shall present, point by point, matters for discussion and for a vote. Each judge shall vote either in the affirmative or the negative; abstentions shall not be permitted.

As I read this Rule, it requires me to vote either with or against the majority and does not permit me to abstain.

3. Since I am compelled to vote, I have decided to vote with the majority because I consider its holding to be sound as a matter of law. Here I should note that the majority substantially reformulated the first question presented by Costa Rica. This approach of the majority also implicitly changed the significance of the remaining two questions and enabled it to answer all three questions by doing little more than restating the provisions of Articles 14(1), 1(1) and 2 of the Convention. The resulting answers are therefore unobjectionable.

4. Given the language of Article 14(1), it can not be doubted that the provision establishes "a right to reply or to make a correction." It has been argued that the phrase "under such conditions as the law may establish" indicates that Article 14(1) was designed merely to authorize, but not to require, the States Parties to establish the right. The reasons given by the majority for rejecting this contention are sound, in my opinion, if one reads the applicable language consistent with the rules of interpretation prescribed by international law. It is unnecessary for me, therefore, to repeat that reasoning except to say that a contrary conclusion would distort the meaning of Article 14(1). Whether I, as an individual, believe that it is a good or a bad idea to provide for a right to reply is not a question that is proper for me to address when called upon to interpret Article 14(1). That Article is in the Convention and, as a judge of this Court, I have to interpret it in accordance with the relevant international law on the subject, which imposes the obligation on me, **inter alia**, to do so in "good

faith" (Vienna Convention on the Law of Treaties, Art. 31(1)). Here it is worth noting that the Court makes quite clear that Article 14(1) may not be interpreted or applied in a manner which would impair the exercise of the rights which Article 13 (Freedom of Thought and Expression) guarantees, and I strongly associate myself with that view.

5. It is also clear to me that to the extent that Article 14(1) recognizes the "right to reply," every State Party is required, under Articles 1 and 2 of the Convention, "to ensure to all persons subject to (its) jurisdiction the free and full exercise" of that right. A state which fails to comply with this requirement violates the international obligations it has assumed by ratifying the Convention. As a general proposition, whether Costa Rica complies with the aforementioned obligations by legislative, judicial or administrative measures is, in my opinion, a matter for its domestic law. I do not believe that we are called upon to say more on this subject at this time.

THOMAS BUERGENTHAL

CHARLES MOYER
Secretary

(Translation)

SEPARATE OPINION OF JUDGE PIZA

I concur with the majority opinion of the Court on the request of the Government of Costa Rica as well as on the answers to the first and second questions, but not with the answer to the third question. Nevertheless, I consider it necessary to deliver a separate opinion on the entire advisory request for the following reasons:

a) Because I disagree with the manner in which the majority of the Court has defined the very meaning of the questions posed, which affects not only the admissibility of the request, but also the answers to the questions. The Court considers them to be only questions of a general request, falling under Article 64(1) of the Convention, concerning the interpretation of Article 14(1) in relation to Articles 1(1) and 2 of that treaty without reference to the domestic law of Costa Rica or the States Parties in general. This interpretation, in my judgment, evades the specific dimension which ought to be given the questions in line with their context and the manifest intention of the Government in making the request that they are primarily part of a particular request falling under Article 64(2);

b) Because I judge that the request, thus understood, was admissible in both the general and particular sense, since in both it was aimed at obtaining an interpretation of the Convention. In the first sense, it was seeking an interpretation of the meaning of the Convention itself, and in the second, it was relying on the particular advisory jurisdiction of the Court to determine the compatibility of Costa Rican law with the Convention. It is true that in this latter sense it could not have been answered in detail, not because it was inadmissible, but rather because the Government of Costa Rica did not offer sufficient information to allow the Court to analyze fully the right of reply or correction as it exists under the domestic law of Costa Rica;

c) Because I feel that the answers given to the first and second questions, although correct, are expressed in such a general manner that they are merely a repetition, almost word for word, of the norms of the Convention, and that they do not completely answer the concrete, although confusing, request of the Government of Costa Rica even when it is understood only with reference to its general advisory jurisdiction under Article 64(1) of the Convention;

d) Because I do not share the implicit thesis of the majority that this subject matter is reserved to the jurisdiction of the States Parties and is irrelevant to international law. Nor do I agree with the specific manner in which the Court would render effective the rights recognized by the Convention, particularly in respect to the question of whether the fulfillment of the right of reply or correction corresponds to the

duty to respect and ensure its exercise pursuant to Article 1(1), or instead requires the State Party to adopt measures to make the right fully effective in its domestic legal system pursuant to Article 2, as two sides of the same international obligation;

e) Finally, because I disagree with the answer to the third question to the extent that it assumes that the regulation of the right of reply or correction under Article 14(1) of the Convention can be guaranteed by measures other than a statutory law.

I
STATEMENT OF THE ISSUES INVOLVED IN THE REQUEST

2. Certainly, the phrasing of the questions and, above all, the reasoning which gave rise to them is somewhat confusing and made it necessary for the Court to interpret their meaning by exercising its implicit authority to clarify, reformulate or restate requests in more precise terms. However, that preciseness can not allow the contents of the request or the purpose of the questions to be understood in a sense contrary to the terms in which they were posed.

3. Above all, it is evident that the request does not ask the Court to determine the existence of the right of reply or correction set out in Article 14(1) of the Convention, because that is obvious. Nor does it ask the Court to define the obligation assumed by the States Parties, including the Republic of Costa Rica, to respect, ensure and, when necessary, to adopt measures under its domestic law, pursuant to Articles 1(1) and 2 of the Convention, because this derives automatically from ratification of the Convention.

