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INTER-AMERICAN COURT OF HUMAN RIGHTS

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OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS

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I. ORIGIN, STRUCTURE AND JURISDICTIONS OF THE COURT

A. Creation of the Court

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

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

B. Organization of the Court

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

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

The judges are elected by the States Parties to the Convention for a term of six years. The election is by secret ballot and by an absolute majority vote in the OAS General Assembly immediately prior to the expiration of the terms of the outgoing judges. Vacancies on the Court caused by death, permanent disability, resignation or dismissal, shall be filled, if possible, at the next session of the OAS General Assembly. (Article 6(1) and 6(2) of the Statute.)

Judges whose terms have expired shall continue to serve with regard to cases that they have begun to hear and that are still pending. (Article 54(3) of the Convention.)

If necessary in order to preserve a quorum of the Court, one or more interim judges may be appointed by the States Parties to the Convention. (Article 6(3) of the Statute.)

"If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case. If one of the judges called upon to hear a case is a national of one of the States Parties to the case, any other State Party to the case may appoint a person to serve on the Court as an ad hoc judge. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an ad hoc judge." (Article 10(1), 10(2) and 10(3) of the Statute.)

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

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

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

There is a Permanent Commission of the Court (hereinafter "the Permanent Commission") composed of the President, Vice-President and a third judge named by the President. The President may appoint a fourth judge for specific cases or as a regular member. The Court may also create other commissions for specific matters. (Article 6 of the Rules of Procedure.)

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

C. Composition of the Court

As of December 31, 1993, which marks the end of the period covered by this Report, the Court was composed of the following judges, in order of precedence:

Rafael Nieto-Navia (Colombia), President
Sonia Picado-Sotela (Costa Rica), Vice-President
Héctor Fix-Zamudio (Mexico)
Alejandro Montiel-Argüello (Nicaragua)
Máximo Pacheco-Gómez (Chile)
Hernán Salgado-Pesantes (Ecuador)
Asdrúbal Aguiar-Aranguren (Venezuela)

The Secretary of the Court was Manuel E. Ventura-Robles and the Deputy Secretary was Ana María Reina.

D. Jurisdictions of the Court

The Convention gives the Court contentious and advisory functions. The first function involves the power to adjudicate disputes relating to charges that a State Party has violated the Convention. The second function involves the power to interpret the Convention or *"other treaties concerning the*

protection of Human Rights in the American states" at the request of the Member States of the OAS. Within their spheres of competence, the organs listed in the OAS Charter may in like manner consult the Court.

1. The Court's Contentious Jurisdiction

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

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

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

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

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

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

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

Article 63(2) reads as follows:

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

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

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

2. The Court's Advisory Jurisdiction

Article 64 of the Convention reads as follows:

> 1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.
>
> 2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

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

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

3. Recognition of the Jurisdiction of the Court

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

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

E. Budget

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

F. Relations with other Regional Organizations

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

II. ACTIVITIES OF THE COURT

A. XXVII Regular Session of the Court

The Court held its XXVII Regular Session from January 25 to February 5, 1993, at its seat in San José, Costa Rica. The Court was composed as follows: Héctor Fix-Zamudio, President (Mexico); Sonia Picado-Sotela, Vice-President (Costa Rica); Rafael Nieto-Navia (Colombia); Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco-Gómez (Chile); Hernán Salgado-Pesantes (Ecuador) and Asdrúbal Aguiar-Aranguren (Venezuela). The following *ad hoc* judges also participated as appropriate: Manuel Aguirre-Roca (Cayara Case) and Antônio A. Cançado Trindade (Gangaram Panday Case). Also present were the Secretary and Deputy Secretary of the Court, Manuel E. Ventura-Robles and Ana María Reina.

1. Advisory Opinion OC-13

At this session, the Court began to review Advisory Opinion request OC-13. This opinion was requested by the Governments of the Republic of Argentina and Oriental Republic of Uruguay and seeks the Court's interpretation of Articles 41, 42, 46, 47, 50 and 51 of the American Convention, as they relate to certain attributes granted to the Inter-American Commission. A public hearing was held on February 1, 1993, which was attended by representatives of the Governments of Costa Rica and Mexico, the Inter-American Commission and international non-governmental organizations.

2. Provisional Measures Against Peru

The Court decided not to adopt the provisional measures provided for in Article 63(2) of the Convention, which had been requested by the Inter-American Commission against Peru in the Chipoco case and in the Peruvian Prisons case. In the latter case, the Court requested the Commission to take the necessary measures to verify the accuracy of the facts reported. (Appendices I and II.)

3. Cayara Case

On February 3, 1993, the Court rendered a judgment on the preliminary objections interposed in the Cayara Case against Peru. The Court accepted some of the preliminary objections, ordered that the case be dismissed, and declared that the Commission continues to enjoy the powers conferred on it by Article 51 of the Convention insofar as this case is concerned. (Appendix III.)

4. Gangaram Panday Case

The Court also analyzed the case of Gangaram Panday against Suriname, still awaiting a final judgment pending the presentation of certain evidence.

5. Other Matters

The Court amended Articles 24(4) and 45(2) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"). (Appendices IV and V.)

The Court also examined and approved its Annual Report to the OAS General Assembly for 1992 and the draft budget of the Court for the 1994-1995 biennium, which were subsequently submitted to the General Assembly for consideration. In addition, it took up other administrative and budgetary matters.

B. XXVIII Regular Session of the Court

The Court held its XXVIII Regular Session from June 5 to 16, 1993, at its seat.

At this session and pursuant to the Statute and Rules of Procedure, elections were held for the offices of President and Vice-President of the Court. Judge Rafael Nieto-Navia (Colombia), who had served as President from 1987 to 1989, was elected President. Judge Sonia Picado-Sotela (Costa Rica) was re-elected as Vice-President. The following judges were also present during this session: Héctor Fix-Zamudio (Mexico); Alejandro Montiel-Argüello (Nicaragua); Hernán Salgado-Pesantes (Ecuador) and Asdrúbal Aguiar-Aranguren (Venezuela); as were the Secretary and Deputy Secretary of the Court, Manuel E. Ventura-Robles and Ana María Reina. Judge Máximo Pacheco-Gómez (Chile) excused himself on this occasion.

1. Neira Alegría *et al.* Case

The presentation of evidence by witnesses and expert witnesses in the case of Neira Alegría *et al.* against Peru was completed. The parties presented oral arguments on the merits and were granted a period of 60 days to submit their pleas and conclusions in writing, which they did on September 10, 1993. The Court will take these matters up in coming sessions.

Despite having been summoned by diverse means, the *ad hoc* judge of Peru, Jorge E. Orihuela-Iberico, did not attend the sessions on this case, for which he had been appointed by the Government of Peru.

2. Caballero Delgado y Santana Case

Judge Sonia Picado-Sotela assumed the Presidency of the Court in this case against Colombia, Judge Rafael Nieto-Navia having relinquished that office pursuant to Article 4(3) of the Rules of Procedure because he is a national of that country.

On July 15, a public hearing was held to hear the preliminary objections interposed by the parties. The Court will consider these at a future date in order to render a judgment thereon.

3. Advisory Opinion OC-13/93

At a public hearing held on July 16, the Court rendered Advisory Opinion OC-13/93 entitled "Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)." The Court unanimously found:

> 1. That, within the terms of the attributes granted it by Articles 41 and 42 of the Convention, the Commission is competent to find any norm of the internal law of a State Party to be in violation of the obligations the latter has assumed upon ratifying or adhering to it, but it is not competent to decide whether the norm contradicts the internal juridical order of that State. Regarding the terminology the Commission may employ to qualify internal norms, the Court refers to what is stated in paragraph 35 of that opinion (according to which "[a]n internal norm may violate the Convention because it is unreasonable or because it does not 'conform' with it and, of course, a law which is contrary to a State's obligations under the Convention cannot be termed 'reasonable' or 'advisable'. The Commission would be empowered to use those terms in this context. Clearly it may do so in the global consideration of cases. Nevertheless, because the functions of the Commission must conform to the law, the terminology it uses must be carefully chosen and should avoid concepts that might be ambiguous, subjective or confusing."). 2. That, without detriment to other attributes granted the Commission by Article 41 of the Convention, once a petition or individual communication is declared inadmissible (Article 41(f) read with Articles 44 and 45(1) of the Convention), findings on the merit are inappropriate. 3. That Articles 50 and 51 of the Convention provide for two separate reports, whose content may be similar, and the first report may not be published. The second report may be published if the Commission so decides by an absolute majority vote upon the expiration of the time period granted the State to adopt adequate measures. (Appendix VI.)

4. Other Matters

Articles 26 and 29 of the Rules of Procedure were amended (Appendix VII) and dates set for the next sessions of the Court: the XIV Special Session from September 6 to 10, 1993 and the XXIX Regular Session from January 10 to 21, 1994.

Routine administrative matters were also taken up at this session.

C. XIII Special Session of the Court

The Court held its XIII Special Session from March 15 to 18, 1993, in order to allow the judge acting as rapporteur, in the case of Aloeboetoe *et al.* against Suriname, then at the phase of determining reparations and costs, to gather the opinion of the Court on certain issues deemed essential to the continuation of his work. On the basis of those opinions and the information supplied by the Secretariat, the rapporteur submitted his draft for consideration at the XIV Special Session of the Court, which was held from September 6 to 10, 1993 (*infra* D).

For this case, the Court was composed as follows: Héctor Fix-Zamudio (Mexico), President; Sonia Picado-Sotela (Costa Rica), Vice-President; Rafael Nieto-Navia (Colombia); Julio A. Barberis (Argentina); Asdrúbal Aguiar-Aranguren (Venezuela); and Antônio A. Cançado Trindade, *ad hoc* Judge. Also present were the Secretary and Deputy Secretary of the Court, Manuel E. Ventura-Robles and Ana María Reina.

D. XIV Special Session of the Court

The Court held its XIV Special Session from September 6 to 10, 1993, in order to consider reparations and costs in the case of Aloeboetoe *et al.* against Suriname, in light of Suriname's acceptance of responsibility for the charges made by the Inter-American Commission.

During this session, the composition of the Court was as follows: Rafael Nieto-Navia (Colombia), President; Sonia Picado-Sotela (Costa Rica), Vice-President; Héctor Fix-Zamudio (Mexico); Julio A. Barberis (Argentina) and Asdrúbal Aguiar-Aranguren (Venezuela). Also present was the *ad hoc* Judge appointed by Suriname, Antônio A. Cançado Trindade.

At a public hearing on September 10, 1993, the Court delivered its Judgment on reparations in the case of Aloeboetoe *et al.* The Court unanimously decided as follows: 1. to set reparations at US$453,102 (four hundred fifty-three thousand, one hundred two dollars), or the equivalent amount in Dutch Florins, to be paid by the State of Suriname before April 1, 1994, to the persons listed in paragraph 98 or their heirs, under the terms of paragraph 99; 2. to order the creation of two trusts and the establishment of a Foundation, as contemplated in paragraphs 100 to 108; 3. that Suriname shall not restrict or tax the activities of the Foundation or the administration of the trusts beyond current levels, nor shall it modify any conditions currently in force, except in ways that would be favorable to these entities, nor interfere in the decisions of the Foundation; 4. to order the State of Suriname to make a one-time contribution to the Foundation for its operations, payable within 30 days of its establishment, in the amount of US$4,000 (four thousand dollars) or its equivalent in local currency at the free market rate of exchange in force at the time of payment; 5. to also order the State of Suriname, as an act of reparation, to reopen the school located in Gujaba and staff it with teaching and administrative personnel so that it will function on a permanent basis as of 1994, and to make the medical dispensary already in place in that locality operational during that same year; 6. to supervise compliance with the reparations ordered before taking any steps to close the file on this case; and, 7. that payment of costs shall not be ordered. (Appendix VIII.)

E. Presentation of the Annual Report to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS

From March 29 to April 1, 1993, Judges Héctor Fix-Zamudio and Rafael Nieto-Navia, together with the Secretary of the Court, Manuel E. Ventura-Robles, visited the seat of the OAS in Washington, D.C., in order to submit the Court's Annual Report to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS.

The Committee on Juridical and Political Affairs submitted the following recommendations to the Permanent Council of the OAS:

a) That the Member States of the OAS that have not yet done so be urged to ratify or accede to the American Convention on Human Rights (Pact of San José, Costa Rica), and to accept the jurisdiction of the Inter-American Court of Human Rights;

b) That the necessary financial and functional support be provided to the Court to enable it to perform the critical functions assigned to it in the American Convention on Human Rights, and

c) That the Inter-American Court of Human Rights be thanked for the work done in the period covered by this report and urged to continue to perform its important function.

F. General Assembly of the Organization of American States

At the XXIII Regular Session of the OAS General Assembly, held in Managua, Nicaragua, from June 7 to 11, 1993, the Court was represented by its Permanent Commission, constituted by the President, Judge Héctor Fix-Zamudio, and by Judges Sonia Picado-Sotela, Vice-President, and Rafael Nieto-Navia. Also present were Judge Alejandro Montiel-Argüello and the Secretary of the Court, Manuel E. Ventura-Robles.

The General Assembly increased the Court's budget for 1994 by 5%. With regard to the Annual Report on the activities of the Court, it passed the following resolution:

1. To take note of the Annual Report of the Inter-American Court of Human Rights.

2. To accept the observations and recommendations made by the Permanent Council of the Organization on the Annual Report and to transmit them to the Inter-American Court of Human Rights.

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

4. To give the Court the necessary financial and functional support to enable it to continue to perform the critical functions assigned to it in the American Convention on Human Rights.

5. To thank the Inter-American Court of Human Rights for the work done in the period covered by this report and to urge it to continue to perform its important function.

In the course of the General Assembly, Judges Fix-Zamudio, Nieto-Navia and Montiel-Argüello and the Secretary of the Court met with the President of the Inter-American Commission, Dr. Oscar Luján Fappiano, and with the Executive Secretary and Deputy Executive Secretary of the Commission, Drs. Edith Márquez and David Padilla. The exchange of views was highly beneficial to both institutions and it was agreed that another meeting would be held at the beginning of 1994.

On June 9, 1993, during the General Assembly meeting, the Permanent Commission of the Court met to analyze draft Advisory Opinion OC-13, to consider administrative matters, and to study the draft amendment to the Rules of Procedure that had been examined by the Court during its XXVIII Regular Session in the month of July, 1993.

G. Request for Provisional Measures Involving Argentina

By note of October 20, 1993, received at the Secretariat of the Court on November 8 of that same year, the Inter-American Commission, pursuant to Articles 63(2) of the American Convention and 24 of the Rules of Procedure, submitted a request for provisional measures in connection with Case No. 10.959 then before the Commission, *"relating to the mental integrity of minors Gonzalo Xavier and Matías Angel* [Reggiardo-Tolosa], *Argentine citizens."* (Appendix IX.)

The President of the Court, Judge Rafael Nieto-Navia, recused himself from hearing that request on the grounds that he is a *"member and President of the Argentine-Chilean Arbitral Tribunal to delimit the boundary between Milestone 62 and Mount Fitz Roy."* As a result, the Presidency was assumed for this matter by Judge Sonia Picado-Sotela, Vice-President of the Court. The Court, by order of November 19, 1993, enjoined

> ...the Government of the Republic of Argentina to adopt without delay whatever measures are deemed necessary to protect the mental integrity of, and avoid irreparable damage to, minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, in strict compliance with its obligations to respect and guarantee human rights under Article 1(1) of the Convention, in order to ensure that the provisional measures that the Court may adopt during its next regular session, to be held from January 10 to 21, 1994, will have the requisite effect.

The Court also requested the Government of Argentina to submit a report on the measures taken pursuant to that order to the President of the Court no later than December 20, 1993, to enable her to bring this information to the attention of the Court. (Appendix X.)

The Government presented its reply within the deadline and it was promptly transmitted to the Commission and to the judges of the Court. (Appendix XI). The matter will be taken up by the Court during its XXIX Regular Session, to be held from January 10 to 21, 1994.

H. Presentation of Advisory Opinion Request OC-14 to the Court

By note of November 8, 1993, received by the Secretariat of the Court on the following day, the Commission requested an advisory opinion regarding the interpretation of Article 4, paragraphs 2 and 3, of the American Convention.

The advisory opinion request was dealt with in the manner prescribed in the applicable rules. The deadline for presentation of observations and relevant documents was set for December 31, 1993. Observations were submitted by the Governments of Brazil, Costa Rica and Peru. (Appendix XII, A, B and C.)

The Court will take up this matter during its XXIX Regular Session in January 1994.

I. Purchase of the Seat of the Court

A donation of eighty million colones by the Government of Costa Rica made it possible for the Court to purchase the premises that served as its seat in San José, Costa Rica, since June 1980. By making the above contribution, the Government fulfilled its obligations under Article 28 of the headquarters agreement with the Court (Law No. 6889 of September 9, 1983).

His Excellency the President of the Republic of Costa Rica, Lic. Rafael Angel Calderón-Fournier, who, as Minister of Foreign Affairs and Worship, had in 1978 requested that the Court be established in Costa Rica, upon becoming President of the Republic pledged to provide the Court with a suitable locale for its operations. This commitment has now been faithfully complied with. The Court will unveil a commemorative plaque at its headquarters.

On November 5, 1993, the President of the Court, Judge Rafael Nieto-Navia, signed the deed of sale at the seat of the Court.

J. Ratification by Dominica of the American Convention on Human Rights

On June 10, 1993, the Government of the Commonwealth of Dominica deposited, with some reservations, the instrument of ratification of the American Convention with the General Secretariat of the OAS. This latest ratification brings the number of States Parties to the Convention to twenty-five OAS member states (Costa Rica, Colombia, Venezuela, Dominican Republic, Honduras, Haiti, Ecuador, Guatemala, Panama, El Salvador, Grenada, Peru, Jamaica, Bolivia, Nicaragua, Mexico, Barbados, Argentina, Uruguay, Suriname, Paraguay, Chile, Trinidad and Tobago, Brazil, and Dominica). (Appendix XIII.)

K. Acceptance of the Jurisdiction of the Court by Paraguay and Bolivia

On March 26, 1993, the Government of Paraguay presented to the General Secretariat of the OAS the instrument whereby it recognizes the obligatory jurisdiction of the Court for an indefinite period of time and for events that occur subsequent to that date, on condition of reciprocity.

On July 27, 1993, the Government of Bolivia deposited with the General Secretariat of the Organization an instrument recognizing the jurisdiction of the Court, pursuant to Article 62 of the Convention.

Paragraph D.3, *supra*, contains a list of the 16 States that have accepted the jurisdiction of the Court. (Appendices XIV and XV.)