Neither does the request pose the question of the effect of these provisions on the domestic law of Costa Rica, a question which the Government itself answered by indicating that the Convention, an international treaty, has a higher authority than domestic law, according to the provisions of Article 7 of the Constitution of Costa Rica.

4. To the contrary, the Government manifested an interest in clarifying an ambiguous situation, which exists in the context of its domestic legal system, but which is also directly related to the fulfillment of its obligations as a State Party to the Convention and the responsibility that it might incur if it did not comply on the international plane. It would seem that the Government is interested in knowing, for instance, in the questions posed, whether the right of reply or correction is an autonomous right, <u>enforceable per se as a right of the Convention, even though its exercise is not regulated under domestic law</u>. Consequently, if the right is considered to be autonomous and no regulations exist under domestic law, could the failure to enforce the right be protested as a violation of a State's immediate international duty to respect and ensure its effective enjoyment, pursuant to

Article 1(1) of the Convention, irrespective of its lack of regulation. On the other hand, does the right of reply or correction require state regulation to be effective and in the absence of such regulation, it would not be an internationally enforceable right of the Convention as such? Under these circumstances, such violation could be imputed to the State due to its failure to establish the legal conditions referred to in Article 14(1), read in conjunction with the obligation of Article 2 to adopt the measures that are necessary to make the right fully effective.

5. The effect of either answer would be, in my judgment, clearly different under the Convention. If the right of reply or correction is judged to be an autonomous right, enforceable **per se** even in the absence of domestic regulation, the absence of this regulation alone, which is not indispensable, would not constitute a violation of the Convention. A violation would exist only if a person, in a specific instance, were denied the opportunity to exercise the right or were refused the assistance of the administrative or judicial authorities to exercise the right, but only when this denial springs from a concrete case. On the other hand, if the right must exist under domestic law, the lack of such domestic regulation would result in the violation of the right even though no one was denied its protection in a concrete situation. In so far as these differences specifically concern a right of the Convention or the other treaties referred to in Article 64, it is absolutely necessary to explain them: to resolve first the matter of the admissibility of the request and then to answer the request if it is deemed admissible.

6. In light of the above, the first issue concerning Questions 1 and 2, which appear to be stated in the alternative, can not be answered by a mere formal definition of Article 14(1) or the mere statement of the obligation to respect, ensure and to make the right effective by the States Parties. That can be determined by simply reading the Convention. Rather, the questions should be phrased in this manner:

a) Should it be understood that this article sets out an autonomous right of reply or correction, that is, enforceable **per se** as a right recognized by the Convention, and that Costa Rica as a State Party is obligated to immediately respect and ensure this right under Article 1(1) of the Convention regardless of whether the requisite legal conditions have been established under domestic law?

b) Or, to the contrary, does this right require regulation under domestic law, without which the right is unenforceable **per se** as a right of the Convention, at the same time recognizing the duty of Costa Rica, as a State Party to the Convention, to adopt such legislative or other measures as may be necessary to give effect, or full effect, to those rights pursuant to Article 2?

A third possible hypothesis would incorporate both alternatives:

c) Or is it both possibilities simultaneously: a right enforceable **per se**, that a State is obliged both to respect and ensure immediately,

but which the State must also incorporate into its domestic law by legally establishing the conditions referred to in Article 14(1)?

7. A second question, Question 3, could be stated in this way:

a) In the event that, in the opinion of the Court, Costa Rica is obligated to establish the legal conditions referred to in Article 14(1) of the Convention, could they be of a merely instrumental character and thus be adopted, for instance, by decrees or administrative regulations?

b) Or to the contrary, would they be understood to fall within the requirement of law (**reserva de ley**), which would consequently require that they be instituted by the enactment of a statutory law?

8. The questions formulated in this manner could fall under Article 64(1) of the Convention, which authorizes the Court to interpret the Convention or other treaties concerned with the protection of human rights in the American States. If this is the case, then the reference to the Republic of Costa Rica in the request would be merely an example, as would be a reference to any other State Party. However, the questions also could and indeed appear to fall under Article 64(2), which authorizes the Court to provide a State with opinions regarding the compatibility of the domestic laws of the State with certain other international human rights instruments, providing only that this concept is understood as also applicable to the domestic legal system as a whole. Furthermore, there is no reason that the questions could not fall under and be considered under both Articles 64(1) and 64(2). Precedent for this position exists in **Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism** (Advisory Opinion, OC-5/85 of November 13, 1985. Series A No. 5). Or, as the Court itself has also stated,

> The only major difference between opinions dealt with under Article 64(1) and those falling under Article 64(2) is one of procedure (**Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica,** Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 17).

9. It is true that the lack of reference to a concrete norm of the domestic law of Costa Rica whose compatibility with the Convention is in question, as well as the express invocation of Article 49 of the Rules of Procedure of the Court, which deals with general advisory requests under Article 64(1) of the Convention, and not Article 51 of the Rules which corresponds to particular requests under Article 64(2), could be understood to lead to the conclusion that this is a general advisory opinion request concerning the abstract interpretation of the Convention under the provisions of Article 64(1). However, these same explicit references to the domestic legal system of Costa Rica and the obligations it has undertaken as a State Party to the Convention, could also oblige the Court to consider it as a particular advisory opinion request pursuant to Article 64(2) of the Convention, which concerns the compatibility of the domestic legal system of Costa Rica with its international obligations.

II
ADMISSIBILITY

10. I agree that to the extent that the request concerns an interpretation of Article 14(1) of the Convention in relation to Articles 1(1) and 2 and because it has been requested by the Government of Costa Rica, a State Party to the Convention and a Member State of the OAS, it falls, in general, within the parameters of Article 64 of the Convention. However, I believe that the admissibility of the request should be considered in the two dimensions already pointed out, namely:

a) As a General Request:

11. In this first sense, I concur with the principal opinion of the Court in that the request does not pose any special doubt in respect to its admissibility. Its main purpose is to obtain an interpretation of the meaning of the very norms of the Convention. This conforms to the specific purpose of the advisory jurisdiction of the Court, in accordance with Article 64(1).