L. Meeting of the President of the Court with the Executive Secretary of the Commission

Taking advantage of a private visit to Washington, D.C., the President of the Court, Judge Rafael Nieto-Navia, met on November 8 with the Executive Secretary of the Commission, Dr. Edith Márquez-Rodríguez. During that meeting, the precise date of the joint meeting between some of the judges of the Court and certain members of the Commission was fixed. The meeting should take place in the city of Miami on January 24 and 25, 1994, taking advantage of the fact that the judges will be bringing to an end their regular session in San José and the members of the Commission will be on their way to Washington for their own session. They also agreed on the agenda for that meeting.

M. Audit of the Court's Accounts

The outgoing President of the Court, Judge Héctor Fix-Zamudio, ordered an external audit of the Court's accounts for the period from July 1, 1991 to December 31, 1993.

The audit was conducted by Fernando Fumero & Asociados, S.C. and will be delivered in early January, 1994.

The Secretariat of the Court was charged with transmitting the results of the audit to the General Secretariat.

APPENDIX I

DECISION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS JANUARY 27, 1993

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

CHIPOCO CASE

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

Héctor Fix-Zamudio, President
Sonia Picado-Sotela, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge

also present,

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

adopts the following Decision:

1. On November 23, 1992, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure (hereinafter "the Rules") of the Inter-American Court of Human Rights (hereinafter "the Court"), the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court a request for provisional measures in Case 11.083 which is before the Commission and concerns Mr. Carlos Chipoco.

2. According to that communication, the Government of Peru has filed criminal charges against Mr. Carlos Chipoco before the 43rd Special Prosecutor of Lima for alleged "activities in support of subversion in the United States." Cause No. 136-92 of the 43rd Criminal Court of Lima was opened as a "criminal proceedings against a group of Peruvians who reside or have traveled abroad, for allegedly

committing the crime of justification of terrorism against the state." This cause was filed on the basis of a report of the National Intelligence Service (Servicio de Inteligencia Nacional) which mentions the names of several persons and institutions allegedly involved in "activities in support of subversion in the United States", among them Mr. Carlos Chipoco. The charges are founded upon various acts committed abroad such as "maintaining contacts with human rights organizations, with false information, in which they denigrate the Armed Forces and the Police and other State institutions related to the struggle against subversion." This report was adopted by the General Secretariat, the Office of Legal Affairs of the Ministry of Foreign Relations and by the Special Provincial Prosecutor of the 43rd Special Prosecutor's Office. The Court ordered the confirmation of the identity of the accused, including Mr. Chipoco, the specification of the alleged acts, for the purpose of amending the "indictment", and their immediate arrest.

3. According to the Commission, the allegations are serious because if Mr. Chipoco is identified as one of the accused, his arrest could be ordered, and under the new anti-terrorist legislation, a finding of guilty could lead to his loss of Peruvian nationality and a prison sentence of more than twenty years. This is more serious because the trial is secret and summary, conducted within strict time limits by the so-called "faceless judges", and may be held in the absence of the defendant. Mr. Chipoco is in the United States of America where he is an international consultant in human rights and, should he return to Peru, would run the risk of being imprisoned with leaders and activists of the terrorist groups whose acts he has publicly condemned. This would constitute a grave threat to his right to life and the integrity of his person which are recognized by the Convention. According to the Commission, the Government wants to punish, penalize and intimidate those who utilize international procedures and courts for the protection of human rights.

4. In the opinion of the Commission, the need for urgent measures is to avoid the indictment being "returned without an exhaustive investigation and without having afforded the accused or his representatives an opportunity to prepare his defense."

5. By communication of November 30, 1992, the Commission asks the Court to convoke "a public hearing on the request for provisional measures."

6. In exercise of his authority under Article 24(4) of the Rules, the President of the Court (hereinafter "the President") handed down an Order on December 14, 1992, which contains the following Decision:

> 1. Based upon the foregoing considerations, it is not appropriate at this time to ask the Government of Peru to take urgent provisional measures.
>
> 2. To submit the request presented by the Inter-American Commission to the Court at its next regular period of sessions, so it may adopt the appropriate measures pursuant to Article 63(2) of the Convention.

The Order was made known to the Commission and the Government.

WHEREAS:

1. By Order of December 14, 1992, the President decided not to adopt urgent measures, the Court shall now determine whether provisional measures are appropriate under Article 63(2) of the Convention and Article 24(2) of its Rules.

2. The instant case concerns a matter which is not presently before the Court, but rather before the Commission, and the latter has not submitted information to the Court sufficient to support the adoption of such measures, which requires the Commission to have gathered preliminary evidence to support a presumption of the truth of the allegations and of a situation whose grave seriousness and urgency could cause irreparable harm to persons.

3. Thus, it is inappropriate at this time for the Court to adopt the provisional measures requested by the Commission or to hold a public hearing on the matter.

THEREFORE:

The Inter-American Court of Human Rights,

RESOLVES:

1. Not to adopt, at the present time, the provisional measures requested by the Commission and provided for under Articles 63(2) of the Convention and 24 of its Rules.

Done in Spanish and in English, the Spanish text being authentic. Read at the seat of the Court in San José, Costa Rica, on January 27, 1993.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX II

DECISION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS JANUARY 27, 1993

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

PERUVIAN PRISONS CASE

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

Héctor Fix-Zamudio, President
Sonia Picado-Sotela, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge

also present,

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

adopts the following Decision:

1. On November 25, 1992, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure (hereinafter "the Rules") of the Inter-American Court of Human Rights (hereinafter "the Court"), the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court a request for provisional measures in Cases 11.015 and 11.048 which are before the Commission and concern the grave situation in the Peruvian prisons of *Miguel Castro Castro* and *Santa Mónica* in Lima, *Cristo Rey* in Ica and *Yanamayo* in Puno.

2. The Commission's petition is founded upon its President's request to the Government of Peru on August 18, 1992, pursuant to Article 29 of the Commission's Regulations, for the adoption of provisional measures "in relation to those persons deprived of their liberty for allegedly committing terrorist acts." Moreover, the President of the Commission stated that if the necessary measures were not adopted within 10 days, "the request for provisional measures might be presented to the Inter-American Court."

3. The facts the Commission considered in requiring the Government to adopt precautionary measures, and subsequently in asking the court for provisional measures, are the existence of "credible evidence of a grave situation in the Peruvian prisons" *Miguel Castro Castro, Santa Mónica, Cristo Rey* and *Yanamayo*, which poses "an immediate danger to the right to integrity of the person of those accused and sentenced for terrorism because of the poor conditions in which they are imprisoned." The Commission has received information that in those prisons there is a "high incidence of diseases", loss of weight, overcrowding, isolation, and psychological and emotional problems among male and female prisoners. When the prisoners are transferred to those prisons, some of which are in very cold zones, they are "mistreated, insulted, humiliated," although some of them are wounded and only have their "worn" summer clothing. Neither can the prisoners receive the visits of their relatives with the implications that conveys. The International Committee of the Red Cross is not currently authorized to inspect those prisons. All the above lends a grave and urgent nature to the situation described.

4. On December 4, 1992, the Secretariat of the Commission sent additional documentation containing a complaint which caused the Commission to note "as may be gathered from the communication, a situation may be developing which coud result in the violation of the rights of the women prisoners in the *Santa Mónica* Prison of Chorrillos, and if true, would increase the seriousness and urgency of the situation being considered by the Members of the Court."

5. In exercise of his authority under Article 24(4) of the Rules, the President of the Court (hereinafter "the President") handed down an Order on December 14, 1992, which contains the following Decision:

> 1. Based upon the foregoing considerations, it is not appropriate at this time to ask the Government of Peru to take urgent provisional measures.
>
> 2. To submit the request presented by the Inter-American Commission to the Court at its next regular period of sessions, so it may adopt the appropriate measures pursuant to Article 63(2) of the Convention.

The Order was made known to the Commission and the Government.

WHEREAS:

1. By Order of December 14, 1992, the President decided not to adopt urgent measures, the Court shall now determine whether provisional measures are appropriate under Articles 63(2) of the Convention and Article 24(2) of its Rules.

2. The instant case concerns a matter which is not presently before the Court, but rather before the Commission, and the latter has not submitted information to the Court sufficient to support the adoption of such measures, which requires the Commission to have gathered preliminary evidence to support a presumption of the truth of the allegations and of a situation whose seriousness and urgency could cause irreparable harm to persons.

3. Therefore, it is inappropriate at this time for the Court to adopt the provisional measures requested by the Commission, but it does ask the Commission to invoke its powers under the Convention, its Statute and its Regulations, to obtain the evidence or carry out the investigations needed to determine the truth of the allegations.

THEREFORE:

The Inter-American Court of Human Rights,

RESOLVES:

1. Not to adopt, at the present time, the provisional measures requested by the Commission and provided for under Articles 63(2) of the Convention and 24 of its Rules.

2. To ask the Commission to take all the measures legally available to it to ascertain the truth of the allegations.

Done in Spanish and in English, the Spanish text being authentic. Read at the seat of the Court in San José, Costa Rica, on January 27, 1993.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela

(s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX III

INTER-AMERICAN COURT OF HUMAN RIGHTS

CAYARA CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF FEBRUARY 3, 1993

In the Cayara Case,

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

Héctor Fix-Zamudio, President
Sonia Picado-Sotela, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge
Manuel Aguirre-Roca, *ad hoc* Judge

Also present:

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

delivers the following judgment pursuant to Article 31 of the Rules of Procedure (hereinafter "the Rules") of the Inter-American Court of Human Rights (hereinafter "the Court") on the preliminary objections interposed by the Government of Peru (hereinafter "the Government" or "Peru") in written communications and at the public hearing.

I

1. The instant case was brought to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission") on February 14, 1992. It relates to Petitions Nos. 10.264, 10.206, 10.276 and 10.446.

2. The Commission filed this case in order that the Court determine whether the country in question violated the following articles of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"): 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 21 (Right to Property) and 25 (Right to Judicial Protection), read together with Article 1(1) (Obligation to Respect Rights), "*as a result of the extrajudicial executions, torture, arbitrary detention, forced disappearance of persons and damages against public property and the property of Peruvian citizens, who were victims of the actions of members of the Peruvian army, beginning on May 14, 1988 in the district of Cayara, Province of V'Ictor Fajardo, Department of Ayacucho...*". The Commission also requested that the Court find that Peru did not comply with the terms of Article 1(1) of the Convention by failing to respect or ensure the exercise of the rights listed above; that the Court rule on the reparations and compensation to which the victims or their next-of-kin are entitled pursuant to Article 63(1) of the Convention; and, that it demand that the Government conduct a full investigation of the facts denounced in the application, in order to identify the culprits and bring them to trial. The application identifies forty persons as victims of arbitrary executions and disappearances and eight persons as having been tortured; it also refers to damages caused to public and private property.

3. In presenting the case, the Commission invoked Articles 50 and 51 of the Convention and appointed as its delegates Drs. Marco Tulio Bruni-Celli, Chairman, and Edith Marquez-Rodriguez, Executive Secretary. In addition, the following persons were named as advisors: Francisco Soberón-Garrido, Miguel Talavera, Pablo Rojas-Rojas, Javier Zúñiga, Jill Hedges, Wilder Tyler, Peter Archard, Juan Méndez, Carlos Chipoco and José Miguel Vivanco.

4. On February 28, 1992 and after a preliminary review by the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") gave notice of the application to the Government, informing it that it had a period of three months in which to file a written answer to the application (Article 29(1) of the Rules) and 30 days after notification of the application in which to interpose preliminary objections (Article 31(1) of the Rules). Peru received the application on March 3, 1992, and on March 16 informed the Court that it had appointed Dr. Alonso Esquivel-Cornejo as its Agent. On June 2, 1992, Peru filed its answer to the application. The application was also transmitted to the persons listed in Article 28(1) of the Rules.

5. On April 15, 1992, Peru appointed Dr. Manuel Aguirre-Roca *ad hoc* Judge.

6. On March 26, 1992, the Agent interposed the following preliminary objections:

1. lack of jurisdiction of the Inter-American Commission on Human Rights;
2. *litis finitio* ;
3. expiration of the time limit for filing of the application;
4. inadmissibility of the application due to deprivation of Peru's right of defense;
5. inadmissibility of the application due to invalidity of Resolution No. 1/91 of the Commission;
6. inadmissibility of the application due to invalidity of the Commission's second report 29/91;
7. invalidity by reason of "stoppel" (sic) on the part of the Inter-American Commission on Human Rights;
8. inadmissibility of the application due to the acceptance of the replies of the claimants after expiration of the time limit;
9. inadmissibility of the application due to the acceptance of Amnesty International as co-petitioner after expiration of the time limit;

10. inadmissibility of the application due to improper joining of four cases before the Commission;
11. inadmissibility of the application due to manifest bias on the part of the Inter-American Commission on Human Rights; and,
12. lack of jurisdiction of the Inter-American Court of Human Rights.

The Secretariat transmitted the preliminary objections to the Commission on the following day, reminding it that it had a period of 30 days from the date of receipt of such objections in which to file a brief with regard thereto. The Commission's observations were received by the Secretariat on April 29 and distributed to the persons named in Article 28(1) of the Rules.

7. In his communication of March 26, 1992, the Agent requested the suspension of the proceedings on the merits until a determination was made on the preliminary objections, pursuant to Article 31 of the Rules. Acting on instructions of the President, the Secretariat informed the Government on April 22, 1992, that the proceedings on the merits would only be suspended if the full Court so decided. In the meantime, the periods would continue to run normally.

8. On May 27, 1992, the Secretariat, following the instructions of the Permanent Commission of the Court (hereinafter "the Permanent Commission"), informed the parties that a public hearing would be held at the seat of the Court on June 24, at 10:00 hours, on the preliminary objections interposed by Peru and the observations thereon submitted by the Commission. The President convened the public hearing by Order of June 19, 1992.

9. In its communication regarding the preliminary objections and, later, by note of May 27, 1992, the Government requested the Secretariat to certify "*the receipt of the first application regarding the CAYARA CASE on May 30, 1991 and its subsequent withdrawal* " as well as "*the legal value of the copy of the minutes of the meeting of the Inter-American Court in which it was agreed to grant the plaintiff's request to withdraw the application submitted.*" The Government likewise requested that the Court require the Commission to send, within a period fixed by the Court, "*a copy of the minutes of the October 27, 1991, meeting of the Inter-American Commission on Human Rights which approved Resolution 1/91 and the second report 29/91 ... under penalty if it is shown that it was approved when the Commission was not in session.*" On May 28, 1992, the Secretariat informed the Government that the Permanent Commission had determined that the Government's requests that the documents offered with the preliminary objections brief be dealt with and that the Commission be asked to provide its minutes were issues that could not be resolved by the President alone, but required a decision by the full Court.

That same day, Peru insisted that the production of any evidence still pending be ordered, since by June 24, 1992, the date on which the public hearing was to take place, "*no evidence should still be pending, to ensure that the Court is able to 'decide thereafter'.*"

10. On June 23, 1992, the Secretariat, on instructions of the Court, certified the following:

> 1. That on Monday, June 3, 1991, a letter dated May 30, 1991, was received by fax from the Inter-American Commission on Human Rights. The purpose of the letter was to "transmit... Report No. 29/91 concerning cases Nos. 10.264, 10.206, 10.276 and 10.446 against the Government of Peru...", in view of the fact that "during its 79th Session, the Commission approved the report in question on February 20, 1991, and decided to submit it to the Inter-American Court of Human Rights pursuant to Articles 51 of the American Convention on Human Rights and 50 of the Regulations of the ICHR."
>
> 2. That on Friday, June 7, 1991, the Court received the file by courier service.

3. That on Wednesday, June 12, 1991, the Executive Secretary of the Inter-American Commission on Human Rights telephoned the Secretary of the Court to inform him that Mr. Luis Jimenez, the Commission's attorney, would be travelling to the Court as soon as possible to discuss the possible withdrawal of the case[s]. Mr. Jiménez arrived at the Court on June 18, 1991.

4. That by note of June 20, 1991 (attached), received at the Secretariat on the 24th of that month, the Inter-American Commission stated that "it ha[d] decided for the time being to withdraw the case from the Court, in order to reconsider it and possibly present it again...". The Secretariat of the Court acknowledged receipt of this note, after consulting with the Permanent Commission.

5. No minutes of the full Court exist on the subject.

11. The public hearing was held at the seat of the Court on June 24, 1992.

There appeared before the Court

a) for the Government of Peru:

Alonso Esquivel-Cornejo, Agent
Julio Vega Erausquin, Ambassador
Eduardo Barandiarán, Minister Counselor of the Diplomatic Mission of Peru to Costa Rica
Manuel Ubillus-Tolentino

b) for the Inter-American Commission on Human Rights

W. Michael Reisman, Delegate
Edith Márquez-Rodríguez, Delegate
Jill Hedges, Advisor
Wilder Tyler, Advisor
Juan E. Méndez, Advisor
José Miguel Vivanco, Advisor
Marcela Briceño-Donn, Advisor.

12. At the hearing, the Commission supplied the information requested by the Government (*supra* 9) regarding the Session of the Commission of October 27, 1991, which approved Resolution 1/91 and the second report 29/91. Delegate Edith Márquez stated that "*during an on-site visit to Peru by the Commission*" the Commission decided "*to approve Resolution 1/91 and notify it immediately to the Government, in the person of its Minister of Foreign Affairs, during the course of that visit*" and that "*... no impediment or legal or regulatory provision exists that would prevent the Commission, wheresoever it might be meeting and provided it has the necessary quorum to decide, from adopting resolutions on matters that fall within its jurisdiction and that affect the fundamental rights of persons, as is true of this case and others in which analogous decisions have been made.*"

13. On September 28, 1992, the Government filed a supplementary brief regarding the preliminary objections interposed, on the grounds that the facts and circumstances referred to in the certification of the Secretariat dated June 23 required the amplification and adaptation of the original brief. The President decided to submit it to the consideration of the Court during the session beginning January 25, 1993. By order of January 26, 1993, the President, in consultation with the Court, decided not to allow the brief to expand the scope of the preliminary objections because "*the proceeding would be reopened, the steps already taken at the appropriate time would be infringed and, furthermore, the procedural balance and equality of the parties would be seriously affected.*"

14. On January 29, 1993, the Agent of the Government appealed the above order to the full Court, which confirmed its decision by order of January 30 of that same year.

II

15. According to the petition of November 17, 1988 presented to the Commission, an armed group of the "Sendero Luminoso", movement ambushed a Peruvian army military convoy in Erusco, an annex of the district of Cayara in the Province of Víctor Fajardo, Department of Ayacucho, on May 13, 1988. Four members of Sendero Luminoso, one army captain and three soldiers were killed in the fighting. On the following day, army troops entered the village of Cayara and murdered the first person they came across (Esteban Asto Bautista, according to the petition). They later came to the village church, where they found five more men who were taking down a platform; they shot them point-blank (Emilio Berrocal-Crisóstomo, Patricio Ccayo-Cahuaymi, Teodosio Noa-Pariona, Indalecio Palomino-Tueros and Santiago Tello-Crisóstomo, according to the petition). Later still, when the men of the village returned from the fields, the soldiers killed them with bayonets and farm tools (in Ccehuaypampa). The soldiers then buried the dead in a neighboring site (David Ccayo-Cahuaymi, Solano Ccayo-Noa, José Ccayo-Rivera, Alejandro Choccna-Oré, Artemio González-Palomino, Alfonso Huayanay Bautista, Ignacio Ipurre-Suárez, Eustaquio Oré-Palomino, Zacarías Palomino-Bautista, Aurelio Palomino-Choccna, Fidel Teodosio Palomino-Suárez, Félix Quispe-Palomino, Dionisio Suárez-Palomino, Prudencio Sulca-Huayta, Emiliano Sulca-Oré, Zózimo Graciano Taquiri-Yanqui, Teodosio Valenzuela-Rivera, Ignacio Tarqui-Ccayo, Hermenegildo Apari-Tello, Indalecio Palomino-Ipurre, Patricio Ccayo-Palomino, Ildefonso Hinostroza-Bautista, Prudencio Palomino-Ccayo and Félix Crisóstomo-García, according to the petition). On May 18, 1988, during the military intervention in Cayara under the command of General José Valdivia, Head of the Security Sub-Zone of the Central Region corresponding to Ayacucho, the army had detained Alejandro Echaccaya-Villagaray, Samuel García-Palomino and Jovita García-Suárez. The bodies of these persons were subsequently exhumed in Pucutuccasa by the Chief Prosecutor, Carlos Escobar, acting on information given by some peasants on August 10, 1988. According to the petition, between 28 and 31 persons had been murdered on May 14; it was difficult to be more specific as to number and identity because the bodies had disappeared. Nevertheless, 22 victims were identified by name. The Commission transmitted this petition to Peru on November 29, 1988, as No. 10.264. Without prejudging as to the admissibility of the petition, the Commission asked Peru to supply whatever information it deemed appropriate within the prescribed time limit of 90 days. That note was retransmitted on March 1, 1989.

16. On July 8, 1988, the Commission received another petition which complemented the one described above and gave rise to Case No. 10.206. According to the petition, which was transmitted to the Government on July 11, some witnesses to the events in Cayara had been arrested in their homes on June 29, 1988. Among them were Guzmán Bautista-Palomino, Gregorio Ipurre-Ramos, Humberto Ipurre-Bautista, Benigna Palomino de Ipurre and Catalina Ramos-Palomino, whose whereabouts are unknown. The relevant parties to the petition approached the Government again on February 22, 1989, and September 7, 1989, without eliciting a response.

17. On December 16, 1988, the Commission received the petition that gave rise to Case No. 10.276. According to that petition, the Mayor and Secretary of Cayara, who had witnessed the events that occurred on May 14, were murdered on December 14, 1988, together with the driver of the truck in which they were travelling. The name of the Mayor was Justiniano Tinco-García, the Secretary was Fernandina Palomino-Quispe, and the truck driver was Antonio Félix García-Tipe.

The petition was transmitted to the Government on December 29, 1988, and it was asked to provide pertinent information. The Commission repeated this request for information to the Government on September 8, 1989. The Government did not provide any information on the subject.

18. On September 13, 1989, the Commission received a new petition regarding the Cayara case, No. 10.446. This one referred to the assassination of nurse Martha Crisóstomo-García, one of the principal eyewitnesses to the events that occurred in Cayara who was still alive. She was shot to death on September 8, 1989, in her home in Huamanga, Ayacucho, at three in the morning. The petition was transmitted to the Government the very day of its receipt, September 13, 1989, without eliciting any response. According to the Commission, the petition was retransmitted to the Government on March 13, 1989 (sic), and April 12, 1990. The Government made no reply, despite the fact that the Commission pointed out, as it had in the previous case, that if no answer were forthcoming the Commission would begin to consider applying Article 42 of its Regulations. That article provides that when a government fails to respond, the facts reported in the petition are presumed to be true.

19. In view of the fact that no reply had been received from the Government in case No. 10.264, on June 9, 1989, the Commission sent the Government a note indicating that it would consider the application of Article 42 of its Regulations. That note was retransmitted on September 7. On September 29, the Representation of Peru before the Organization of American States (OAS) declared that:

> [T]he proceedings within our domestic jurisdiction have still not been concluded. The delay in replying to the ICHR's request can be attributed to the need for strict compliance with the rules guaranteeing the administration of justice which are contained in the Constitution of the Republic of Peru.

20. On November 1, 1989, the petitioner affirmed that the domestic jurisdiction had already been exhausted.

21. With regard to Case No. 10.264, the Government sent the Commission a communication on May 8, 1990, with which it transmitted copy of a letter dated February 1, 1990, *"addressed by the President of the Supreme Council of Military Justice to the Minister of Defense, informing him that on May 12, 1989, the Army's Second Judicial Zone decided to dismiss the claim in the aforementioned case, and the Supreme Council of Military Justice confirmed the dismissal by order of January 31, 1990."*

22. On March 26, 1990, the original petitioner, Americas Watch, asked the Commission to regard Amnesty International as a co-petitioner for purposes of processing the case. The Commission agreed to do so.

23. In its Report 29/91 of February 20, 1991, the Commission expressed the opinion that both the relatives of the victims and the petitioners themselves *"have exhausted all the remedies that the Peruvian legal system makes available to them, yet the responsible parties have neither been identified nor punished, thereby preventing the victims, next-of-kin from filing civil suits for damages, and from this one can conclude that the remedies under domestic law in Peru were ineffective in the instant case."* The Commission also considered that the subject matter relating to these cases was not pending in another international proceeding. Consequently, it concluded that the admissibility requirements spelled out in Article 46 of the Convention had been fully complied with.

In that Resolution, the Commission declared that Peru had violated the articles of the Convention listed in paragraph 2 above. In addition, the Resolution

3) Recommends to the Government of Peru that it launch an exhaustive and impartial investigation into the facts denounced to find the persons responsible for the violations indicated in operative paragraphs 1 and 2 described in the report and to bring them to trial so that they may receive the punishment that such serious conduct demands.

4) Recommends to the Government of Peru that it inform the Inter-American Commission on Human Rights of the findings of the investigation recommended in the preceding operative paragraph, within sixty days of the date of transmission of this report.

5) Recommends to the Government of Peru that it indemnify the victims and/or their next-of-kin, seeking reparation for the damages caused and report to the Commission within the same time period indicated in the preceding operative paragraph.

24. During its 79th Session of February, 1991, the Commission studied cases 10.264, 10.206, 10.276 and 10.446 jointly and approved Report 29/91 in which, among other things, it decided to submit the cases to the jurisdiction of the Court. The report was sent to the Government on March 1, 1991.

In view of the fact that the Government did not receive the Report until April 5, the Commission agreed to its request that the 60-day period granted begin to run as of that date.

25. On May 27, 1991, the Government pointed out to the Commission that, under the terms of Article 34, paragraphs 7 and 8, of the Regulations of the Commission, it should have transmitted to Peru the pertinent parts and attachments of the replies of the petitioners dated November 1, 1989 (Americas Watch), and July 18, 1990 (Americas Watch and Amnesty International). The Commission did not do so, depriving the country of its right of defense. In the Government's opinion, this "*invalidates the investigation and weakens the general framework of the Convention that Peru has subscribed to and ratified.*"

The Government affirmed:

> Bearing in mind the serious procedural irregularities pointed out above, the Government of Peru believes that as long as the investigation does not adhere to the rules expressly enunciated by the Convention and the Regulations of the ICHR, the necessary guarantees will not be in place to ensure that its conclusions and recommendations enjoy the minimum degree of efficacy required. The investigation of the CAYARA case, which has been rendered invalid, nullifies any other proceeding to which it could give rise and allows Peru to disqualify itself in the future from validating such acts with its participation, since it considers them to be in violation of the principles and guarantees of International Law and, especially, of those that uphold the Inter-American Legal System. (Underlined in the original.)
>
> For these reasons, the Government of Peru, being a State Party to the American Convention on Human Rights, requests that the Commission comply with its Regulations and the Pact of San José and therefore decide not to take the case to the Inter-American Court of Human Rights without first weighing the observations made in the present note and making the appropriate procedural corrections.

26. The Commission submitted the four joint cases to the Court by note of May 30, 1991. On June 11, 1991, the Commission's Executive Secretary notified the Minister of Foreign Affairs of Peru that she had submitted "*the cases in question to the Inter-American Court of Human Rights (San José, Costa Rica) on May 30, 1991, for processing.*" By note of June 20, 1991, received at the Secretariat on the 24th of that month, the Chairman of the Commission, Mr. Patrick L. Robinson, addressed the President of the Court as follows:

> I take the liberty of informing Your Excellency that the Commission, acting at the request of the Government of Peru and in order to ensure that no questions arise as to the correct application of the proceedings, as well as to protect the interests of both parties (the Government and the petitioners), has decided for the time being to withdraw the case from the Court, in order to reconsider it and possibly present it again at some future date, after the observations submitted by the Government of Peru with regard to the instant case have been properly assessed.

27. That same June 24, 1991, the Secretariat replied to the above note from the Chairman of the Commission as follows:

> Acting on instructions of the President of the Inter-American Court of Human Rights, Judge Héctor Fix-Zamudio, I have the honor to inform Your Excellency that, after consulting with the Permanent Commission, I have been authorized to acknowledge receipt of your note of June 20, 1991, "relating to Report 29/91 of the Inter-American Commission on Human Rights in connection with cases 10.206, 10.264, 10.276 and 10.446 against the Government of Peru", in which you affirm that the Commission "has decided for the time being to withdraw the case from the Court...".

28. By note of June 20, 1991, the Commission informed Peru of the withdrawal of the case from the Court and granted it a period of 60 days in which to submit its final observations. The note states the following on the issue:

> I take the liberty of informing Your Excellency that the Commission, acting at the request of your Government and in order to ensure that no questions arise as to the correct application of the proceedings, as well as to protect the interests of both parties (the Government and the petitioners), has decided for the time being to withdraw the case from the Court, in order to present it again at some future date, after the observations presented by your Government with regard to the instant case have been properly assessed.
>
> Please find enclosed the observations of the petitioners. I would greatly appreciate your taking the necessary steps to provide the Commission with the Government's final observations, as provided in Article 34(8) of the Regulations of the Inter-American Commission on Human Rights, within sixty days of the date of transmittal of this letter.

29. By note of August 26, 1991, Peru replied to the Commission, in part as follows:

> ...
>
> From the contents of your communication it would appear that the Government of Peru had requested the Inter-American Commission on Human Rights to reconsider the case. That is inaccurate, for at no time did Peru interpose such a motion, neither as regards the case itself nor as regards the decision to submit the case to the jurisdiction of the Inter-American Court. The possibility of reconsidering a report already vacated is not contemplated in the American Convention on Human Rights nor in the Regulations of the Commission when the State in question is a Party to the Convention and has accepted the jurisdiction of the Inter-American Court of Human Rights, as is the case of Peru. This is especially true of a case that has already been previously submitted to the Court.
>
> The Government of Peru did point out to the Commission the advisability of not submitting the case to the Court, considering the serious procedural omissions incurred in the drafting of its Report No. 29/91, which are precisely those which, among others, served to buttress the decision of the full Commission to submit the joint cases. In other words, the decision to reconsider the case is unilateral and does not comply with the procedural rules in force.
>
> ...

30. On October 27, 1991, the Commission approved Report 1/91, which literally states the following:

HAVING SEEN:

1. Report No. 29/91 adopted by the Inter-American Commission on Human Rights on February 20, 1991, referring to cases 10.264, 10.206, 10.276 and 10.446.

2. That on May 27, 1991, the Government of Peru filed a brief wherein it "requests that the Commission comply with its Regulations and the Pact of San José and therefore decide not to take the case to the Inter-American Court of Human Rights without first weighing the observations made in the present note and making the appropriate procedural corrections." In that note, the Government of Peru stated that "In accordance with the express provisions of Article 34, paragraphs 7 and 8 of the Commission's Regulations, once the reply was received from the petitioners, the Commission should have transmitted the pertinent parts thereof and its attachments to the Government of Peru for its final observations. None of the petitioners' replies to the Government's notes were transmitted to the Government. Hence, by violating that procedural requirement, the Commission has denied the Peruvian state its right to self defense."

CONSIDERING:

1. That the request from the Government of Peru constitutes a petition to suspend the proceedings.

2. That while the Government of Peru raised this matter in the note in question, it did not say what injury has been caused by this procedural omission.

3. That in response to its express request and to honor justice, the Commission resolved to consider the objection and therefore transmitted the petitioners' replies as requested by the Government under the provisions of Article 34(8) of the Commission's Regulations.

4. That in its reply dated September 4, 1991, the Government of Peru made no reference to the petitioners' replies.

5. That the Commission also examined Report 29/91 and has found that adjustments must be made in Section II thereof, which are included in the version of that Report attached hereto.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

1. To reject the argument of the Government of Peru that the report is invalid.

2. To confirm the conclusions and recommendations contained under point 48 of Report 29/91 and to transmit it to the Government of Peru so that it might respond as it sees fit within a period of 90 days.

3. To send the instant case to the Inter-American Court of Human Rights.

The sixth conclusion and recommendation contained in paragraph 48 of Report 29/91 reads as follows:

> Decides to submit these cases, joined, to the Inter-American Court of Human Rights, in accordance with articles 51 and 60 of the Convention, taking into account that Peru has recognized the Court's compulsory jurisdiction.

31. On December 20, 1991, Peru responded to the Commission's note transmitting its Report 29/91, indicating that it had already replied by note of May 27, 1991, to the conclusions and recommendations of Report 29/91 of February 20 of that year. The Government added that since the Commission was on this occasion transmitting a different report which nevertheless contained the same conclusions, recommendations and numbering as the previous version, the appropriate action was to ratify the terms of the note of May 27, 1991, referred to above.

32. Finally, on January 30, 1992, Peru responded to the Commission's note of November 14, 1991, with which it had transmitted Resolution 1/91. After emphasizing that in its letter of May 27, 1991,it had not requested the reconsideration of the case, let alone its withdrawal, and that the Commission could not in good faith maintain that Peru had requested the withdrawal of that case, but, rather, had taken that action on its own initiative, Peru asserted that:

> Consequently, the Government of Peru considers that the Commission has exhausted its possibilities with regard to the instant case for reasons attributable, not to Peru, but to the Commission's repeated insistence on going ahead with an irregular proceeding that is not in compliance with the American Convention on Human Rights.
>
> Hence, instead of insisting on submitting the case to the Court as it has been dealt with, the Commission should duly weigh other options within the framework established by the American Convention.

III

33. The Court has jurisdiction to hear the instant case. Peru has been a Party to the Convention since July 28, 1978, and recognized the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on January 1, 1981. Although the Government has interposed a preliminary objection it calls "lack of jurisdiction of the Court", in its reasoning it does not dispute the power of the tribunal to rule on the objections interposed by the Government, for it refers only to the inadmissibility of the application filed by the Commission on February 14, 1992, an issue that will be examined below.

IV

34. Before taking up the preliminary objections, the Court will refer to some issues raised by the representative of the Government during the public hearing, relating to the certification issued by the Court regarding the reception and withdrawal of the so-called first application (*supra* 10). The representative declared that "*the application arrived in due form on June 7, 1991, for it was only on that date that the requirements stipulated in Article 25 of the Rules of Procedure of the Court then in force were complied with... that the time limit provided under Article 51, paragraph 1 of the Convention having fallen due on May 31, 1991, the application entered the Court after the deadline had passed, that is, on June 7.*"

35. In order to fully understand the Government's observation and deal with the preliminary objections, it is important to recall that Article 51(1) of the Convention provides the following:

> If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

36. The Report was transmitted to the Government on March 1, 1991. The period stipulated would therefore have fallen due on May 31 of that same year. The Government received the report on April 5 and then requested of the Commission that the sixty days referred to in paragraph 4 of the operative part of Report 29/91 (*supra* 23) begin to run as of the date of receipt and not the date of mailing. This was accepted by the Commission, with the result that the deadline for the Government was moved to June 5, theoretically a later date than the original one. The Government submitted its observations on May 27. In its note, it requested that "*the Commission comply with its Regulations and the Pact of San José and therefore decide not to take the case to the Inter-American Court of Human Rights without first weighing the observations made in the present note and making the appropriate procedural corrections.*" The Commission, on its part, dated the application May 30. Both documents -- the Peruvian note and the application -- were received on Monday, June 3, the former by the Commission and the latter by the Court.

As indicated in the certification issued by the Secretary, the Executive Secretary of the Commission subsequently telephoned the Court on June 12 and announced that the application would be withdrawn. This was accomplished by a letter from the Commission dated June 20, signed by its Chairman, indicating that the application was being withdrawn "*at the request of the Government of Peru and in order to ensure that no questions arise as to the correct application of the proceedings, as well as to protect the interests of both parties (the Government and the petitioners), has decided for the time being the withdraw the case from the Court, in order to reconsider it and possibly present it again at some future date, after the observations submitted by the Government of Peru with regard to the instant case have been properly assessed.*"

After consulting with the Permanent Commission, the Secretary simply took note of the withdrawal. On August 26, the Government, which had received from the Commission a note dated June 11, informing it of the filing of the application and another dated June 20, communicating the withdrawal thereof, stated that the application had not been withdrawn at its request but was, instead, a unilateral act by the Commission.

After the file returned to the Commission, the latter complied with some of the requests contained in the Government's communication of May 27, such as transmitting to it the replies of the petitioners dated November 1, 1989, and July 18, 1990. However, as the Executive Secretary of the Commission explained to the Court at the public hearing, the original Report was only amended as to style. The Commission issued a Resolution and another Report bearing the same number but a different date, and filed a new application with the Court on February 14, 1992.

37. The Court has on other occasions analyzed certain aspects of Article 51 of the Convention (*Velásquez Rodríguez Case, Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 62 ff.; *Neira Alegría et al. Case, Preliminary Objections.* Judgment of December 11, 1991. Series C No. 13, para. 32), but not the characteristics or conditions of the time limit contemplated in paragraph 1 of that article. In order to arrive at a satisfactory resolution of the objections interposed by the Government, it is necessary to refer to it. In doing so, moreover, the Court must ratify its often stated opinion that the object and purpose of the treaty is the effective protection of human rights and that

the interpretation of all its provisions must be subordinated to that object and purpose, as provided in Article 31 of the Vienna Convention on the Law of Treaties (*Velásquez Rodríguez Case, Preliminary Objections, op. cit.*, para. 30).

38. In the case of *Neira Alegría et al.*, the Court had already found that, since it can be extended, the period contemplated in Article 51(1) is not final (*Neira Alegría et al. Case, Preliminary Objections. Supra* 37, paras. 32, 33 and 34). Nevertheless, legal certainty requires that States know what norms they are to follow. The Commission cannot be permitted to apply the time limits in arbitrary fashion, particularly when these are spelled out in the Convention.