12. Nor does the fact that the request appears to involve, at first glance, considerations of the domestic law of the State cause me difficulty as to its admissibility. In this sense, I do not share the reasoning of my colleagues that, as the advisory jurisdiction of the Court is limited to the interpretation of the International Law of Human Rights (that of the Convention or of other treaties concerning human rights), the issue as to what degree and by what means the States must respect and effectively guarantee that right, as long as they do so, lies outside the jurisdiction of the Court. Stated in other terms, the Court would only be concerned with determining the meaning and scope of internationally recognized rights, or of the norms which guarantee them, and the general obligation of the States to effectively respect and ensure them. However, the Court would not be concerned with how the States actually accomplish these objectives or how they should accomplish them in their domestic legal system. Under international law, it is only important that they comply with this duty. The form or the means which they use is exclusively a matter of the jurisdiction and responsibility of the State.

13. I believe that this view is only partially true: certainly, from the point of view of international law, the State is a sovereign entity and its acts have traditionally been considered, although certainly less so today, as acts, legal or illegal as the case may be, in whatever form they are adopted, whether they be normative or subjective acts or whether they be legislative, governmental, administrative or judicial acts.

14. However, this thesis can no longer be sustained under contemporary international law, and much less under Human Rights Law, if only because it is no longer possible to differentiate the content of international law and even less Human Rights Law from that of domestic law, at least not with the clarity that was possible when international law was limited to the regulation of the external acts and relations of States. There was no apparent conflict with domestic law which retained exclusive domination over everything else,

especially that which concerned a State's relations or actions within its own territory or in respect to its own subjects. On the contrary, at the present time, the same situations, in the same territory, and with respect to the same persons can be the subject of both the jurisdiction of a particular State and the jurisdiction of the international community. As a result, the legitimacy and even the need to consider questions from the point of view of international law, although they apparently fall under domestic law, is today indisputable. The Permanent Court of International Justice has already established this principle on various occasions even rebutting the classical but out-dated principle that domestic law must have precedence over international law.

b) As a Particular Request:

15. Nor do I have difficulty admitting the request as a particular request, falling under Article 64(2) of the Convention, in the sense that it can be understood to pose a question of the compatibility of the norms of Costa Rican domestic law with the norms of the Convention as they relate to the right of reply or correction, because this falls precisely under the definition of the Court's advisory jurisdiction in this particular dimension.

16. Nevertheless, I recognize that a doubt is raised by the fact that the Government of Costa Rica was not requesting an opinion with respect to a concrete norm of its domestic legal system that could possibly directly countermand the provisions of the Convention. In effect, from the point of view of a particular request, what was being asked was rather whether the obligation assumed by Costa Rica pursuant to Article 1(1) to respect and ensure the effective exercise of the rights recognized by Article 14(1) is satisfied by the sole fact that the Convention has a higher authority than Costa Rican domestic law under the Costa Rican Constitution (Art. 7), even in the absence of norms that regulate the conditions of its exercise under the terms of Article 14(1). Or to the contrary, does the nature of this right and its recognition by the Convention require an adoption of complementary measures under domestic law, in which case Costa Rica, if it lacked such regulations, would be in violation of the Convention and its obligations under Article 2. In addition, if domestic regulations are deemed necessary, what class of legislative or other measures must Costa Rica adopt to comply with its obligations?

17. It is obvious that these questions would be completely admissible in a contentious case submitted to the Court, in which a complaint alleged a concrete violation of the right of reply or correction resulting from an action or omission of the State of Costa Rica. Naturally, this violation would require that the State had, in fact, denied to the injured person the administrative or judicial protection of the State, when the right of reply or correction was denied by a legally regulated medium of communication, as required under Article 14(1). However, violations do not only result from a denial of justice or from the non-application of the Convention or the related norms of domestic legislation. Violations may also result from the inability to protect the right because of the absence of domestic norms.

However, as was stated, any one of these possibilities would constitute different forms of violation which would result in different consequences: if the violation were due to the absence of complementary domestic norms, it would be produced by the sole fact of this normative omission. In such a case, as has been repeatedly established under international law, the prior exhaustion of domestic remedies would not be necessary as the violation would be produced by the sole fact of this normative omission. This same jurisprudence declares that international law can be invoked when there is a violation of international law by a norm of domestic law, even without involving a concrete case. On the other hand, if it is only necessary that the right of the Convention be incorporated into the domestic law of Costa Rica, a violation would only result in the concrete case of a refusal to administer justice, regardless of whether intermediate legislation existed. It should also be kept in mind that the media of communication are normally private, and for that reason their simple refusal to recognize the right of reply or correction could not constitute a violation of international law because such refusal would not be imputable to the State as long as the State, through its organs, did not acquire that responsibility by not protecting the victim from the publication of inaccurate or offensive statements.

18. If the questions posed in this request would be admissible in a contentious case in these terms, it is absurd to suppose that they would not be admissible in an advisory opinion, which has a wider scope and is more informal. The Court has repeatedly stated that its advisory jurisdiction was established by Article 64 as a

> service for all of the members of the inter-American system and is designed to assist them in fulfilling their international human rights obligations (**"Other treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982, Series A No.1, para. 39.)

Moreover, as the Court has indicated on another opportunity, the advisory process is

> designed to assist states and organs to comply with and to apply human rights treaties without subjecting them to the formalism and the sanctions associated with the contentious judicial process. (**Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)**, Advisory Opinion OC-3/83 of September 8, 1983, Series A No 3, para. 43) (See also **Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, supra** 8, especially paras. 19 and 25).