39. Article 51(1) provides that the Commission must decide within the three months following the transmittal of its report whether to submit the case to the Court or to subsequently set forth its own opinion and conclusions, in either case when the matter has not been settled. While the period is running, however, a number of circumstances could develop that would interrupt it or even require the drafting of a new report or the resumption of the period from the beginning. In each case it will be necessary to conduct an analysis to determine whether or not the time limit expired and what circumstances, if any, could reasonably have interrupted the period.

40. In the instant case, the Report was sent on March 1, 1991, and the time limit would therefore have expired on May 31. The original application was received at the Court by fax on Monday, June 3, that is, three days after the calendar day on which the period would have expired, had the extension sought by Peru not affected it, in which case the expiration would have occurred on June 5. The Court will not comment on this fact at the present time, as it will also not comment on the fact that the Commission extended the periods. An application containing such serious charges as those which are before us now cannot be deemed to have lapsed simply on those grounds.

41. Peru stated at the public hearing that "*the application arrived in due form on June 7, 1991* [the date on which the file was received], *for it was only on that date that the requirements stipulated in Article 25 of the Rules of Procedure of the Court then in force were complied with.*"

42. The former Rules of Procedure of the Court, applicable to the instant application, established in its Article 25(2) that "*[i]f the Commission intends to bring a case before the Court ... it shall file with the Secretary, together with its report, in twenty copies, its duly signed application...*". In the instant case, the application was received before the report, the former having arrived at the Court on June 3, 1991, and the latter at the Secretariat of the Court on June 7.

The rule quoted above must not be applied in a way that distorts the object and purpose of the Convention. It is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved.

A very different issue is, of course, raised by consideration of the effect on the time limit of the Commission's withdrawal of the application in order to resubmit it at a much later date. That issue will be analyzed in due course.

V

43. The Court will now examine the objections interposed by the Government in the instant case.

44. The first three objections are based on the withdrawal of the case by the Commission after it had been submitted to the Court. Hence, the three objections should be dealt with together.

45. In the first objection, which the Government has labelled "*lack of jurisdiction of the Commission*", the Government contends that

> the applicant lost its jurisdiction to deal with the case on May 30, 1991, the date on which it submitted it to the Court. Hence, all of its subsequent acts aimed at regaining jurisdiction and at attempting to amend its own errors are invalid because they originate in an unjust decision to withdraw the case....

On this issue, the Commission responded as follows:

> [t]he protection of procedural balance and, especially, of the right of defense of the states is a fundamental requirement of the proceedings at issue. In the instant case, the Commission did everything necessary -- including reopen the proceedings at the request of the Peruvian Government -- in order to guarantee the unrestricted exercise of that right. The decision to grant the request of the Government of Peru in no way implied admission of any procedural flaw. Rather, it reflected the need to remove any defect that might have existed in the proceedings and to preserve the Government's right of defense.
>
> ...
>
> The jurisdiction of the Commission had not expired when it was decided to reopen proceedings in the Cayara case, for the transfer of jurisdiction to the Court was never consummated or completed. Such transfer occurs not when the Commission files the application but when the Court receives it and processes it in the manner prescribed by the Convention. As the file shows, at the time of withdrawal of the case the Court had not begun to process the application.
>
> In any event, the Commission believes that the Government of Peru is disqualified from interposing this objection of lack of jurisdiction because it contributed conclusively to the creation of the express conditions of which it now wishes to avail itself.

46. In the second objection, described as "*litis finitio*", the Government contends that

[t]he American Convention on Human Rights and the Regulations of the Commission and Rules of Procedure of the Inter-American Court do not contemplate the possibility of withdrawing, removing or extracting a case submitted to the jurisdiction of the Court....

and that

> [o]n June 20, 1991, the applicant informed the Government of the withdrawal of the case from the jurisdiction of the Court. In light of the Rules of Procedure of the Court and general principles of international law, such an action amounts to an abandonment... that so-called withdrawal constitutes an absolute annulment of the action and implies the illegality of the application.

The Commission, on its part, indicated that

> The Peruvian Government characterizes the act of June 20, 1991, -- whereby the Commission temporarily withdrew the case from the Court in order to reopen the proceedings at its request --as abandonment, despite the fact that nowhere in the file has the Commission expressed any intention of abandoning the application filed with the Court. According to the provisions of the

> Convention, abandonment cannot be presumed, let alone created through an interpretation, because the effect of an abandonment is to deprive the victims of violations of human rights of any opportunity of access to the Court. For such an important legal effect to occur, an unequivocal statement of intention indicating that that is indeed the effect sought must be required. (Underlined in the original.)

47. In the third objection, *"expiration of the time limit for filing of the application,"* the Government argues that the period of three months contemplated in Article 51(1) of the American Convention must

> ...without exception be calculated as of the transmittal of the Report to the State, for that is the period set forth in the American Convention on Human Rights (Article 51). As such, it cannot be amended unilaterally by the Inter-American Commission nor consensually by a State and the Commission; and even if it were possible to amend it in the latter manner, this did not occur in the CAYARA case.

The Government added at the hearing:

> ... if [the Commission] withdrew the case on June 20, it did so after the expiration of the period; consequently, by its arbitrary action it has forfeited any possibility of resubmitting the application.... It is one thing to suspend it within the time limit, quite another to attempt to suspend it after the expiration thereof.... Assuming that such a period could be amended or suspended in exceptional circumstances at the request of one of the parties, this would only be permissible if the request were presented before expiration of the period in question....

On this issue, the Commission responded as follows:

> On the matter of the Third Preliminary Objection interposed, the Commission is of the opinion that the application had not expired, since the measure adopted on June 20, 1991, suspended the proceedings at the request of the Government of Peru and antedated the whole matter to February 20, 1991, the date of the approval of Report 29/91.
>
> ...
>
> It is important to note that the Government was not damaged by the withdrawal and reopening of the proceeding. If anybody was affected it was the petitioners, for the action taken entailed the reexamination of a decision that had ruled in their favor, thus delaying the effective and timely protection to which they are entitled under the Convention. With this objection, the Government of Peru is attempting to classify as illegal an action that brought it no procedural damages whatsoever; to the contrary, it benefitted the Government by granting it fresh opportunities for its defense. The adage pas de nullite sans grief (there can be no nullity without damages) can be very aptly quoted in connection with this objection of expiration of the time limit for filing of the application. (Underlined in the original.)

48. The withdrawal of the application is not expressly regulated in the Convention, the Statutes of the Commission and the Court, the Regulations of the Commission or the Rules of Procedure of the Court. This does not mean that it is inadmissible. General principles of procedural law allow the applicant party to request a court not to process its application, provided the court has not begun to take up the case. As a rule, that stage begins with the notification of the other party. Furthermore, the foundation of the Court's jurisdiction, as set forth in Article 61(1) of the Convention, lies in the will of the Commission or of the States Parties.

49. In a case before the Court, formal notification of the application does not occur automatically but requires a preliminary review by the President in order to determine whether the basic requirements of that action have been met. This is spelled out in Article 27 of the Rules in force, which reflects the long-standing practice of the Court.

50. The withdrawal of the application in the instant case cannot be deemed to be among those situations governed by Article 42 of the Rules applicable at the time of presentation of that application, because that rule refers to hypothetical cases where the dispute has already been brought before the Court, cases in which the parties, acting unilaterally or bilaterally, cannot freely waive the continuation of the proceedings because *"[t]he Court may, having regard to its responsibilities, decide that it should proceed with the consideration of the case..."* (paragraph 3).

51. In the instant case, the request for withdrawal presented by the Commission occurred before the President of the Court was able to conduct the preliminary review of the application and, consequently, before he was in a position to order the notification of same. The President had not even been apprised of the communication of June 11, 1991, by which the Commission notified the Government that the case had been referred to the Court, as provided in Article 50(2) of the Regulations of the Commission.

52. The request for withdrawal was not, at first glance, unjustified or arbitrary. In its note of June 20, the Commission declared that the withdrawal was being sought *"at the request of the Government of Peru and in order to ensure that no questions arise as to the correct application of the proceedings, as well as to protect the interests of both parties (the Government and the petitioners)..."*. Principles of good faith would preclude casting doubt on the reasons given by the Commission for withdrawing its application.

53. In view of the foregoing, the Secretariat of the Court, acting on instructions of the Permanent Commission, merely acknowledged receipt of the note of withdrawal. It did not assess the action or the timing thereof because neither the Secretariat nor the Permanent Commission was in a position to do so, since the President had not yet begun to review the case, the processing of which had still not been initiated.

54. These considerations are not inconsistent with the precedents established by the Court. In a previous case (*Velásquez Rodríguez Case. Preliminary Objections, supra* 37, para. 75), the Court found that *"the Commission's application to the Court unequivocally shows that the Commission had concluded its proceedings and submitted the matter for judicial settlement. The presentation of the case to the Court implies, ipso jure, the conclusion of proceedings before the Commission..."*. On that occasion, the Court was referring to the impossibility of the Commission continuing proceedings in a case that had already been submitted to the Court. At the time, the Court did not define the meaning of "submit a case" or "file an application" nor did it, of course, refer to any subsequent motions or acts by the Commission, such as, for example, the withdrawal of a case already filed with the Court, which is precisely the issue now before the Court.

55. At this time, there is no need for the Court to rule on whether the Commission understood the withdrawal to be a cancellation of the proceedings or the abandonment of the case, even at the judicial level. The Commission has stated that this was not the case and there is nothing in the file that would indicate otherwise. Rather, the Commission's letter of withdrawal indicates the opposite intention (Cf. *Barcelona Traction, Light and Power Company, Limited, Preliminary Objections*, Judgment, I.C.J. Reports 1964, p. 21).

56. It is also not necessary to determine whether the prior actions of the Commission were nullified by errors in the handling of the case or whether the Government's right of defense was impaired by the failure to transmit certain documents.

57. What must be analyzed is whether the withdrawal was instigated by the Peruvian Government and what benefits the latter could have derived from it. It is important to note that the communication from Peru requesting that "*the case not be submitted to the Court* " reached the Commission on the very date that the latter transmitted the case to the tribunal by fax. It is clear, therefore, that the Government could not request the withdrawal of a case which, to its knowledge, had still not been submitted.

The Peruvian note nevertheless does contain the suggestion that the irregularities which, in Peru's opinion, occurred in the handling of the case, "*nullify any other proceeding to which [they] could give rise and allow Peru to disqualify itself in the future from validating such acts with its participation...*".

58. It could be concluded that both issues -- that is, the request that the application not be filed because of irregularities in the way it had been handled and the Peruvian Government's intimation that it would not participate in the process -- persuaded the Commission to withdraw the case.

59. In its note of August 26, the Government insisted that the withdrawal of the application was a unilateral act by the Commission which Peru had not requested. At the public hearing, the Commission admitted that "*it is true that the Government of Peru did not request the withdrawal of the case, nor its resubmission.*" Consequently, it is of little importance whether or not Peru benefitted, as the Commission argues, from the new time limits that resulted from the withdrawal. Even if it had, that would not prevent it from invoking the expiration of the time limit as a preliminary objection. The withdrawal of the case did not undermine the Peruvian Government's right of defense nor did it prevent it from exercising any of the other rights recognized in the Convention.

60. More than six months elapsed between the withdrawal of the case and the filing of the new application. Regardless of whether the original period had expired on May 31, or June 5, 1991, there is no question that February 14, 1992, substantially exceeds the timely and reasonable limits that, as the Court has stated, govern the proceeding. Even if the Commission understood the Peruvian Government to have requested the withdrawal, such a request, however reasonable, could not have been granted because the time limit provided by the Convention for filing an application had already expired. Furthermore, as already stated, that is not one of the factors that could have led to a suspension of the periods.

61. Without taking up the merits of the Commission's application, the Court will find that it was filed after the expiration of the appropriate time limit. Nevertheless, a reading of Article 51 leads to the conclusion that a declaration of this nature cannot entail the neutralization of the other protective mechanisms set forth in the American Convention. Hence, the Commission continues to enjoy all the other powers conferred on it in that article, which is, furthermore, consistent with the object and purpose of the treaty.

62. Having stated the foregoing, it is not necessary for the Court to analyze the remaining objections.

63. The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of the alleged victims in the face

of manifest violations of the procedural norms established by the Convention itself would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights.

NOW, THEREFORE,

THE COURT

unanimously,

1. Declares that the application dated February 14, 1992, was filed by the Commission after the expiration of the period provided in Article 51(1) of the Convention.

unanimously,

2. Declares that the Commission continues to enjoy the other powers conferred on it by Article 51 of the Convention.

unanimously,

3. Orders that the case be dismissed.

Done in Spanish and English, the Spanish text being authentic. Read at the public hearing at the seat of the Court in San José, Costa Rica, on this third day of February, 1993.

(s) Héctor Fix-Zamudio
President

(s) Sonia Picado-Sotela — (s) Rafael Nieto-Navia

(s) Alejandro Montiel-Argüello — (s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren — (s) Manuel Aguirre-Roca

(s) Manuel E. Ventura-Robles
Secretary

So ordered:

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX IV

CDH-R1/93

INTER-AMERICAN COURT OF HUMAN RIGHTS

Decision approved by the Court during its Twenty Seventh
Regular Session, at Meeting No. 2,
held on January 25, 1993

THE COURT DECIDES:

1. To amend paragraph 4, Article 24, of its Rules, replacing it with the following text:

   If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect.

2. This amendment shall enter into force as of January 26, 1993.

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX V

CDH-R2/93

INTER-AMERICAN COURT OF HUMAN RIGHTS

Decision approved by the Court during its Twenty Seventh
Regular Session, at Meeting No. 16,
held on February 5, 1993

THE COURT DECIDES:

1. To amend paragraph 2, Article 45, of its Rules, replacing it with the following text:

   All other decisions shall be rendered by the Court, if it is sitting, or by its President, if it is not, unless otherwise provided. DecisionS of the President which are not merely procedural may be appealed to the Court.

2. This amendment shall enter into force as of February 5, 1993.

(s) Héctor Fix-Zamudio
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VI

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-13/93
OF JULY 16, 1993

CERTAIN ATTRIBUTES OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
(ARTS. 41, 42, 46, 47, 50 AND 51
OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

REQUESTED BY THE GOVERNMENTS OF THE
REPUBLIC OF ARGENTINA AND THE
ORIENTAL REPUBLIC OF URUGUAY

Present:

Rafael Nieto-Navia, President
Sonia Picado-Sotela, Vice-President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge

Also present:

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

THE COURT,

composed as above,

renders the following Advisory Opinion:

1. By submission of December 17, 1991, received in the Secretariat (hereinafter "the Secretariat") of the Inter-American Court of Human Rights (hereinafter "the Court") on May 7, 1992, the Governments of the Republic of Argentina (hereinafter "Argentina") and of the Oriental Republic of Uruguay (hereinafter "Uruguay"), requested an advisory opinion on the interpretation of Articles 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") *"as they relate to the concrete situation and circunstances"* indicated.

2. Argentina and Uruguay requested the advisory opinion pursuant to Article 64(1) of the American Convention and Articles 49 and 51 of the former Rules of Procedure of the Court which, with some amendments, correspond to Articles 51 and 53 of the present Rules of the Court (hereinafter "the Rules"), which are applicable because the request was made subsequent to August 1, 1991.

3. The request for an advisory opinion raises the following questions:

> 1) As regards Articles 41 and 42, the Court is hereby requested to render an opinion as to whether, in order to justify its dealing with a case involving communications alleging the violation of the rights protected by Articles 23, 24 and 25 of the Convention, the Commission is competent to assess and offer an opinion on the legality of domestic legislation adopted pursuant to the provisions of the Constitution, insofar as the "reasonableness," "advisability," or "authenticity" of such legislation is concerned.
>
> 2) With respect to Articles 46 and 47 of the Convention, the Court is asked to render an opinion as to whether, in the case of communications submitted pursuant to Article 44 of the Convention, which must be processed within the framework of the Pact of San José, it is proper, as a matter of law, for the Commission, after having declared the application inadmissible, to address the merits of the case in the same report.
>
> 3) As for Articles 50 and 51 of the Convention, the Court is here being asked to render an opinion as to whether it is proper to combine the two reports provided for under Articles 50 and 51 of the Convention in a single report, and whether the Commission may order the publication of the report to which Article 50 refers before the period specified in Article 51 has expired.

4. Among the considerations giving rise to the consultation, Argentina and Uruguay mention the following:

> 4) None of the standards of interpretation which the Court is being asked to apply in this advisory opinion relates to abstract issues or theoretical hypotheses that might eventually arise in the process of implementing the Convention. They concern concrete cases that have been dealt with by the Commission (e.g., cases 9.768, 9.780, 9.828, 9.850, 9.893).
>
> 5) The applicant Governments consider that the instant advisory opinion request presents an issue of great interest and importance for the proper enforcement of the American Convention on Human Rights and to the effective operation of the Inter-American Regional System for the Protection of Human Rights, bearing in mind the noble and exalted aims and goals that should always guide the defense of the human person.

5. Argentina and Uruguay appointed as their Agents their Ambassadors in Costa Rica, Alicia Martínez-Ríos and Raquel Macedo de Shepard, respectively.

6. By Note of May 26, 1992, in accordance with Article 54(1) of the Rules, the Secretariat requested written observations and relevant documents from the Member States of the Organization of American States (hereinafter "the OAS") and, through its Secretary General, from the organs mentioned in Chapter VIII of the OAS Charter.

7. The President of the Court (hereinafter "the President") ordered the written observations and relevant documents filed with the Secretariat before November 16, 1992.

8. The Governments of Chile, Jamaica, Santa Lucia, Mexico, Panama and Costa Rica and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") replied to the Secretariat's communication.

9. The following non-governmental organizations presented their views on the advisory opinion as *amici curiae:* Federación latinoamericana de asociaciones de familiares de detenidos desaparecidos (FEDEFAM); Familiares, madres y abuelas de detenidos desaparecidos de Mar del Plata; Centro por la justicia y el derecho internacional (CEJIL); Americas Watch; International Human Rights Law Group; Centro de estudios legales y sociales (CELS); Centro por los derechos humanos y el derecho humanitario de American University; Programa venezolano de educación y acción en derechos humanos (PROVEA); Centro por la acción legal en derechos humanos and the Washington Office on Latin America. Also presenting a brief as *amicus curiae* was María Elba Martínez, in her capacity as a lawyer with the Fundación Paz y Justicia--Argentina and the legal representative of some private parties before the Commission.

10. Pursuant to the instructions of the President and by notes of October 7, 1992, the Secretariat convoked the Member States and the organs of the OAS to a public hearing which was held on February 1, 1993, at 15:00 hours.

11. Having consulted with the Permanent Commission of the Court, the President authorized the following international non-governmental organizations to attend the hearing: Americas Watch, Centro por la justicia y el derecho internacional (CEJIL) and the International Human Rights Law Group.

12. The following representatives appeared at the public hearing:

For the Government of Costa Rica:

Elizabeth Odio-Benito, Minister of Justice

For the Government of Mexico:

Miguel Angel González-Félix, Coordinator for Human Rights and Drug Trafficking of the Secretary of Foreign Relations

Mario I. Alvarez-Ledesma, Director of Sociopolitical Studies and Human Rights of the Secretary of Government

For the Inter-American Commission of Human Rights:

Marco Tulio Bruni-Celli, President
David J. Padilla, Assistant Executive Secretary

For Americas Watch:

Juan E. Méndez

For the Centro por la justicia y el derecho internacional (CEJIL):

José Miguel Vivanco

For the International Human Rights Law Group:

Reed Brody
Felipe González.

I

13. The Governments of Argentina and Uruguay submitted this request for an advisory opinion to the Court pursuant to the authority granted them by Article 64(1) of the Convention. Both are Member States of the OAS and, therefore, have the right to request advisory opinions from the Court on the interpretation of the Convention.

14. The Court finds that the request meets the formal prerequisites of Article 51 of the Rules, which require that a request state the specific questions with precision, identify the provisions to be interpreted, indicate the considerations giving rise to the request, and furnish the name and address of the Agent.

15. Because a request meets the requirements of Article 51 does not necessarily mean the Court is obligated to hear it. The Court has reiterated that its advisory jurisdiction is

> permissive in character in the sense that it empowers the Court to decide whether the circumstances of a request for an advisory opinion justify a decision rejecting the request (*"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. 28**).

In the same opinion, the Court noted that

> The advisory jurisdiction of the Court is closely related to the purposes of the Convention. This jurisdiction is intended to assist the American States in fulfilling their international human rights obligations and to assist the different organs of the inter-American system to carry out the functions assigned to them in this field. It is obvious that any request for an advisory opinion which has another purpose would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court (*Ibid*, **para. 25**).

And any request would be inadmissible which

> is likely to undermine the Court's contentious jurisdiction or, in general, to weaken or alter the system established by the Convention, in a manner that would impair the rights of potential victims of human rights violations (*Ibid*, **para. 31**).

To determine whether there are reasons the Court should decline to render an advisory opinion, it is necessary to consider the circumstances of each individual case.

16. In the instant request for an advisory opinion the Governments state that *"[n]one of the standards of interpretation which the Court is being asked to apply in this advisory opinion relates to abstract issues or theoretical hypotheses that might eventually arise in the process of implementing the Convention. They concern concrete cases that have been dealt with by the Commission."* To support that argument, they cite five cases heard by the Commission.

17. That the request for an advisory opinion cites concretes cases in which the Commission has applied the standards in question, may be an argument in favor of the Court's exercise of its advisory jurisdiction in that it is not a matter of *"purely academic speculation, without a foreseeable application to concrete situations justifying the need for an advisory opinion."* (***Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8, American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 16**). Of course, the Court is not empowered to examine those cases on the merits, because they have not been submitted by the Commission or the interested States.

18. On a previous occasion in which the Commission was examining several cases against the State requesting an advisory opinion, the Court recognized *"that a reply to the questions... could produce, under the guise of an advisory opinion, a determination of contentious matters not yet referred to the Court, without providing the victims with the opportunity to participate in the proceedings. Such a result would distort the Convention system"*, and, therefore, it decided not to render an opinion. (***Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights)*, Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12, para. 28**).

19. The foregoing does not mean the Court cannot render an advisory opinion at the Commission's request on a matter pending before it, for *"[if] the Commission were to be barred from seeking an advisory opinion merely because one or more governments are involved in a controversy with the Commission over the interpretation of a disputed provision, the Commission would seldom, if ever, be able to avail itself of the Court's advisory jurisdiction."* (***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. 38**). As stated above, what is important is that a request for an advisory opinion not be an attempt to distort the Convention system by seeking in disguise the resolution of a contentious case to the detriment of the victims.

20. The Court does not find in the instant request any reason to abstain from considering it and, therefore, admits it and responds as follows.

II

21. The first question posed by the Governments *"as regards Articles 41 and 42"* of the Convention refers to whether *"the Commission is competent to assess and offer an opinion...[in] a case involving communications alleging the violation"* of certain rights protected by the Convention (those of Articles 23,

24 and 25), *"on the legality of domestic legislation adopted pursuant to the provisions of the Constitution [of a State], insofar as [its] 'reasonableness', 'advisability', or 'authenticity'."*

22. The Courts finds no reason, nor does the request contain one, to distinguish the rights in question (Arts. 23 --political rights--, 24 --equality before the law-- and 25 --judicial protection--) from the others set out in the Convention. The Convention does not establish a hierarchy of the rights protected. The distinctions among human rights in the inter-American system are, principally, those related to the rights the States Parties to the Convention or the Member States of the OAS who are not Parties to the Convention have obligated themselves to protect; being in the latter case only those contained in the American Declaration of the Rights and Duties of Man and, in particular, those mentioned in Article 20 of the Commission's Statute ***(Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights,* Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 45)**; and those distinctions made in Article 27 of the Convention regarding the rights that cannot be suspended in *"time of war, public danger, or other emergency that threatens the independence or security of a State."* Paragraph 2 of that article mentions Article 23 as one that may not be suspended, but does not mention 24 or 25. Nevertheless, in its advisory opinion on "Judicial Guarantees..." ***(supra 17,* paras. 22-24)** the Court held that Article 25(1) contains some of those guarantees that cannot be suspended. Because, however, there is no reason for the Court to refer only to the three articles mentioned in the request, it shall omit the distinction in its reply.

23. Several of the articles of the Convention, in particular those which appear in Section 2, Chapter VII, under the title **Functions** and Article 44 which is part of Section 3, **Competence,** refer to the attributes of the Commission. From the beginning, the provisions of the inter-American system have charged the Commission with the "promotion of human rights" **(Resolution VIII, V Meeting of Consultation of Ministers of Foreign Relations, Santiago, 1959, Official Documents, OAS, Series C.II. 5, 4-6)** or *"to promote the observance and protection of human rights"* **(Art. 111 of the Charter of the OAS as Amended by the Protocol of Cartagena)**, as incorporated into Article 41 of the Convention. That is the principal function of the Commission, which defines and regulates all its other functions, in particular those granted it by Article 41, and any interpretation must be limited by those criteria.

24. The Court understands that the request does not seek a complete interpretation of Articles 41 and 42, but rather an opinion whether, on the authority of those articles, the Commission could, in the case of communications before it (probably those referred to in Articles 41.f, 44 and 45) or with reference to the copies of the reports and studies the States send it in application of Article 42, rule on the *"legality of domestic legislation adopted pursuant to the provisions of the Constitution, insofar as [its] 'reasonableness', 'advisability', or 'authenticity'."*

25. In one advisory opinion, the Court had the opportunity to examine *in extenso* the meaning of the word "laws" in Article 30 of the Convention, that is, those laws which establish restrictions on the rights and freedoms recognized therein. On that occasion, it defined laws as *"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."* ***(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. 38)**. This definition is based upon an analysis of the principles of "legality" and "legitimacy" and of the democratic system of government within the framework of which the inter-American system of human rights must be understood **(paras. 23 and 32)**. These interpretations by the Court referred exclusively to the meaning of the word "laws" in Article 30, and there is no authority to extend them to other situations in which the Convention refers to the "law" or, in any other context, speaks of "law". It must be understood, then, that the expression employed in the

request, *"domestic legislation adopted pursuant to the provisions of the Constitution"* refers to any provision of a general nature and not exclusively to law in a strict sense.

The Court understands the expression "legality of domestic legislation adopted pursuant to the provisions of the Constitution" as referring, in general terms, to their conformity with the internal and international juridical order.

26. A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention. Whether those norms have been adopted in conformity with the internal juridical order makes no difference for these purposes.

27. In these circumstances, there should be no doubt that the Commission has in that regard the same powers it would have if confronted with any other type of violation and could express itself in the same way as in other cases. Said in another way, that it is a question of "domestic legislation" which has been *"adopted pursuant to the provisions of the Constitution"*, is meaningless if, by means of that legislation, any of the rights or freedoms protected have been violated. The powers of the Commission in this sense are not restricted in any way by the means by which the Convention is violated.

28. There are historical situations in which States have promulgated laws which conformed with their juridical order, but which did not offer adequate guarantees for the exercise of human rights, imposed unacceptable restrictions or, simply, ignored them. As the Court has said, the fulfillment of a constitutional requirement *"does not always prevent a law passed by the Legislature from being in violation of human rights"* (***The Word "Laws" in Article 30 of the American Convention on Human Rights, supra*** **25, para. 22**).

29. This does not mean the Commission has the authority to rule as to how a legal norm is adopted in the internal order. That is the function of the competent organs of the State. What the Commission should verify, in a concrete case, is whether what the norm provides contradicts the Convention and not whether it contradicts the internal legal order of the State. The authority granted the Commission to *"make recommendations to the governments of the member states... for the adoption of progressive measures in favor of human rights* ***within the framework of their domestic laws and constitutional provisions****"* (Art. 41(b)) [emphasis added] or the obligation of the States to adopt such legislative or other measures as may be necessary to give effect to the rights or freedoms guaranteed by the Convention *"****in accordance with their constitutional processes****"* (Art. 2) [emphasis added], does not authorize the Commission to determine the State's adherence to constitutional precepts in establishing internal norms.

30. At the international level, what is important to determine is whether a law violates the international obligations assumed by the State by virtue of a treaty. This the Commission can and should do upon examining the communications and petitions submitted to it concerning violations of human rights and freedoms protected by the Convention.

31. This definition of the attributes of the Commission does not affect the relationship between the rule of law and the Convention. As the Court has already said, *"the concept of rights and freedoms as well as that of their guarantees [according to the Pact of San José] cannot be divorced from the system of values and principles that inspire it."* (***Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)***, **Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 26**). Within such values and principles, it is apparent that *"[r]epresentative democracy is the determining factor throughout the system of which the Convention is a part."* (***The Word "Laws" in Article 30 of the Convention on Human Rights, supra*** **25, para. 34**). The Court has also pointed out that *"there exists an*

inseparable bond between the principles of legality, democratic institutions and the rule of law" and *"[i]n a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad,"* and *"[e]ach component thereof defines itself, complements and depends on the others for its meaning."* ***(Habeas Corpus in Emergency Situations,* paras. 24 and 26).**

32. It is now appropriate to consider the terms "reasonableness", "advisability", and "authenticity", mentioned by the applicant Governments in the first question. This Court is asked to give its opinion whether the Commission may use that terminology "to assess and offer an opinion" on domestic legislation considered within the framework of Articles 41 and 42 of the Convention.

33. "Reasonableness" implies a value judgment and, when applied to a law, conformity to the principles of common sense. It is also used in reference to the parameters of interpretation of treaties and, therefore, of the Convention. Reasonable means just, proportionate, and equitable, in opposition to unjust, absurd, and arbitrary. It is a qualifier with an axiological content which implies opinion but, in another sense, may be employed juridically as, in fact, the courts frequently do, in that any State activity should be not only valid but reasonable. Insofar as the "advisability" of a law, the question may lend itself to subjective opinions, unless the expression is used in the uncommon sense of "correlation" or "conformity" between internal norms and those based upon the Convention. The expression "authenticity" of a law, which could have the juridical meaning of true, certain or certified in the sense of authority to attest to documents, does not appear to have that meaning in the context of the request.

34. Individual communications must allege a violation of the Convention by a State Party. This is a requirement of admissibility (Art. 47(b)) and the Commission is given the authority to decide whether that violation has occurred. In that sense, it must decide whether legal norms violate the Convention. In fact, the international organs which apply the Convention cannot treat an internal norm differently from an act. There is no difference between State responsibility arising from violations of the Convention by virtue of an internal norm and the treatment that general international law gives to internal provisions violative of other international obligations.

35. An internal norm may violate the Convention because it is unreasonable or because it does not "conform" with it and, of course, a law which is contrary to a State's obligations under the Convention cannot be termed "reasonable" or "advisable". The Commission would be empowered to use those terms in this context. Clearly it may do so in the global consideration of cases. Nevertheless, because the functions of the Commission must conform to the law, the terminology it uses must be carefully chosen and should avoid concepts that might be ambiguous, subjective, or confusing.

36. The above assertions are equally valid for the procedure relating to copies of reports and studies referred to in Article 42.

37. The Court's reply, then, must be based upon the Commission's principal function of promoting the observance and protection of human rights, from which it derives its power to rule, as in the case of any other act, that a norm of internal law violates the Convention, but not that it violates the internal juridical order of a State.

III

38. The second point of the request for an advisory opinion, which is related to the petitions presented under Article 44 of the Convention, asks whether the Commission, having declared the

petition inadmissible pursuant to the provisions of Articles 46 and 47, may *"address the merits of the case in the same report"*.

39. In that regard, it should be clarified that although the Convention does not use the word "address", it may be considered the generic equivalent of other expressions: to formulate opinions, conclusions, recommendations, which the Commission may issue in exercise of its powers pursuant to Article 41. Likewise, it is inexact to speak of a "report" which is not based upon a finding of admissibility, for if the Commission declares a matter inadmissible, it may not draw up a report ***(infra* para. 48)** within the meaning of Articles 50 and 51. The Court understands that the instant question refers to a case where the Commission issues opinions, conclusions, or recommendations on the merits in individual petitions, after it has declared them inadmissible.

40. The Convention sets out the prerequisites a petition or communication must meet in order to be found admissible by the Commission (Art. 46); it also sets out the cases of inadmissibility (Art. 47) which may be determined once the proceeding has been initiated (Art. 48(1)(c)). Regarding the form in which the Commission should declare inadmissibility, the Court has already pointed out that this requires an express act, which is not required in a finding of admissibility. ***(Velásquez Rodríguez Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 1, para. 40; *Fairén Garbi and Solís Corrales Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 2, para. 45; and, *Godínez Cruz Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 3, para. 43)**.

41. The requirements of admissibility are related, obviously, to juridical certainty in the internal order as well as in the international. Without falling into a rigid formalism which distorts the purpose and object of the Convention, the States and the organs of the Convention must comply with the provisions which regulate the procedure, for the juridical security of the parties depend upon it. ***(Cayara Case, Preliminary Objections,* Judgment of February 3, 1993. Series C No. 14, paras. 42 and 63)**. Before the Commission, a State accused of violating the Convention may, in the exercise of its right of defense, argue any of the provisions of Articles 46 and 47 and, if the argument is successful, the proceeding is interrupted and the file is closed.

42. The admissibility of a petition or communication is an indispensable prerequisite to hearing the merits of a matter. The finding of inadmissibility of a petition or communication shall, thus, preclude a decision on the merits. In the individual petition system provided by the Convention, from the moment the Commission declares a matter inadmissible, it lacks the competence to rule on the merits.

43. This Court has said that *"[i]t is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities."* ***(Cayara Case, Preliminary Objections, supra* 41, para. 42)**. But here it is a matter of a case which has been closed and to rule on the merits afterwards would be the equivalent of the Commission ruling on a communication without having received it.

44. In the foregoing circumstances, the procedural impossibility of addressing the merits of the petitions received in the exercise of its authority pursuant to Article 41(f) of the Convention or making the pertinent recommendations to the State concerned, does not in any away detract from the Commission's exercise of other attributes which Article 41 confers upon it *in extenso*. In any case, the use of the latter attributions, for example, those contemplated in paragraphs (b), (c), and (g) of that norm, must be by means of acts and procedures other than the procedure governing the examination of individual petitions or denunciations based upon Articles 44 through 51 of the Convention, and may in no way be used in a devious fashion to refer to the merits of one or several individual cases declared inadmissible.

IV

45. The third question refers to Articles 50 and 51 of the Convention, precepts which, as this Court has already recognized, raise certain problems of interpretation. *(Velásquez Rodríguez Case, Preliminary Objections, supra* **40, para. 63;** *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* **40, para. 63; and,** *Godínez Cruz Case, Preliminary Objections, supra* **40, para. 66***)*.

46. These norms were based upon Articles 31 and 32 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which, when the European Commission considers there are violations of the rights protected in that Convention, it may send the report, which is only one, to the Committee of Ministers which will dictate the measures the State concerned should adopt or submit it in the form of a case to the European Court of Human Rights for that Court to rule, in an imperative manner, on the alleged violations.

47. Because an organ similar to the Committee of Ministers was not established in the inter-American system, the American Convention empowered the Commission to decide whether to submit the case to the Court or to continue to examine the case and prepare a final report, which it may publish.

48. Given admissibility, and without prejudice to the procedure established in Articles 48 and 49, Articles 50 and 51 of the Convention establish successive stages. In the first, regulated by Article 50, when a friendly settlement has not been reached, the Commission may state the facts and its conclusions in a preliminary document addressed to the State concerned. This "report" is transmitted in a confidential manner to the State so it may adopt the proposals and recommendations of the Commission and resolve the problem. The State is not authorized to publish it.

Based upon the presumption of the equality of the parties, a proper interpretation of Article 50 implies that neither may the Commission publish this preliminary report, which is sent, in the terminology of the Convention, only "to the States concerned."

49. Article 47(6) of the Commission's Regulations states *"[t]he report shall be transmitted to the parties concerned, who shall not be authorized to publish it."* Given that petitioners and victims are recognized as parties in the proceeding before the Commission (for example, Art. 45 of the Commission's Regulations), Article 47(6) does not conform to Article 50 of the Convention, and its application has altered the confidential nature of the report and the obligation not to publish it.

50. A second stage is regulated by Article 51. If within the period of three months, the State to which the preliminary report was sent has not resolved the matter by responding to the proposal formulated therein, the Commission is empowered, within that period, to decide whether to submit the case to the Court by means of the respective application or to continue to examine the matter. This decision is not discretionary, but rather must be based upon the alternative that would be most favorable for the protection of the rights established in the Convention.

51. The three months are counted from the date of transmittal of the Article 50 report to the State concerned, and the Court has clarified that the time limit, though not fatal, has a preclusive character, except in special circumstances, with regard to the submission of the case to this Court, independent of that which the Commission gives the State to fulfill its first recommendations. *(Cayara Case, Preliminary Objections, supra* **41, paras. 38 and 39***)*.

52. Article 51 authorizes the Commission to draw up a second report, whose preparation *"is conditional upon the matter not having been submitted to the Court within the three-month period set by Article 51(1). Thus, if the application has been filed with the Court, the Commission has no authority to draw up [that] report"* ***(Velásquez Rodríguez Case, Preliminary Objections, supra*** **40, para. 63;** ***Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra*** **40, para. 63; and,** ***Godínez Cruz Case, Preliminary Objections, supra*** **40, para. 66).** Otherwise, the Commission has the authority to prepare a final report containing the opinions and conclusions it considers advisable. It must also make the pertinent recommendations, giving the State an additional period to take appropriate measures to fulfill its obligations under the Convention.