Paragraph 25 further states:

> In this context, the Court concludes that its advisory function, as embodied in the system for the protection of basic rights, is

as extensive as may be required to safeguard such rights, limited only by the restrictions that the Convention itself imposes. That is to say, just as Article 2 of the Convention requires the States Parties to "adopt...such legislative or other measures as may be necessary to give effect to (the) rights and freedoms" of the individual, the Court's advisory function must also be viewed as being broad enough in scope to give effect to these rights and freedoms.

19. The wording of Article 64(2) of the Convention which expressly refers to requests by a State for an opinion of the Court regarding the "compatibility of any of its domestic laws with (certain) international instruments" creates a problem in cases such as the one before us, which appears rather to refer to the absence of specific norms concerning the right of reply or correction in the domestic legal system of Costa Rica. It is also apparent that it can not be said **a priori** that these norms do not exist at all in view of the fact that, according to the Government of Costa Rica, all the norms of the Convention are fully incorporated as law in its domestic system with a higher authority than even domestic laws. Furthermore, according to the principle of "plenitud del orden juridico" (the all-inclusiveness of law), a total absence of a norm in a concrete case or situation is equated with the existence of a contrary norm in the same way that every concrete norm always implies another that conforms to it, which may or may not be applicable to other suppositions not contemplated therein, by virtue of the general principles and technical criteria of interpretation, integrated in the law, in a way that the so-called gaps of the legal system are only apparent. This generally valid principle is particularly applicable in the case of standards of "guarantees" since these are aimed at working through the whole institutional and economic apparatus that, in the measure that it does not simply allow access of persons to its mechanisms of protection and eventual indemnization, it denies it to them with the same consequences and in the same way as if it had been expressly prohibited. In the case where, irrespective of the recognition of the right of reply or correction, its normative development in the domestic legal system were juridically necessary, the mere lack of this normative development would imply the existence of a concrete norm of that system which would block the exercise of the right in question, leaving it without the respect and guarantee provided by Articles 1(1) and 2 of the Convention. That is, moreover, in tune with the established principle that rights are violated, especially in international law, as much by action as by omission. As the European Court of Human Rights has stated:

> In any event, the Government may not, in relation to the fulfillment of the engagements undertaken by them by virtue of Article 6, seek refuge behind the possible failings of their own domestic law (Eur. Court H.R., **Eckle case**, judgment of 15 July 1982 Series A No. 51, para. 84; see also **Marckx case**, judgment of 13 June 1979, Series A No. 31, para. 3).

20. For these reasons, I believe that the request of the Government of Costa Rica is admissible and should be admitted as I have defined it, as much as a

general request in the terms of Article 64(1), as a particular request in those of Article 64(2) of the Convention.

III
WITH RESPECT TO THE GENERAL REQUEST OF COSTA RICA

21. I am in general agreement with the reasoning of the principal opinion concerning Questions 1 and 2, as they have been generally understood. It is not necessary for me to discuss here some exceptions that I have to that reasoning because they do not seriously affect the conclusion, which I share, that, under Article 14(1) of the Convention, the right of reply or correction is a right **per se**. Each State Party is obligated both to respect and to ensure this right to all persons subject to its jurisdiction, without discrimination, under the terms of Article 1(1), and to adopt the legislative or other measures as may be necessary to give it effect, or full effect, in its domestic legal system, in accordance with Article 2 of the Convention.

22. I must, however, expand on some matters not covered by the majority opinion, that appear to me to be important in order to answer the request more precisely, as well as comment on others on which I am in general agreement with my colleagues but with respect to which I have some differences. The former concern the very interpretation of the right of reply or correction as it is guaranteed by Article 14(1) of the Convention. The latter concern both the nature and scope of the obligations assumed by the States Parties under Articles 1(1) and 2 of the Convention and the subject matter of Question 3, which concerns the kind of measures provided by Article 14(1) to regulate the conditions of the exercise of the right of reply or correction.

a) **Articles 1(1) and 2 of the Convention:**

23. The general duties assumed by the States Parties to the Convention for each one of the rights therein are, on the one hand,

> ... to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination ... (Art. 1(1))

and on the other hand,

> ... to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms (Art. 2).

I believe that the request requires the Court to analyze the content and scope of both such duties, starting with the logical presumption that both refer to different hypotheses --otherwise it would not make sense to have separate provisions.

24. The draft that served as the basis for the American Convention only provided for the generic duties of Article 1(1) (see **Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre de 1969, Actas y Documentos,** OEA/Ser.K/XVI/1.2, Washington, D.C. 1978, Doc. 5, pp. 12ss.); that of Article 2, an almost exact copy of Article 2(2) of the International Covenant on Civil and Political Rights, was the result of the Observations of the Government of Chile (**Ibid.**, doc. 7, p. 38), supported by those of the Governments of the Dominican Republic (**Ibid.**, doc. 9, p. 55) and Guatemala (**Ibid.**, doc. 4, corr. 1, p. 107) and finally of a motion of Ecuador during the Conference (**Ibid.**, p. 145). It was subsequently accepted by the Working Group of Commission I as Article 2(2) (**Ibid.** p. 152). This Article also had the support of the United States of America in a Declaration, (**Ibid.**, Appendix A, p. 146) although for reasons which differ from those of the other countries, as will be explained.

25. The foregoing, combined with the very requirements of the International Law of Human Rights, requires that the obligation to respect and ensure those rights, as established in Article 1(1), is truly essential to the system of the Convention, and that it be precisely understood as an immediate and unconditional duty of the States, resulting directly from the Convention. The very notion of protection on the international plane, although only as complementary or subsidiary to that of domestic law, requires that the States immediately commit themselves to respect and ensure those rights as an international obligation over and above the vicissitudes of their domestic legal system.