53. There are, then, two documents which, depending upon the interim conduct of the State to which they are addressed, may or not coincide in their conclusions and recommendations and to which the Convention has given the name of "report" and which have the character of preliminary and final, respectively.

54. There may be a third stage after the final report. In fact, with the lapse of the time period the Commission has given the State to comply with the recommendations contained in the final report, and if they have not been accepted, the Commission shall decide whether to publish it, and this decision must also be based upon the alternative most favorable for the protection of human rights.

55. This being the case, the question should be answered in the sense that the two reports governed separately by Articles 50 and 51 of the Convention may not be subsumed in one because those norms establish two separate stages, even though the contents of those documents, depending upon the conduct of the State concerned, may be similar.

56. The preliminary, confidential document of Article 50 may not be published. Only the final report contemplated by Article 51 of the Convention may be published, by decision of the Commission adopted after the lapse of the period given the State to carry out the recommendations contained in the final report.

57. For the reasons stated,

THE COURT,

unanimously

DECIDES

it is competent to render the present advisory opinion.

IT IS OF THE OPINION

unanimously

1. Within the terms of the attributes granted it by Articles 41 and 42 of the Convention, the Commission is competent to find any norm of the internal law of a State Party to be in violation of the obligations the latter has assumed upon ratifying or adhering to it, but it is not competent to decide whether the norm contradicts the internal juridical order of that State. Regarding the terminology the Commission may employ to qualify internal norms, the Court refers to paragraph 35 of this opinion.

unanimously

2. Without detriment to other attributes granted the Commission by Article 41 of the Convention, once a petition or individual communication is declared inadmissible (Art. 41(f) read with Arts. 44 and 45(1) of the Convention), findings on the merits are inappropriate.

unanimously

3. Articles 50 and 51 of the Convention provide for two separate reports, whose content may be similar, and the first report may not be published. The second report may be published if the Commission so decides by an absolute majority vote upon the expiration of the time period granted the State to adopt adequate measures.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this sixteenth day of July, 1993.

(s) Rafael Nieto-Navia
President

(s) Sonia Picado-Sotela

(s) Héctor Fix-Zamudio

(s) Alejandro Montiel-Argüello

(s) Hernán Salgado-Pesantes

(s) Asdrúbal Aguiar-Aranguren

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VII

CDH-R5/93

INTER-AMERICAN COURT OF HUMAN RIGHTS

Decision approved by the Court during its
Twenty Eight Regular Session, at Meeting No. 9,
held on July 16, 1993

THE COURT DECIDES:

1. To amend the first paragraph of Article 26 of its Rules, replacing it with the following text:

   For a case to be referred to the Court under Article 61(1) of the Convention, ten copies of the application shall be filed with the Secretariat in each of the working languages of the Court. The filing of an application in only one working language shall not suspend the proceeding, but the translations in the other language or languages shall be filed within 45 days. The application shall contain:

2. To add to Article 29 of its Rules, a new paragraph which shall read as follows:

   4. During the proceeding, in consultation with the Permanent Commission, the President may refuse any submission of the parties he considers manifestly inappropiate, which he shall order returned to the interested party without any further action.

3. These amendments shall enter into force as of July 16, 1993.

(s) Rafael Nieto-Navia
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX VIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

ALOEBOETOE *ET AL.* CASE

REPARATIONS
(ART. 63(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF SEPTEMBER 10, 1993

In the case of Aloeboetoe *et al.*,

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

Rafael Nieto-Navia, President
Sonia Picado-Sotela, Vice President
Héctor Fix-Zamudio, Judge
Julio A. Barberis, Judge
Asdrúbal Aguiar-Aranguren, Judge
Antônio A. Cançado Trindade, *ad hoc* Judge;

Also present:

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

pursuant to the Court's judgment of December 4, 1991 (***Aloeboetoe et al. Case*, Judgment of December 4, 1991. Series C No. 11**), and in application of Article 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules of Procedure"), enters the following judgment in the case brought by the Inter-American Commission of Human Rights (hereinafter "the Commission") against the Republic of Suriname (hereinafter "the Government" or "Suriname").

I

1. The instant case was brought to the Inter-American Court of Human Rights (hereinafter "the Court") by the Commission on August 27, 1990, by a note transmitting its Report 03/90. It originated in Petition No. 10.150 of January 15, 1988, against Suriname.

In its communication, the Commission asserted that "*the Government of Suriname violated Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1) and 25(2) of the American Convention on Human Rights*" (hereinafter "the Convention" or "the American Convention"). On those grounds, the Commission asked the Court

> to adjudicate this case in accordance with the terms of the Convention, and to fix responsibility for the violation described herein and award just compensation to the victim's next of kin.

2. The Commission submitted its memorial on April 1, 1991.

The events that gave rise to the petition apparently occurred on December 31, 1987, in Atjoni (village of Pokigron, District of Sipaliwini) and in Tjongalangapassi, District of Brokopondo. In Atjoni, more than 20 male, unarmed Bushnegroes ("Maroons") had been attacked, abused and beaten with rifle-butts by a group of soldiers. A number of them had been wounded with bayonets and knives and were detained on suspicion of belonging to the Jungle Commando, a subversive group. Some 50 persons witnessed these occurrences.

3. According to the petition, the Maroons all denied that they were members of the Jungle Commando. The captain of the village of Gujaba made a point of informing the commander in charge of the soldiers that the persons in question were civilians from various different villages. The commander disregarded this information.

4. The petition asserts that the soldiers allowed some of the Maroons to continue on their way, but that seven of them, including a 15-year old boy, were dragged, blindfolded, into a military vehicle and taken through Tjongalangapassi in the direction of Paramaribo. The names of the persons taken by the soldiers, their place and date of birth, insofar as is known, are as follows: Daison Aloeboetoe, of Gujaba, born June 7, 1960; Dedemanu Aloeboetoe, of Gujaba; Mikuwendje Aloeboetoe, of Gujaba, born February 4, 1973; John Amoida, of Asindonhopo (resident of Gujaba); Richenel Voola, alias Aside or Ameikanbuka, of Grantatai (found alive); Martin Indisie Banai, of Gujaba, born June 3, 1955; and, Beri Tiopo, of Gujaba **(cf. paras. 65 and 66, *infra*)**.

5. The petition goes on to state that the vehicle stopped when it came to Kilometer 30. The soldiers ordered the victims to get out or forcibly dragged them out of the vehicle. They were given a spade and ordered to start digging. Aside was injured while trying to escape, but was not followed. The other six Maroons were killed.

6. The petition states that on Saturday, January 2, 1988, a number of men from Gujaba and Grantatai set out for Paramaribo to seek information on the seven victims from the authorities. They called on the Coordinator of the Interior at Volksmobilisatie and on the Military Police at Fort Zeeland, where they tried to see the Head of S-2. Without obtaining any information regarding the whereabouts of the victims, they returned to Tjongalangapassi on Monday, January 4. At Kilometer 30 they came across Aside, who was seriously wounded and in critical condition, and the bodies of the other victims. Aside, who had a bullet in his right thigh, pointed out that he was the sole survivor of the massacre, the victims of which had already been partially devoured by vultures. Aside's wound was infested with maggots and his right shoulder blade bore an X-shaped cut. The group returned to Paramaribo with the information. After 24 hours of negotiations with the authorities, the representative of the International Red Cross obtained permission to evacuate Mr. Aside. He was admitted to the Academic Hospital of Paramaribo on January 6, 1988, but died despite the care provided. The Military Police prevented his relatives from visiting him in the hospital. It was not until January 6, that the next of kin of the other victims were granted permission to bury them.

7. The original petitioner asserted that he spoke twice with Aside about the events and that Aside's version of what took place concurs with that obtained from the eyewitnesses and the members of the search-party.

8. The memorial of the Commission contains all the documentation on the instant case. Proceedings were initiated by the Commission on February 1, 1988, and continued until May 15, 1990. On that date, pursuant to Article 50 of the Convention, the Commission drew up Report No. 03/90 which decided the following:

1. To admit the present case.

2. To declare that the parties have been unable to achieve a friendly settlement.

3. To declare that the Government of Suriname has failed to fulfill its obligations to respect the rights and freedoms contained in the American Convention on Human Rights and to assure their enjoyment as provided for in Articles 1 and 2 of the same instrument.

4. To declare that the Government of Suriname violated the human rights of the subjects of this case as provided for by Articles 1, 2, 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 25(1), and 25(2) of the American Convention on Human Rights.

5. To recommend to the Government of Suriname that it take the following measures:

a. Give effect to Articles 1 and 2 of the Convention by assuring respect for and enjoyment of the rights contained therein;

b. Investigate the violations that occurred in this case and try and punish those responsible for their occurrence;

c. Take necessary measures to avoid their reoccurrence;

d. Pay a just compensation to the victims' next of kin.

6. To transmit this report to the Government of Suriname and to provide the Government with 90 days to implement the recommendations contained herein. The 90 day period shall begin as of the date this report is sent. During the 90 days in question the Government may not publish this report, in keeping with Article 47(6) of the Commission's Regulations.

7. To submit this case to the Inter-American Court of Human Rights in the event that the Government of Suriname should fail to implement all of the recommendations contained in numeral 5 above.

9. In its memorial of April 1, 1991, the Commission requested the following of the Court:

That the honorable Court find the State of Suriname responsible for the deaths of Messrs. Aloeboetoe, Daison; Aloeboetoe, Dedemanu; Aloeboetoe, Mikuwendje; Amoida, John; Voola, Richenel, alias Aside; Ameikanbuka (found alive); Banai, Martin Indisie; and, Tiopo, Beri, while in detention, and hold that these deaths violate Articles 1(1) (2), 4(1), 5(1) (2), 7(1) (2) (3) and 25 of the American Convention on Human Rights.

That the Court find that Suriname must pay adequate reparation to the victims' next of kin and, consequently, order the following: payment of indemnization for indirect damages and loss of earnings; reparation for moral damages, including the payment of compensation and adoption

> of measures to restore the good name of the victims; and, the investigation of the crime committed, with due punishment for those found to be guilty (...)
>
> That the Court order Suriname to pay the costs incurred by the Commission and the victims in the instant case.

10. Suriname's counter-memorial was received by the Court on June 28, 1991. In it, the Government interposed preliminary objections.

The document presented by the Government requested that the Court declare that:

> 1. Suriname cannot be held responsible for the disappearance and death of the persons named by the Commission.
>
> 2. In view of the fact that it has not been proved that the violation attributed to Suriname was committed, Suriname should not have to pay compensation of any type whatsoever for the death and disappearance of the persons listed in the Commission's report.
>
> 3. Suriname be exempted from the payment of costs in the instant case, since its responsibility for the executions attributed to it has not been demonstrated.

11. At the public hearing convened by the Court on December 2, 1991, to deal with the preliminary objections, Suriname accepted its responsibility in the instant case (*Aloeboetoe et al. Case, supra* introductory paragraph, para. 22).

12. As a result, in its judgment of December 4, 1991, the Court unanimously

> 1. Notes the admission of responsibility proffered by the Republic of Suriname and finds that the dispute relating to the facts giving rise to the instant case has now been concluded.
>
> 2. Decides to retain the case on its docket in order to fix reparations and costs.
>
> (*Aloeboetoe et al. Case, supra* introductory paragraph, operative part.)

II

13. By order of January 18, 1992, the President of the Court (hereinafter "the President") granted the Commission until March 31, 1992, to offer and submit the evidence at its disposal regarding reparations and costs in the instant case; he gave the Government until May 15, 1992, to present its observations on the Commission's submission. In that order, the President also summoned the parties to a public hearing on the subject, to be held at 10:00 a.m. on June 23, 1992. At the request of the Commission and with the Government's agreement, the President on March 24, 1992, agreed to postpone the aforementioned hearing until July 7, 1992, at the same hour.

14. The Commission presented its brief on reparations and costs on March 31, 1992, with the Spanish translation following on May 8.

15. In its brief, the Commission maintains that, under Article 63(1) of the American Convention and the applicable principles of international law, the Government must compensate the injured

party for damages resulting from its failure to fulfill its obligations on the basis of the rule of *restitutio in integrum*. In the Commission's opinion, the Government should indemnify for material and moral damages, grant other, non-monetary reparations and reimburse the expenses and costs incurred by the victims' next of kin. The Commission's brief refers to the amount of the damages and costs, proposes a method of payment and lists the non-monetary measures requested by the families of the victims.

16. The Commission makes a distinction between the compensation for material damages payable to the minor children of the persons killed and that payable to their adult dependents. It proposes the establishment of a trust fund for the minor children, the basic value of which would consist of a sum proportional to the estimated projected income of the victim, after deducting what would have been the victim's own living expenses. The foregoing would be determined by applying the current or present value method. According to the Commission, this method entails the application of generally acceptable principles that are compatible with international law. As for the adult dependents, the Commission requests that a lump sum be placed in a trust fund, to become due and payable on the date of the judgment. The amount thereof would be calculated on the basis of the income that the victims had at the time of their death. Alternatively, said sum could be made available through annual payments in securities that maintain their purchasing power, to be continued until the death of the beneficiaries. The sums claimed in Surinamese florins (hereinafter *"Sf"*) must be adjusted to reflect the current value of that currency, since they were calculated on the basis of *"1988 monetary values"*.

17. With regard to the persons who would be entitled to compensation for actual damages, the Commission explains that it is necessary to take into account the family structure of the Maroons, of which the Saramacas (the tribe to which the victims belonged) are a part. It is essentially a matriarchal structure, where polygamy is common. In Suriname, marriages must be registered in order to be recognized by the State. Due to the dearth of registry offices in the interior of the country, however, that requirement is generally not met. The Commission is of the opinion that this should not affect the right to compensation of the relatives or spouses of unregistered marriages. It is argued that the care of family members is entrusted to a communal group organized along maternal lines; this is something that should be borne in mind in determining which of the relatives should be compensated. The direct, personal damages of a monetary nature that give rise to compensatory rights should be measured principally by the degree of financial dependence that existed between the claimant and the deceased. The list of aggrieved parties entitled to compensation was drawn up by the Commission partly on the basis of sworn statements by the next of kin of the victims.

18. According to the Commission, the Government would also be under the obligation to make reparation for moral damages suffered as a result of the severe psychological repercussions that the killings had on the relatives of the victims, the working men who represented their main or only source of income.

The Government's failure to react, investigate or punish these deeds is presented as an indication of the little value it places on the lives of the Maroons, a fact that has wounded their dignity and self-confidence. In six of the seven cases, the bodies of the victims were not returned for burial, the authorities gave no information as to where they might be found, they could not be identified and no death certificates were issued.

19. The Commission argues that the Saramacas also suffered direct moral damages and should be compensated. According to the Commission,

> In the traditional Maroon society, a person is not only a member of his own family group, but also

> a member of the village community and of the tribal group. In this case, the damages suffered by the villagers due to the loss of certain members of its group must be redressed. Since the villagers, in practice, constitute a family in the broad sense of that term ... they have suffered direct emotional damages as a result of the violations of the Convention.

The deeds for which the Government accepted responsibility appear to have caused damages to the Saramaca tribe, aggravated by the Government's subsequent actions in not recognizing "*the rights of the Bushnegroes*". In the Commission's opinion, a conflictive relationship appears to have existed between the Government and the Saramaca tribe and the killings occurred as a consequence of that situation.

20. The Commission states that the families of the victims demand that certain non-pecuniary provisions be made. For example, they ask that the President of Suriname apologize publicly for the killings; that the chiefs of the Saramaca tribe be invited to come before the Congress of Suriname to receive an apology; and, that the Government publish the operative part of this judgment. They also request the Government to exhume the bodies of the six victims and return them to their respective families; to name a park, square or street in a prominent section of Paramaribo after the Saramaca tribe; and, to investigate the murders committed and punish the guilty parties.

21. The Commission demands that the Government pay the expenses and costs incurred by the families of the victims in asserting their rights before the courts of Suriname, the Commission, and the Court.

In its brief, the Commission describes some aspects of that endeavor, which included a visit to Suriname by the attorney representing the victims, a visit to the interior of the country by part of Moiwana 86, the appointment of research assistants to prepare the three hearings for the case before the Commission and the initial memorandum to the Court, and the hiring of an associate professor to take over the university course that the victims' attorney was unable to give because of his work on this case.

22. The Commission's brief concludes that:

> In view of the foregoing, the Commission on Human Rights and the attorneys representing the victims' families respectfully request that the Court order the payment of the following amounts:
>
> A lump sum of Sf. 5,114,484 broken down as follows:
>
> Sf. 1,114,484 for material damages, to the children;
>
> Sf. 660,000 for moral damages, to the children;
>
> Sf. 1,340,000 for moral damages, to the adult dependents;
>
> Sf. 2,000,000 for moral damages, to the tribe of the victims.
>
> an annual sum of Sf. 84,040, adjusted incrementally, for actual damages payable to the adult dependents; lump sums of Sf. 715,618 and US$ 18,533 to cover legal costs; and, a lump sum of US$ 32,375 for expenses.
>
> In order to preserve the purchasing power of the amounts listed in Surinamese currency, we respectfully ask the Court to order the Government to provide access to the official rate of exchange. Otherwise, the sums involved will have to be recalculated at the market rate of exchange of 20:1.

The Court has confirmed that discrepancies exist between the English and Spanish versions of the Commission's brief, as well as between the figures and names as they appear in the text and in its attachments.

23. On May 13, 1992, the Agent of Suriname requested the President to grant an extension of the time limit set for the Government to submit its observations on the Commission's brief regarding reparations and costs, in view of the fact that the official Spanish version was transmitted to the Agent on May 12, 1992, "*exactly three days before the deadline fixed by the Court*" for the Government's submission. The President acceded to the request and determined that the observations should be submitted to the Secretariat by May 22, 1992, at the latest.

The Government presented its observations on Monday, May 25, 1992, that is, on the first working day after expiration of the time limit. In them, the Government argues that the fact that the Commission submitted its brief on the reparations and costs in the English language and that the Spanish translation was delivered to the Agent four days before expiration of the deadline fixed by the Court "*resulted in an indirect reduction of the time limit granted ... for presentation of its countermemorial and to some degree impaired once again our defense before that Court*" (underlined in the original), since Suriname had barely ten days in which to respond to the Commission's brief on reparations and costs.

24. The communication emphasizes the importance of Suriname's express admission to the Court of its responsibility in the instant case. This action by Suriname has its "*fundamental basis*" in the fact that the country had, on May 25, 1991, retaken the road to democracy and that its President, Dr. Venetiaan, had committed himself "*to respect and promote the observance of the obligations comprised in the area of human rights*". It recalls that, in its 1991 Annual Report, the Commission declared that it had received no complaints of alleged violations of human rights since the accession of President Venetiaan.

25. The Government does not seek to disavow the responsibility it accepted before the Court. However, it considers the reparations and costs demanded by the Commission to be excessively burdensome and "*a distortion of the meaning of the provisions of Article 63(1) of the Convention*". It adds that the potential income of the victims as presented by the Commission has no bearing on reality.

26. Suriname points out that its domestic legislation only permits it to make payments in the national currency. Consequently, it shall use that coin to pay all of the financial obligations that this judgment may impose.

27. As for the compensation for actual damages suffered, the Government declares that such compensation should be based on the American Convention and the applicable principles of international law, as the Court indicated in the *Godínez Cruz Case* (***Godínez Cruz Case, Compensatory Damages, Judgment of July 21, 1989,*** **(Art. 63(1) American Convention on Human Rights). Series C. No. 8, para. 29**). The customary norms of the Saramaca Tribe should not be binding in fixing the amount of compensation to be granted to the victims' next of kin, whose family relationship must be determined by reference to the American Convention and the applicable principles of international law.

28. Suriname accepts the compensation for moral damages and relies on the precedents established in the *Velásquez Rodríguez* and *Godínez Cruz* cases, where such compensation was granted after the psychological damages of the family members of the victims had been substantiated by expert medical testimony (***Velásquez Rodríguez Case, Compensatory Damages,***

Judgment of July 21, 1989, (Art. 63(1) American Convention on Human Rights). **Series C No. 7, para. 51;** *Godínez Cruz Case, Compensatory Damages, supra* **27, para. 49).** According to the Government, this was not done in the instant case, no evidence having been produced on the subject.

29. Suriname objects to the Commission's request to compensate the Saramaca Tribe for moral damages because this claim was not presented during the proceedings on the merits. In its brief, the Government states the following:

> To admit new claims for compensation during the current COMPENSATORY DAMAGES phase would be to accept the violation of a new international obligation (which the Commission to this date has neither identified nor attributed) that had not been presented by the Commission in its previous briefs and had neither been analyzed by the Court during the various phases of the proceedings nor contested by Suriname's defense during the prior hearings (apart from the fact that this deprives the government of its defense).

30. The Government argues that the Commission works with outside attorneys, who are listed as lawyers for the victims, in order to perform tasks that should have been done by its own officials. Fees for such services amount to 250 United States of America Dollars (hereinafter "dollars" or "US$") per hour, a rate that bears no relationship to prevailing conditions in the "*inter-American*" system. Furthermore, the families of the victims did not file any claims in the Surinamese courts and the Commission was seized of the case a mere fifteen days after the events had taken place.

31. As for the non-pecuniary reparations requested by the Commission, the Government believes that the acceptance of its responsibility, made public in the Court's judgment of December 4, 1991, is a significant and important form of reparation and moral satisfaction for the families of the victims and the Saramaca Tribe.

32. In its brief, Suriname challenges the experts proffered by the Commission to testify at the hearing scheduled for July 7, 1992. It states that such experts should have provided a sworn affidavit -- for which the procedural stage had already expired -- and that only the testimony of witnesses would be admissible at the hearing. The Government provides supporting proof in its brief.

33. In its conclusion, Suriname's brief declares the following:

> Suriname wishes to inform the Court that, in its opinion, compensation in this contentious case should basically cover in-kind reparations, such as the opportunity to obtain, free of charge, housing, agricultural property, social security, labor, medical, and educational benefits. Suriname is, in consequence, prepared to grant the families of the victims the aforementioned reparations within a reasonable period. These would be treated as part of the fair compensatory damages that the Court may order to be paid.

34. The Government considers that the standards of compensation put forward by the Commission are not in line with the current social and economic reality in Suriname. It adds that Suriname has come before the Court "*in order to correct the erroneous path followed in the past by former governments, as well as to demonstrate to the Court and to the international community the seriousness of President Venetiaan's intentions with regard to the protection of human rights*", a position that must not serve as a pretext to impose on the country compensations in the millions that will only impoverish it further.

III

35. In view of the statements of the parties, the evidence presented and Suriname's objection to the expert witnesses proposed by the Commission, on June 19, 1992, the President decided that the purpose of the hearing convened for July 7, 1992 (**see para. 13, *supra***), would be to hear the arguments of Suriname and the observations of the Commission regarding the objection filed and, if appropriate, to receive the testimony offered by the parties and hear the views of the parties concerning reparations and costs.

36. The public hearing on reparations and costs was held at the seat of the Court on July 7, 1992.

There appeared before the Court

a) for the Government of Suriname:

Carlos Vargas-Pizarro, Agent
Fred M. Reid, Representative of the Ministry of Foreign Affairs
Jorge Ross-Araya, Attorney-Adviser

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

Oliver H. Jackman, Delegate
David J. Padilla, Delegate
Claudio Grossman, Adviser

c) called at the request of the Commission:

Richard Price
Stanley Rensch

d) called at the request of the Government:

Ramón de Freitas.

37. At the hearing, the Court rejected the objections filed by Suriname and heard the testimony, while "*reserving the right to consider it at a later date*". The witnesses and experts proffered by the parties responded to the questions put to them by the parties and the judges.

38. During these proceedings, an *amicus curiae* brief was received from the International Commission of Jurists.

IV

39. In view of the fact that more detailed information was required in order to be able to fix the amount of the compensation and costs, the President, after consulting with the Permanent

Commission, on September 24, 1992, decided to have the Court avail itself of the services of Mr. Christopher Healy and Ms. Merina Eduards as experts. By order of March 16, 1993, the Court decided to "*... at the appropriate time make available to the parties the information supplied by the experts in this case*". The Court also requested clarifications and additional information of the parties.

On March 18, 1993, the Court asked the Commission to transmit "*a final list of the correct names of the persons it contends are the children and spouses of the victims*" in this case. On March 20, 1993, the Court asked the Government to send "*to the Court whatever information and observations the Government of Suriname deems advisable to submit in this regard*". A final list containing the names of the wives, children, and other dependents of the victims was drawn up by the Commission on April 8, 1993, and delivered to the Secretariat of the Court on the 14th of that month. By note of April 26, 1993, the President granted the Government a period of 20 days to present its observations regarding the documents transmitted by the Commission to the Court. The Government made no observations, nor did it present the information it had been requested to provide.

40. During the Special Session of the Court held from March 15 to 18, 1993, it was decided that the Deputy Secretary, Ana María Reina, would travel to Suriname in order to gather additional information regarding the economic, financial, and banking situation of the country. She would also visit the village of Gujaba to obtain data that would enable the Court to deliver a judgment taking into account the prevailing conditions in Suriname. This decision was communicated to the parties.

The information and data gathered during this visit through interviews and documents, both in Paramaribo and in the village of Gujaba, have also been utilized by the Court to fix the amount of compensation.

V

41. The Court has jurisdiction to decide on the payment of reparations and costs in the instant case. Suriname has been a State Party to the American Convention since November 12, 1987, date on which it also accepted the contentious jurisdiction of the Court. The Commission submitted the case to the Court pursuant to Articles 51 and 61 of the American Convention and 50 of its Regulations, and the Court decided the case on the merits on December 4, 1991.

VI

42. In the instant case, Suriname has accepted its responsibility for the events described in the Commission's memorial. Consequently, as the Court stated in its judgment of December 4, 1991, "*the dispute relating to the facts giving rise to the instant case has now been concluded*". (***Aloeboetoe et al. Case, supra*** **introductory paragraph, para. 23**). This means that the facts presented in the memorial of the Commission dated August 27, 1990, are deemed to be true. Nevertheless, there is disagreement between the parties as to other facts which relate to the reparations and their scope. The dispute over these matters will be decided by the Court in the instant judgment.

43. The provision applicable to reparations is Article 63(1) of the American Convention, which reads as follows:

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

This article codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law, as has been recognized by this Court (cf. *Velásquez Rodríguez Case, Compensatory Damages, supra* 28, para. 25; *Godínez Cruz Case, Compensatory Damages, supra* 27, para. 23) and the case law of other tribunals (cf. *Factory at Chorzów, Jurisdiction,* Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; *Factory at Chorzów, Merits,* Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase,* Advisory Opinion, I.C.J., Reports 1950, p. 228).

44. The obligation contained in Article 63(1) of the Convention is governed by international law in all of its aspects, such as, for example, its scope, characteristics, beneficiaries, etc. Consequently, this judgment must be understood to impose international legal obligations, compliance with which shall not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law (cf. *Velásquez Rodríguez Case, Compensatory Damages, supra* 28, para. 30; *Godínez Cruz Case, Compensatory Damages, supra* 27, para. 28; *Jurisdiction of the Courts of Danzig,* Advisory Opinion, 1928, P.C.I.J., Series B, No. 15, pp. 26 and 27; *Greco-Bulgarian "Communities",* Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, pp. 32 and 35; *Free Zones of Upper Savoy and the District of Gex,* Order of 6 December 1930, P.C.I.J., Series A, No. 24, p. 12; *Free Zones of Upper Savoy and the District of Gex,* Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 167; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory,* Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, p. 24).

VII

45. Having determined that the obligation to make reparation falls under international law and is governed by it, the Court considers it advisable to carefully analyze the scope of that compensation.

46. Article 63(1) of the Convention makes a distinction between the behavior that must be followed by the State responsible for the violation from the moment that the Court passes judgment and the consequences of that same State's attitude in the past, that is, while the violation was in process. As regards the future, Article 63(1) provides that the injured party shall be ensured the enjoyment of the right or freedom that was violated. As for the past, the provision in question empowers the Court to impose reparations for the consequences of the violation and a fair compensation.

In matters involving violations of the right to life, as in the instant case, reparation must of necessity be in the form of pecuniary compensation, given the nature of the right violated (*Velásquez Rodríguez Case, Judgment of July 29, 1988.* Series C No. 4, para. 189; *Godínez Cruz Case, Judgment of January 20, 1989.* Series C No. 5, para. 199).

47. The Commission interprets Article 63(1) of the Convention as instituting the obligation to reestablish the *status quo ante.* In another part of its brief, the Commission refers to *restitutio in*

integrum, which it seems to equate to the reestablishment of the *status quo ante*. Regardless of the terms employed, the Commission affirms that the compensation to be paid by Suriname shall be in an amount sufficient to remedy all the consequences of the violations that took place.

48. Before analyzing these rules in their legal context, it is important to reflect on human actions in general and how these occur in practice.

Every human act produces diverse consequences, some proximate and others remote. An old adage puts it as follows: *causa causæ est causa causati*. Imagine the effect of a stone cast into a lake; it will cause concentric circles to ripple over the water, moving further and further away and becoming ever more imperceptible. Thus it is that all human actions cause remote and distant effects.

To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible, since that action caused effects that multiplied to a degree that cannot be measured.

49. For a long time, the law has addressed the subject of how human actions occur in practice, what their effects are and what responsibilities they give rise to. On the international plane, the arbitral award in the case of *Alabama* already dealt with this question (**Moore, *History and Digest of International Arbitrations to which the United States has been a Party*, Washington, D.C., 1898, vol. I, pp. 653-659**).

The solution provided by law in this regard consists of demanding that the responsible party make reparation for the immediate effects of such unlawful acts, but only to the degree that has been legally recognized. As for the various forms and modalities of effecting such reparation, on the other hand, the rule of *restitutio in integrum* refers to one way in which the effect of an international unlawful act may be redressed, but it is not the only way in which it must be redressed, for in certain cases such reparation may not be possible, sufficient or appropriate (**cf. *Factory at Chorzów*, merits, *supra* 43, p. 48**). The Court holds that this is the interpretation that must be given to Article 63(1) of the American Convention.

VIII

50. It has already been stated that insofar as the right to life is concerned, it is impossible to reinstate the enjoyment of that right to the victims. In such cases, reparation must take other, alternative forms, such as pecuniary compensation (**para. 46, *supra***).

This compensation refers primarily to actual damages suffered. According to arbitral case law, it is a general principle of law that such damages comprise both indirect damages and loss of earnings (**cf. *Chemin de fer de la baie de Delagoa*, sentence, 29 mars 1900, Martens, Nouveau Recueil Général de Traités, 2éme Série, t. 30, p. 402; *Case of Cape Horn Pigeon*, 29 November 1902, Papers relating to the Foreign Relations of the United States, Washington, D.C.: Government Printing Office, 1902, Appendix I, p. 470**). Compensation shall furthermore include the moral damages suffered by the victims. The Permanent Court of International Justice so held (***Treaty of Neuilly, Article 179, Annex, Paragraph 4 (Interpretation)*, Judgment No. 3, 1924, P.C.I.J., Series A, No. 3, p. 9**), as did the arbitral tribunals (***Maal Case*, 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732 and 733; and, *Campbell Case*, 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158**).

51. In the instant case, the victims who died at Tjongalangapassi suffered moral damages when they were abused by an armed band which deprived them of their liberty and later killed them. The beatings received, the pain of knowing they were condemned to die for no reason whatsoever, the torture of having to dig their own graves are all part of the moral damages suffered by the victims. In addition, the person who did not die outright had to bear the pain of his wounds being infested by maggots and of seeing the bodies of his companions being devoured by vultures.

52. In the Court's opinion, it is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion; the acknowledgement of responsibility by Suriname suffices.

53. The actual damages are analyzed starting in paragraph 88 *et seq*.

IX

54. The damages suffered by the victims up to the time of their death entitle them to compensation. That right to compensation is transmitted to their heirs by succession.

The damages payable for causing loss of life represent an inherent right that belongs to the injured parties. It is for this reason that national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death. In that jurisprudence a distinction is made between successors and injured third parties. With respect to the former, it is assumed that the death of the victim has caused them actual and moral damages and the burden of proof is on the other party to show that such damages do not exist. Claimants who are not successors, however, must provide specific proof justifying their right to damages, as explained below (**cf. para. 68,** ***infra***).

55. In the instant case, there is some difference of opinion between the parties as to who the successors of the victims are. The Commission urges that this decision be made with reference to the customs of the Saramaca Tribe, whereas Suriname requests that its civil law be applied.

The Court earlier stated that the obligation to make reparation provided in Article 63(1) of the American Convention is governed by international law, which also applies to the determination of the manner of compensation and the beneficiaries thereof (**para. 44,** ***supra***). Nevertheless, it is useful to refer to the national family law in force, for certain aspects of it may be relevant.

56. The Saramacas are a tribe that lives in Surinamese territory and was formed by African slaves fleeing from their Dutch owners. The Commission's brief affirms that the Saramacas enjoy internal autonomy by virtue of a treaty dated September 19, 1762, which granted them permission to be governed by their own laws. It also states that these people "*acquired their rights on the basis of a treaty entered into with the Netherlands, which recognizes, among other things, the local authority of the Saramacas over their own territory*". The text of the treaty is attached to the brief in question, which adds that "*the obligations of the treaty are applicable, by succession, to the State of Suriname*".

57. The Court does not deem it necessary to investigate whether or not that agreement is an international treaty. Suffice it to say that even if that were the case, the treaty would today be null and void because it contradicts the norms of *jus cogens superveniens*. In point of fact, under that treaty

the Saramacas undertake to, among other things, capture any slaves that have deserted, take them prisoner and return them to the Governor of Suriname, who will pay from 10 to 50 florins per slave, depending on the distance of the place where they were apprehended. Another article empowers the Saramacas to sell to the Dutch any other prisoners they might take, as slaves. No treaty of that nature may be invoked before an international human rights tribunal.

58. The Commission has pointed out that it does not seek to portray the Saramacas as a community that currently enjoys international juridical status; rather, the autonomy it claims for the tribe is one governed by domestic public law.

The Court does not deem it necessary to determine whether the Saramacas enjoy legislative and jurisdictional autonomy within the region they occupy. The only question of importance here is whether the laws of Suriname in the area of family law apply to the Saramaca Tribe. On this issue, the evidence offered leads to the conclusion that Surinamese family law is not effective insofar as the Saramacas are concerned. The members of the tribe are unaware of it and adhere to their own rules. The State for its part does not provide the facilities necessary for the registration of births, marriages, and deaths, an essential requirement for the enforcement of Surinamese law. Furthermore, the Saramacas do not bring the conflicts that arise over such matters before the State's tribunals, whose role in these areas is practically non-existent with respect to the Saramacas. It should be pointed out that, in the instant case, Suriname recognized the existence of a Saramaca customary law.

The only evidence produced to the contrary is the statement made by Mr. Ramón de Freitas. However, the manner in which that witness testified, his attitude during the hearing and the personality he revealed led the Court to develop an opinion of the witness that persuaded it to reject his testimony.

59. The Commission has produced information on the social structure of the Saramacas indicating that the tribe displays a strongly matriarchal familial configuration where polygamy occurs frequently. The principal group of relatives appears to be the "bêè", composed of all the descendants of one single woman. This group assumes responsibility for the actions of any of its members who, in theory, are each in turn responsible to the group as a whole. This means that the compensation payable to one person would be given to the "bêè", whose representative would distribute it among its members.

60. The Commission also requests compensation for the injured parties and the distribution of such compensation among them. On examining the Commission's brief, it is evident that the identification of the beneficiaries of such compensation has not been carried out in accordance with Saramaca custom, at least not as the Commission has described it before the Court. It is impossible to determine what legal norm the Commission applied for this purpose. It would appear that the Commission simply took a pragmatic approach.

Likewise, on the matter of the amount of compensation and its distribution, the Commission's brief asserts that it resorted to an "*equilibrium system*" which took the following factors into account: the age of the victim, his actual and potential income, the number of his dependents and the customs and petitions of the "Bushnegroes".

61. The I.L.O. Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989) has not been accepted by Suriname. Furthermore, under international law there is no conventional or customary rule that would indicate who the successors of a person are. Consequently, the Court has no alternative but to apply general principles of law (Art. 38(1)(c) of the Statute of the International Court of Justice).

62. It is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children. If there is no spouse or children, private common law recognizes the ascendants as heirs. It is the Court's opinion that these rules, generally accepted by the community of nations, should be applied in the instant case, in order to determine the victims' successors for purposes of compensation.

These general legal principles refer to "children", "spouse", and "ascendants". Such terms shall be interpreted according to local law. As already stated (**para. 58,** ***supra***), here local law is not Surinamese law, for the latter is not effective in the region insofar as family law is concerned. It is necessary, then, to take Saramaca custom into account. That custom will be the basis for the interpretation of those terms, to the degree that it does not contradict the American Convention. Hence, in referring to "ascendants", the Court shall make no distinction as to sex, even if that might be contrary to Saramaca custom.

63. It has proved extremely difficult to identify the children, spouses, and, in some cases, the ascendants of the victims in this case. These are all members of a tribe that lives in the jungle, in the interior of Suriname, and speaks only its own native tongue. Marriages and births have in many cases not been registered. In those cases where they have, sufficient data have not been provided to fully document the relationship between persons. The matter of identification becomes even more complex in a community which practices polygamy.

64. In its observations, Suriname has presented a general critique of the Commission's brief as regards the evidence it presents. The Government asserts the following:

> ... we need to know, based on rational and certainly verifiable data, specifics on all the victims, insofar as the family members left unprotected are concerned ...