26. On the other hand, the duty to take the necessary measures to ensure fully the effectiveness of such rights on the domestic plane, as referred to in Article 2, can not be understood, in the system of the Convention, as a mere repetition of that which is already established in Article 1(1) because that would be the equivalent of rendering Article 2 meaningless. Nor can it be understood to be the equivalent of the simple generic duty to give such rights effect on the domestic plane, as part of any international obligation, because then it would have been unnecessary to ensure them under Article 1(1), and perhaps it would have been unnecessary to ensure them at all. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not have a provision similar to Article 2 of the American Convention and yet it can not be supposed that due to the absence of this provision the same obligation does not exist for its States Parties.

27. On the other hand, the fact that this norm has been included in the Convention shows, very clearly in my opinion, that it has a marginal role in the Convention, which is to provide protection in the eventuality that Article 1(1) would be inoperable or at least insufficient. It was included not because of the limitations inherent under domestic law that would result in violations of Article 1(1) but rather by virtue of the fact that some rights --not all-- need in and of themselves complementary standards or measures on the domestic plane in order to be immediately and unconditionally enforceable. In other words, in questions of those rights recognized by the

Convention as immediate and inconditional, the duty of the States Parties to respect and to ensure them, in accordance with Article 1(1), is sufficient to make them immediate, unconditional and fully enforceable as rights of the Convention, which is the only area in which the Court exercises its jurisdiction. Some rights, however, due to their nature or to the wording of the Convention, lack this immediate and full enforceability unless domestic norms or other complementary measures grant it, as is the case for example with political rights (Art. 23) or those of judicial protection (Art. 25). These rights can not be effective solely by virtue of the norms that recognize them, because they are by their very nature inoperable without a very detailed normative regulation or, even, a complex institutional, economic and human machinery which gives them the effectiveness that they command as rights of the Convention on the international plane and not only as a question of the domestic legal system of each State. If there are no electoral codes or laws, voter rolls, political parties, means of publicity and transportation, voting centers, electoral boards, dates and time periods for the exercise of the right to vote, this right, by its very nature, simply can not be exercised; nor can the right to judicial protection be exercised unless there are courts to grant it and there are procedural standards that control and make it possible.

28. It is also for this reason that Article 2 wisely refers not only to normative provisions but also to "other measures" which clearly include the aforementioned institutional, economic and human machinery. Article 2 does not refer to the administrative or judicial measures as such, because they simply constitute the application of the former measures and, in that sense, are included within the duties of respect and guarantee recognized by Article 1(1) and not within the duties of Article 2. This is true even in States with systems of binding precedents, as are those under the common law system, because it is obvious that in these States general law is created not by jurisdictional act but rather by the normative power of the courts, as set by their precedents.

29. This interpretation is also, in my opinion, the only one that is in accord with the legislative history of Article 2 of the Convention. The drafts that preceded the present Convention did not include a similar provision, not through inadvertence but rather because of the concern that the provision might be interpreted as a kind of escape valve from the immediate and unconditional obligations of Article 1(1). Thus, in the report of the rapporteur of the Inter-American Commission, Dr. Dunshee de Abranches, it is expressly stated:

> Under the constitutional system prevailing among the American States, the provisions of treaties are incorporated into municipal law through ratification, that is prior enactment of the competent legislative organ, without the need for a special law. Consequently, this paragraph is not needed in the Inter-American Convention. On the contrary, if it were placed in the Convention, it could justify the view that any State Party would not be obliged to respect one or more of the rights defined in the Convention but

> not covered by the domestic legislation; but would be so obliged only after passage of a special law on such right or rights (**Estudio Comparativo de los Pactos de las Naciones Unidas ... y de los Proyectos de Convenciones Americanas sobre Derechos Humanos,** OEA/Ser.L/V/II.19/Doc. 18, p. 191, 1968).

This concern resulted in the concrete observations of the Government of Chile (**supra** 24), in which it proposed the inclusion of Article 2, in the sense that:

> While it is true that generally speaking the statement made by the Rapporteur, Dr. Dunshee de Abranches, in the IACHR Document 18 to the effect that in the American states the provisions of treaties are incorporated into domestic law by virtue of ratifications may be borne out, it is not nonetheless certain that in various instances it will be necessary to adopt measures of a domestic nature to give effect to the rights, particularly in those cases in which the Preliminary Draft itself so indicates, in such terms as the following: "the law shall recognize equal rights for children born outside of wedlock and for those born in wedlock." (Art. 16); or "the law shall regulate the manner ..." (Art. 17); and other similar passages. The argument that inclusion of this clause in the Inter-American Conventon might warrant allegation by a State that it was not obligated to respect one or more rights not contemplated in its domestic legislation is not supported by the terms of the Preliminary Draft; and it is even less likely to find support if the scope of the Convention is expressly established at the Conference (**Actas y Documentos, supra** 24, doc. 7, p. 38).

30. I believe that the most basic duty is that of each State to immediately and unconditionally respect and ensure fundamental human rights, so that these rights are provided full protection on the international legal plane, even if domestic rules do not grant them immediate enforceability. By virtue of the duty to respect fundamental human rights, the State can not directly violate them even if it has not recognized those rights in its domestic law; and by virtue of the duty to guarantee them, the State can not indirectly violate them by denying the executive protection and judicial "amparo" neccesary to enforce them both with respect to public authorities as well as with respect to individuals, not even under the pretext that such remedies have not been provided by its domestic legal system. In other words, the mere lack of respect of such rights and the mere denial of executive or judicial protection would constitute direct violations of those rights with regard to the duty to respect and ensure them as established by Article 1(1) of the Convention, without the necessity of recourse to that duty of Article 2 to adopt the legislative or other measures necessary to make them effective on the domestic plane.

31. Therefore, Article 2 only has meaning, as an independent norm within the system of the Convention in respect to those rights which by their nature must be developed through supplementary laws on the domestic plane. I do

not refer, of course, to the so-called programmatic rights because these establish a different category of mandates, certainly legal, but unenforceable as such even under the terms of Article 2 of the Convention.

32. In line with the above, Article 2 can not be understood as conditioning the application of Article 1(1) in the sense that, for example, it was interpreted unilaterally and without any support in the Conference of San José by the Declaration of the United States of America (**supra** 24), when it was stated

> The United States agrees that this article should be included in the draft Convention since it helps to clarify the legal effect of ratification on the domestic law of the respective parties. The article is sufficiently flexible so that each country can best implement the treaty consistent with its domestic practice. Some countries may choose to make the articles of the treaty directly effective as domestic law and this article would permit them to do so. The comments made by Chile suggest that its own practice may vary depending on the text of each article. Others may prefer to rely solely on domestic law to implement the articles of the treaty. In the U.S. we would interpret this article as authorizing us to follow the last course in the case of matters within Part I, the substantive portions, of the draft convention. That will permit us to refer, where appropriate, to our Constitution, to our domestic legislation already in existence, to our court decisions and to our administrative practice as carrying out the obligations of the Convention. It will also mean that we will be able to draft any new legislation that is needed in terms that can be readily and clearly assimilated into our domestic codes. In other words, it is not the intention of the U.S. to interpret the articles of the treaty in Part I as being self-executing (Buergenthal & Norris, **Human Rights: The Inter-American System**, Chapter 1, Summary Minutes of the Conference of San José, Doc. 35 Corr. 1, November 16, 1969, p. 15).

33. Irrespective of the validity of this interpretation or of a reservation of this nature in the concrete case of the United States of America --a determination of which would exceed the scope of this advisory opinion-- it does not appear to be acceptable as a general thesis, nor was it, in fact, the reason that Article 2 was included in the Convention. On the contrary, I believe that, pursuant to the Convention, the States that do not automatically incorporate international law into their domestic legal system are obligated to incorporate all of the rights recognized by the Convention by virtue of the duty to respect and ensure them pursuant to Article 1(1) and not by virtue of the duty to develop these rights in their domestic law as established in Article 2.

b) Article 14 of the Convention

34. As I have indicated, I agree, in general, with the reasoning of the majority opinion, especially with respect to the meaning and scope of Article

14(1) and the right of reply or correction which it guarantees. I limit myself to the following observations, which are complementary in nature.

35. First, given my interpretation of Articles 1(1) and 2 of the Convention, it is necessary to clarify the reasons, in addition to those expressed in the principal opinion, as to why I believe that Article 14(1) establishes a right of reply and correction enforceable **per se** without the need for "such conditions as the law may establish" as stated in Article 14(1). I believe that the essence of Questions 1 and 2 of the Government of Costa Rica is whether this reference subordinates the actual right or its exercise, so that without these legal conditions the right of reply or correction would not be imposed on the States as an immediate and unconditional duty that must be respected and ensured.

36. In this respect, it appears that the fundamental criterion which creates the very nature of human rights requires that the norms which guarantee or extend human rights be broadly interpreted and those that limit or restrict human rights be narrowly interpreted. This fundamental criterion, the **pro homine** principle of the Law of Human Rights, leads to the conclusion that immediate and unconditional enforceability is the rule and that conditional enforcement is the exception. Considered as such, under the terms of the Convention the right of reply and correction could be applied even if "such conditions as the law may establish" did not exist. The right is enforceable **per se**.

37. This is precisely the case: First, Article 14(1) defines this right as a corollary to the rights of everyone "to have his honor respected" and "to the protection of the law against interference or attacks" to his "honor or reputation" (Art. 11) and also in a certain way "to freedom of thought and expression" (Art. 13), both of which have a special if not preeminent place among the rights recognized by the Convention. Second, Article 14 itself establishes the basic criteria to determine its scope. The first line of Article 14 reads, "Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication" and permits the injured party "the right to reply or to make a correction using the same communications outlet." From these criteria, it is evident that others can be deduced, such as the conditions that the reply or correction would be published free of charge, as soon as possible, in a location and with an emphasis comparable to that which caused the injury, and without a commentary which would impair its value. All of these conditions can be determined by only using reasonable criteria which should govern all interpretations of law, even when formal regulations do not exist.

38. In other words, the right of reply or correction is such that nothing may prevent that it be respected, ensured, applied and protected. The basic criteria of reasonability must be used to determine its boundaries even when no regulatory laws exist. All things considered, the same law that establishes the norms under which the right is be exercised must also delineate its limitations, because in any other way the law itself would violate the essential subject matter of the right regulated and, therefore, Article 14(1) of the Convention.

39. In my judgment, two reasons exist in the present case which, in addition to and without detracting from the immediate and unconditional enforceability of the right of reply or correction, require that the conditions for its exercise be established with the exactitude and permanence of Law. The first is the principle of juridical security, which in this case plays a double role: security for the eventual victims of an inaccurate or offensive statement who hold the right, and also security for the mass media, normally private, to avoid abuse in the exercise of the right. Second, there must be a necessary balance between the rights of both parties, which can be provided for by access to an effective and expedient judicial remedy that is adequate to the character and urgency of the rights of both parties, and which also guarantees, in case of controversy, the opportune publication of the reply or correction when it is justified. Here we would see the operation of the principle to which I referred previously in this paragraph --that complementary legal and institutional measures are necessary if the very right recognized by Article 14(1) is to be fully and effectively guaranteed as a right of the Convention under domestic law, which is where we must look for human rights to be effective. Consequently, the States have a duty to adopt these measures pursuant to Article 2 of the Convention.

40. My affirmative vote on the answers in the principal opinion to Questions 1 and 2 of the request of the Government of Costa Rica should be understood to affirm the concurrent duties of the State Parties to the Convention to respect and ensure the rights in accordance with Article 1(1) and to develop these rights in their domestic legal system in accordance with Article 2.

c) The Meaning of the Word "Law" in Article 14(1):

41. Finally, with reference to Question 3 of the Government of Costa Rica, I dissent from the majority's interpretation that the phrase "such legislative or other measures" (Art. 2) refers to regulations of any character that are sufficient in the domestic legal system of each State Party and not only the norms and institutional measures to which I believe it should be limited as I have previously explained (see **supra** 27-31) but also that, by virtue of this general norm, the "law" to which Article 14(1) refers is not limited to a true "statutory law," in the terms already defined by the Court (**The Word "Laws" in Article 30 of the American Convention of Human Rights**, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6), or even to a "norm" of another rank, in its specific meaning, but rather includes any other type of "act" that has the necessary force to make the right of reply or correction effective in the legal system of each State Party to the Convention.

42. It is true that the principal opinion itself recognizes that, in so far as the measures of the domestic legal system signify limitations or restrictions to the right of reply or correction itself or to other rights recognized by the Convention, they must be adopted by means of a statutory law, in the terms stated. Nevertheless, I believe that because, first, all regulations necessarily signify a limitation or restriction and, second, there exists a general principle of law that basic rights are a subject matter re-

served to law, the Court should state that the expression "law" in Article 14(1) means the enactment of a "statutory law" in every case.

43. To reinforce this assertion, it should also be kept in mind that all regulation of the conditions of the exercise of the right of reply and correction necessarily involves limitations or restrictions of the general right of freedom of the mass media, which should be enough to require the existence of a statutory law. In this context, I believe that the possibility, affirmed in the request, that these measures be merely instrumental in character, is unacceptable considering that the right of reply or correction is established by the Convention itself, or in the domestic legal system that incorporates it. For this right to have effect, it is necessary to go beyond the terms of the simple definition of the right and to impose new limitations or restrictions on the holder of the right or the mass media or on both parties.

44. Of course, I warmly subscribe to the reservation established in paragraph 45 of the principal opinion that emphasizes how important it is that the States, in regulating the conditions of the exercise of the reply or correction, ensure to everyone involved the enjoyment of the necessary guarantees, specifically the rights to a fair trial and to judicial protection (Arts. 8 and 25 of the Convention).

IV
AS TO THE PARTICULAR REQUEST OF COSTA RICA

45. I have little to add to my opinion concerning the admissibility of the request. I consider the request presented not a question which exclusively concerns the domestic law of Costa Rica, but rather a question about the compatibility of the domestic law of Costa Rica with the norms of the American Convention. The request expressly asked the Court to interpret Article 14(1) in relation to Articles 1(1) and 2 of this international treaty. As I have stated (**supra**, 1.b), however, the request did not provide the Court with sufficient facts to permit the Court to rule on the issue of incompatibility.

46. In effect, the Government of Costa Rica only affirmed that under Article 7 of the Costa Rican Constitution, the Convention is incorporated as law in the domestic legal system of the country and has a higher authority than domestic laws. This information is obviously insufficient to determine if the State of Costa Rica is fully complying with its obligations under the Convention. The Government did not even inform the Court as to whether a norm exists under Costa Rican law which regulates the conditions of the exercise of the right of reply or correction, although it can be assumed from the wording of the request that it does not exist. However, neither the Court nor its member from Costa Rica, as an international judge, is obligated to know or to investigate whether such a norm exists. Further, the Government did not offer concrete references explaining the status of this right in the legal practice of the country, nor did it explain whether appropriate judicial remedies, such as a writ of "amparo" which is prevalent in the Constitutions of the American States, are accessible.

47. For these reasons, I believe that the request of Costa Rica, inasmuch as it is a particular request falling under Article 64(2) of the Convention, although it is admissible and should be admitted, can not be answered.

V
CONCLUSIONS

48. I believe that the request of Costa Rica:

a) Should be considered by the Court both as a general request under Article 64(1) and as a particular request under Article 64(2) of the Convention.

b) Is admissible and should be admitted in two contexts: as a request for an interpretation of Article 14(1) in relation to Articles 1(1) and 2 of the Convention and as a request for a ruling on the compatibility of the Costa Rican legal system with these international norms.

c) As to the substance of the questions, they should be answered as follows:

I. AS A GENERAL REQUEST

First:

That Article 14(1) of the Convention recognizes a right of reply or correction enforceable **per se**, as a right of the Convention, regardless of the authority or effectiveness of this Article or of others found in the Convention in general, in the domestic legal system of each State, and independent of whether the State has established the conditions for its exercise as provided by that Article.

Consequently, pursuant to Article 1(1) of the Convention, all States Parties are obligated immediately and unconditionally:

1. To ensure the right of reply or correction recognized in Article 14(1) to anyone subject to their jurisdiction who is injured by the mass media to which the Article refers, whether public or private, and to respect directly this right in the mass media even if the conditions for its exercise as stated in the Article have not been established in their domestic legal systems.

2. To ensure the right of reply and correction in any case, in accordance with criteria of reasonability, keeping in mind its character, object and purpose and the need to balance its legitimate exercise with the basic rights of others, particularly with freedom of the press;

3. To grant to anyone who considers himself to be injured, under the terms of Article 14(1), access to an expedient and efficient judicial remedy that peremptorily resolves any conflict regarding the existence

of an injury and, in the case of an actual injury, guarantees the timely publication of a reply or correction.

Second:

That, in addition to and without detracting from the immediate and unconditional duty to respect and ensure the right of reply and correction, the States Parties are obligated, pursuant to Article 2 of the Convention and the general principle of judicial security, to establish in their domestic legal systems the conditions for its exercise referred to in Article 14(1), taking into consideration the peculiarities of the right itself and respecting its essential meaning and the other rights recognized under international law.

Third:

That, in virtue of the principle that the regulation of basic rights is a matter reserved to statutory law, and that the legitimate interests of both the injured parties and the mass media which is normally privately owned, are affected by the regulation of the right of reply or correction, conditions for the exercise of this right should be established by a statutory law, according to the terms defined by the Court in its Advisory Opinion **The Word "Laws" (supra 41)**.

II. **AS A PARTICULAR REQUEST:**

First:

That the Republic of Costa Rica, by incorporating the international treaties duly approved by the Legislative Assembly into its legal system with a higher authority than domestic law, has granted the recognition and enforceability required by international law to the norms, including the right of reply and correction, which are recognized by the American Convention.

Second:

That, nevertheless, in order to determine if Costa Rica is complying fully with its commitment to respect and ensure the rights recognized in the Convention, including the right of reply and correction, and is taking the measures necessary to give effect to those rights in its domestic legal system pursuant to Articles 1(1) and 2 of the Convention, the request does not offer the information which is indispensable to clarify among other things:

1. Whether norms exist in the domestic legal system of Costa Rica to ensure this right by establishing the conditions of its exercise as provided by Article 14(1) of the Convention, and if such conditions do exist, to establish their scope and contents. The request contains nothing on this, although it may be inferred from it that these norms do not exist;

2. Whether there exists under Costa Rican law, expedient and effective remedies that ensure both the exercise of the right of reply or correction and a fair balance between it and the other rights recognized by the Convention. Although the request is also remiss in this respect, it is possible that remedies, such as "amparo" as it is set out in the laws of the Latin American States, would constitute an acceptable remedy, on the condition that it would be recognized in the case of an eventual refusal to allow the exercise of the right in question or the other rights recognized by the Convention in general and with respect to the injuries committed by private persons;

3. Whether there actually exists in Costa Rica expedient, equal and non-discriminatory access to these remedies, especially to appropriate judicial remedies, and whether these remedies undeniably provide a full and immediately effective resolution to the conflicts which the urgency of the character of the right of reply or correction requires. The request does not offer any information on these questions.

Consequently, the particular request of Costa Rica, although admissible, can not be answered.

RODOLFO E. PIZA E.

CHARLES MOYER
Secretary

APPENDIX VII

PRESENT STATUS OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

AMERICAN CONVENTION ON HUMAN RIGHTS
"PACT OF SAN JOSE, COSTA RICA"

Concluded at San José, Costa Rica on November 22, 1969, at the Inter-American Specialized Conference on Human Rights

Entered into force on July 18, 1978

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF INSTRUMENT OF RATIFICATION OR ADHERENCE	DATE OF ACCEPTANCE OF JURISDICCION OF COURT
Argentina	02/II/84	05/IX/84	05/IX/84
Barbados	20/VI/78	05/XI/81	
Bolivia		19/VII/79	
Chile	22/XI/69		
Colombia	22/XI/69	31/VII/73	21/VI/85
Costa Rica	22/XI/69	08/IV/70	02/VII/80
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	
Grenada	14/VII/78	18/VII/78	
Guatemala	22/XI/69	25/V/78	
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	
Panama	22/XI/69	22/VI/78	
Paraguay	22/XI/69		
Peru	27/VII/77	28/VII/78	21/I/81
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

THE ORGANIZATION OF AMERICAN STATES

The purposes of the Organization of American States (OAS) are to strengthen the peace and security of the Hemisphere; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member states; to provide for common action on the part of those states in the event of aggression; to seek the solution of political, juridical, and economic problems that may arise among them; and to promote, by cooperative action, their economic, social, and cultural development.

To achieve these objectives, the OAS acts through the General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the three Councils (the Permanent Council, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science, and Culture); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the Specialized Conferences; and the Specialized Organizations.

The General Assembly holds regular sessions once a year and special sessions when circumstances warrant. The Meeting of Consultation is convened to consider urgent matters of common interest and to serve as Organ of Consultation in the application of the Inter-American Treaty of Reciprocal Assistance (known as the Rio Treaty), which is the main instrument for joint action in the event of aggression. The Permanent Council takes cognizance of matters referred to it by the General Assembly or the Meeting of Consultation and carries out the decisions of both when their implementation has not been assigned to any other body; monitors the maintenance of friendly relations among the member states and the observance of the standards governing General Secretariat operations; and, in certain instances specified in the Charter of the Organization, acts provisionally as Organ of Consultation under the Rio Treaty. The other two Councils, each of which has a Permanent Executive Committee, organize inter-American action in their areas and hold regular meetings once a year. The General Secretariat is the central, permanent organ of the OAS. The headquarters of both the Permanent Council and the General Secretariat is in Washington, D.C.

The Organization of American States is the oldest regional society of nations in the world, dating back to the First International Conference of American States, held in Washington, D.C., which on April 14, 1890, established the International Union of American Republics. When the United Nations was established, the OAS joined it as a regional organization. The Charter governing the OAS was signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires, which entered into force in February 1970. Today the OAS is made up of thirty-two member states.

MEMBER STATES: **Antigua and Barbuda, Argentina, The Bahamas,** *(Commonwealth of)*, **Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica,** *(Commonwealth of)*, **Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.**