It is true that a person's identity must, as a general rule, be proved by means of relevant documentation. However, the situation in which the Saramacas find themselves is due in great measure to the fact that the State does not provide sufficient registry offices in the region; consequently, it is unable to issue documentation to all its inhabitants on the basis of the data contained therein. Suriname cannot, therefore, demand proof of the relationship and identity of persons through means that are not available to all of its inhabitants in that region. In addition, Suriname has not here offered to make up for its inaction by providing additional proof as to the identity and relationship of the victims and their successors.

In order to clarify the information available on the successors, the Court requested the Commission to provide complementary data about them. Considering the circumstances surrounding the instant case, the Court believes that the evidence supplied is credible and can be admitted.

65. The information provided by the Commission nevertheless contains some discrepancies between the names of the victims and the way these appeared in the petition (**see para. 4,** ***supra***). Thus, Deede-Manoe Aloeboetoe appears in the petition as Dedemanu Aloeboetoe; this can be explained by the fact that both names are pronounced in the same way. The name of Bernard Tiopo appears in the petition as Beri Tiopo, which was one of his nicknames or sobriquets, for he was known as Beri or Finsié. There has also been some confusion as to the name of Indie Hendrik Banai, who originally appeared as Martin Indisie Banai, though his identification has never been questioned. As for a victim who was listed in the petition as John Amoida, he was a son of Pagai Amoida and was known as Asipee Adame. His identification also presented no questions.

66. In accordance with the foregoing, it has been possible to establish a list of the successors of the victims. That list reflects the situation at the time of the killings. Consequently, it includes persons who have since died and excludes those spouses who at the time were divorced from the victims.

Daison Aloeboetoe

His wives:	his children:
Wenke Asodanoe	Podini Asodanoe Maradona Asodanoe
Aingifesie Aloeboetoe	Leona Aloeboetoe

Deede-Manoe Aloeboetoe

His wives:	his children:
Asoidamoeje Tiopo	Klucion Tiopo
Norma Aloeboetoe	Moitia Foto

Mikuwendje Aloeboetoe

His mother: Andeja Aloeboetoe
His father: Masatin Koedemoesoe

Richenel Voola

His wives:	his children:
Mangoemaw Adjako (deceased)	Stefan Adjako Bertholina Adjako John Adjako Godfried Franklin Adjako Pamela Jaja Adjako
Senda Palestina Esje Lugard	Baba Tiopo

Indie Hendrik Banai

His wife:	his children:
Adelia Koedemoesoe	Elbes Koedemoesoe Chris Enoi Vorswijk Aike Karo Vorswijk Robert Vorswijk Etty Vorswijk

Etmelia Adipi
Jenny Alfonsoewa

<u>Bernard Tiopo</u>

His wives: his children:

Dina Abauna — Bakapina Abauna

Ajemoe Sampi — Seneja Sampi
Arisin Sampi
Maritia Vivian Sampi

Anthea Vorswijk
Apintimonie Vorswijk

Glenda Lita Toy

<u>Asipee Adame</u>

His father: Pagai Amoida
His mother: Aoedoe Adame (deceased on May 29, 1989)

X

67. The obligation to make reparation for damages caused is sometimes, and within the limits imposed by the legal system, extended to cover persons who, though not successors of the victims, have suffered some consequence of the unlawful act. This issue has been the subject of numerous judgments by domestic courts. Case law nevertheless establishes certain conditions that must be met for a claim of compensatory damages filed by a third party to be admitted.

68. First, the payment sought must be based on payments actually made by the victim to the claimant, regardless of whether or not they constituted a legal obligation to pay support. Such payments cannot be simply a series of sporadic contributions; they must be regular, periodic payments either in cash, in kind, or in services. What is important here is the effectiveness and regularity of the contributions.

Second, the nature of the relationship between the victim and the claimant should be such that it provides some basis for the assumption that the payments would have continued had the victim not been killed.

Lastly, the claimant must have experienced a financial need that was periodically met by the contributions made by the victim. This does not necessarily mean that the person should be indigent, but only that it be somebody for whom the payment represented a benefit that, had it not been for the victim's attitude, it would not have been able to obtain on his or her own.

69. The Commission has submitted a list of 25 persons who, while not successors of the victims, claim compensatory damages as their dependents. According to the Commission, they are persons who received financial support from the victims, whether in cash, in kind, or through contributions of personal work.

According to the Commission's brief, the persons listed are relatives of some of the victims, the only exception being a former teacher of one of them.

The Commission presents this information in its brief on reparations and includes a fact sheet on each of the victims. It also adds an affidavit from the father or the mother of each victim. No further proof is offered with regard to the dependency status of the 25 persons, nor the amounts, regularity, effectiveness, or other characteristics of the contributions which the victims purportedly made to those persons.

70. The Commission has repeatedly invoked in its submissions the precedent of the *Lusitania*, a case that was resolved by a mixed Commission composed of the United States and Germany. As regards the claims of the dependents, however, that Commission held that compensation was only in order if the effectiveness and regularity of the contributions made by the victim had been proved **(cf. the cases of *Henry W. Williamson and others and Ellen Williamson Hodges, administratrix of the estate of Charles Francis Williamson*, February 21, 1924, Reports of International Arbitral Awards, vol. VII, pp. 256 and 257 and *Henry Groves and Joseph Groves*, February 21, 1924, Reports of International Arbitral Awards, vol VII, pp. 257-259)**.

71. The Court has earlier made a distinction between the reparations due to the successors and that owed to claimants or dependents. The Court will grant the former the reparations requested, because of the presumption that the death of the victims caused them damages. The burden of proof is therefore on the other party to demonstrate the contrary **(cf. para. 54, *supra*)**. As far as the other claimants or dependents are concerned, however, the *onus probandi* is on the Commission. And the Commission has not, in the opinion of the Court, provided the necessary proof to demonstrate that the conditions have been met.

72. The Court is aware of the difficulties presented by the instant case: the facts involve a community that lives in the jungle, whose members are practically illiterate and do not utilize written documents. Nevertheless, other evidence could have been produced.

73. In view of the foregoing, the Court hereby rejects the claim of compensation for actual damages presented by the dependents.

XI

74. The Commission also seeks compensation for moral damages suffered by persons who, while not successors of the victims, were their dependents.

75. The Court is of the opinion that, as in the case of the reparations for actual damages sought by the dependents, moral damages must in general be proved. The Court considers that in the instant case sufficient proof has not been produced to demonstrate the damages to the dependents.

76. Listed among the so-called dependents of the victims are their parents. The parents of Mikuwendje Aloeboetoe and Asipee Adame have already been declared their successors **(para. 66, *supra*)** and will obtain compensation for moral damages. However, the parents of the other five victims are not in the same situation. Nevertheless, in this particular case, it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child.

77. For these reasons, the Court deems it only appropriate that those victims' parents who have not been declared successors also participate in the distribution of the compensation for moral damages.

78. The beneficiaries of the compensation for moral damages are as follows:

Daison Aloeboetoe
His father: Abinotoe Banai (deceased)
His mother: Ajong Aloeboetoe

Deede-Manoe Aloeboetoe
His father: Abinotoe Banai (deceased)
His mother: Ajong Aloeboetoe

Richenel Voola
His mother: Dadda Aside

Indie Hendrik Banai
His father: Eketo Tiopo
His mother: Goensikonde Banai

Bernard Tiopo
His mother: Angaloemoeje Tiopo

XII

79. The Court considers it appropriate for the next of kin of the victims to be reimbursed for expenses incurred in obtaining information about them after they were killed and in searching for their bodies and taking up matters with the Surinamese authorities. In the specific case of victims Daison and Deede-Manoe Aloeboetoe, the Commission claims equal sums to cover expenses relating to each of them. These victims were brothers. It would seem reasonable to conclude, therefore, that the next of kin took the same steps for both at one and the same time and incurred in a single outlay. The Court consequently finds it appropriate to approve a single reimbursement for the two victims.

In its brief, the Commission indicates that in all cases the expenditures were made by the mother of each victim. For lack of proof to the contrary, the reimbursement shall be paid to these persons.

80. The Commission's brief states that the victims were stripped of some of their assets and belongings at the time of their detention. However, it does not present a claim in this regard and the Court will therefore refrain from analyzing this issue.

XIII

81. The Commission asks the Court to order Suriname to pay the Saramaca Tribe compensation for moral damages and to make certain, non-pecuniary reparations.

Suriname objects to this demand on procedural grounds and maintains that the Commission presented this claim during the stage fixed for the determination of compensation. It had not mentioned this issue in its memorial of April 1, 1991.

The Court does not consider the Government's argument to be well-founded, for in proceedings before an international court a party may modify its application, provided that the other party has the procedural opportunity to state its views on the subject (**cf.: *Factory at Chorzów*, merits, *supra* 43, p. 7; Neuvieme rapport annuel de la Cour permanente de Justice internationale, P.C.I.J., Series E, No. 9, p. 163**).

82. In its brief, and in some of the evidence presented by the Commission, it is implied that the killings were racially motivated and committed in the context of ongoing conflicts that apparently existed between the Government and the Saramaca Tribe.

In the petition dated January 15, 1988, presented to the Commission, it is alleged that

More than 20 unarmed Bushnegroes were severely beaten and tortured in Atjoni. All were male and they were unarmed, but the soldiers suspected that they were members of the Jungle Commando.

The Commission's memorial of April 1, 1991, took up this petition and included it as an integral part of the document. Throughout the proceedings, the statement that the soldiers acted on suspicion that the Saramacas were members of the Jungle Commando was neither amended nor challenged. Consequently, the origin of the events as described in the memorial of April 1, 1991, lies not in some racial issue but, rather, in a subversive situation that prevailed at the time. Although a certain passage of the brief dated March 31, 1992, and the testimony of an expert both refer to the conflicting relationship that appears to have existed between the Government and the Saramacas, in the instant case it has not been proved that the racial factor was a motive for the killings of December 31, 1987. It is true that the victims of the killings all belonged to the Saramaca Tribe, but this circumstance of itself does not lead to the conclusion that there was a racial element to the crime.

83. In its brief, the Commission explains that, in traditional maroon society, a person is a member not only of his or her own family group, but also of his or her own village community and tribal group. According to the Commission, the villagers make up a family in the broad sense. This is why damages caused to one of its members also represent damages to the community, which would have to be indemnified.

As for the argument linking the claim for moral damages to the unique social structure of the Saramacas who were generally harmed by the killings, the Court believes that all persons, in addition to being members of their own families and citizens of a State, also generally belong to intermediate communities. In practice, the obligation to pay moral compensation does not extend to such communities, nor to the State in which the victim participated; these are redressed by the enforcement of the system of laws. If in some exceptional case such compensation has ever been granted, it would have been to a community that suffered direct damages.

84. According to the Commission, the third ground for payment of moral damages to the Saramacas involves the rights that the tribe apparently have over the territory they occupy and the violation of such rights by the army of Suriname when it entered that territory. The Commission has stated that the autonomy acquired by the Saramacas, while originating in a treaty, at the present time is only governed by domestic public law, since no form of international status is sought for the tribe (**cf. para. 58, *supra***). The Commission, then, is basing the right to moral compensation on the alleged violation of a domestic legal norm regarding territorial autonomy.

At these proceedings, the Commission has only presented the 1762 treaty. The Court has already expressed its opinion of this so-called international treaty (cf. **para. 57,** ***supra***). No other provision of domestic law, either written or customary, has been relied upon to establish the autonomy of the Saramacas.

The Court believes that the racial motive put forward by the Commission has not been duly proved and finds the argument of the unique social structure of the Saramaca Tribe to be without merit. The assumption that a domestic rule on territorial jurisdiction was transgressed in order to violate the right to life does not of itself establish the right to moral damages claimed on behalf of the tribe. The Saramacas could raise this alleged breach of public domestic law before the competent jurisdiction; however, they may not present it as a factor that justifies the payment of moral damages to the whole tribe.

XIV

85. In its judgments of July 21, 1989, in the *Velásquez Rodríguez* and *Godínez Cruz* cases, the Court presented its criteria regarding the calculation of the amounts payable in compensation (***Velásquez Rodríguez Case, Compensatory Damages, supra*** **28, para. 40** ***et seq.; Godínez Cruz Case, Compensatory Damages, supra*** **27, para. 38** *et seq.*).

In those decisions, the Court held that when the victim has died and the beneficiaries of the compensation are his heirs, the family members have a current or future possibility of working or receiving income on their own. The children, who should be guaranteed an education until they reach a certain age, will be able to work thereafter. In the Court's opinion, "*[i]t is not correct, then, in these cases, to adhere to rigid criteria ... but rather to arrive at a prudent estimate of the damages, given the circumstances of each case*" (***ibid.,*** **para. 48;** ***ibid.,*** **para. 46**).

86. As for the assessment of compensation for moral damages, the Court, in its judgments of July 21, 1989, stated that "*[i]ndemnification must be based upon the principles of equity*" (***ibid.,*** **para 27;** ***ibid.,*** **para. 25**).

87. In the instant case, the Court has followed the aforementioned precedents. In the matter of compensation for loss of earnings, it has "arrive[d] at a prudent estimate of the damages". As for the moral damages, the Court based these on "principles of equity".

The phrases "prudent estimate of the damages" and "principles of equity" do not mean that the Court has discretion in setting the amounts of compensation. On this issue, the Court has strictly adhered to the methods ordinarily used in the case law and has acted in prudent and reasonable fashion by ordering *in situ* verification by its Deputy Secretary of the figures that served as the basis for its calculations.

88. In order to arrive at the amount of reparations for actual damages to be received by the victims' successors, the method employed was to relate it to the income that the victims would have earned throughout their working life had they not been killed. To that end, the Court decided to make inquiries in order to estimate the income that the victims would have earned during the month of June, 1993, based on the economic activities pursued by each of them. That particular month was selected because it was then that a free exchange market was established in Suriname. In determining the amount of reparations, this made it possible to avoid the distortions produced by a

system of fixed rates of exchange in the face of the inflationary process affecting the country's economy. That situation was in fact undermining confidence in long-term projections. In addition, the data provided by the Commission on the victims' income were not sufficiently documented; it was therefore impossible to use them as the basis for calculation without an *in situ* verification.

89. The Court calculated the annual income of each victim in Surinamese florins and then converted it into dollars at the rate of exchange in effect on the free market.

The annual figure was used to determine the wages that would have accrued during the period from 1988 to 1993, including both of those years. Interest was added as compensation to the sum obtained for each victim, in keeping with the rates in effect on the international market. The resulting amount was increased by the current net value of the expected income during the rest of the working life of each of the victims. In the case of Mikuwendje Aloeboetoe, an adolescent, it was assumed that he would begin to earn a living at the age of 18 and would receive an income similar to that of those listed as construction workers.

90. The calculations made on the basis of the preceding paragraphs produced the following results:

Daison Aloeboetoe	US$	29,173.-
Deede-Manoe Aloeboetoe		26,504.-
Mikuwendje Aloeboetoe		35,988.-
Richenel Voola		19,986.-
Indie Hendrik Banai		55,991.-
Bernard Tiopo		22,716.-
Asipee Adame		42,060.-

91. As regards the reparations for moral damages, the Court believes that, bearing in mind the economic and social position of the beneficiaries, such reparations should take the form of a lump sum payment in the same amount for all the victims, with the exception of Richenel Voola, who was assigned reparation that exceeded that of the others by one third. As has already been stated, Richenel Voola was subjected to greater suffering as a result of his agony. There is nothing to indicate that there were any differences in the injuries and ill-treatment suffered by the other victims.

92. For lack of other data and because it considers it fair, the Court has accepted the total amount claimed by the Commission for moral damages.

The amounts in *Sf* that the Commission claims for each victim have been adjusted by a coefficient representing the fluctuation of domestic prices in Suriname over the period in question. The value in florins was converted into dollars at the free market rate of exchange and then increased to include compensatory interest, calculated at the rate in effect on the international market. The total amount was then distributed among the victims as stipulated in the previous paragraph.

93. The calculations made resulted in the following:

Daison Aloeboetoe	US$	29,070.-
Deede-Manoe Aloeboetoe		29,070.-
Mikuwendje Aloeboetoe		29,070.-
Richenel Voola		38,755.-
Indie Hendrik Banai		29,070.-
Bernard Tiopo		29,070.-

Asipee Adame	29,070.-

94. The expenses incurred by the families as a result of the disappearance of the victims were calculated on the basis of the sums claimed by the Commission, except in the case of the brothers Daison and Deede-Manoe Aloeboetoe, for the reasons explained above. In order to determine the current value of these expenses, the same procedure used to calculate the reparations for moral damages was applied.

95. The results of these calculations are as follows:

Daison Aloeboetoe	US$	1,030.-
Deede-Manoe Aloeboetoe		1,030.-
Mikuwendje Aloeboetoe		242.-
Richenel Voola		1,575.-
Indie Hendrik Banai		1,453.-
Bernard Tiopo		1,453.-
Asipee Adame		726.-

96. The compensation fixed for the victims' heirs includes an amount that will enable the minor children to continue their education until they reach a certain age. Nevertheless, these goals will not be met merely by granting compensatory damages; it is also essential that the children be offered a school where they can receive adequate education and basic medical attention. At the present time, this is not available in several of the Saramaca villages.

Most of the children of the victims live in Gujaba, where the school and the medical dispensary have both been shut down. The Court believes that, as part of the compensation due, Suriname is under the obligation to reopen the school at Gujaba and staff it with teaching and administrative personnel to enable it to function on a permanent basis as of 1994. In addition, the necessary steps shall be taken for the medical dispensary already in place there to be made operational and reopen that same year.

XV

97. As regards the distribution of the amounts fixed for the various types of compensation, the Court considers that it would be fair to apply the following criteria:

a. of the reparations for material damages caused to each victim, one third is assigned to their wives. If there is more than one wife, this amount shall be divided among them in equal parts. Two thirds shall go to the children, who shall also divide their portion equally among themselves if there is more than one child.

b. the reparations for moral damages caused to each victim shall be divided as follows: one half is allocated to the children, one quarter to the wives and the remaining quarter to the parents. If there is more than one beneficiary in any of these categories, the amount shall be divided among them in equal parts.

c. the expenses shall be reimbursed to the person who incurred them, as indicated in the brief of the Commission.

98. In keeping with the above rules, the distribution of reparations and reimbursement of expenses shall be as follows:

Daison Aloeboetoe

to his wives

Wenke Asodanoe............................	US$	8,496.-
Aingifesie Aloeboetoe....................		8,496.-

to his children

Podini Asodanoe............................	US$	11,328.-
Maradona Asodanoe.......................		11,328.-
Leona Aloeboetoe...........................		11,328.-

to his parents

Abinotoe Banai (deceased)............	US$	3,634.-
Ajong Aloeboetoe..........................		4,664.-

Deede-Manoe Aloeboetoe

to his wives

Asoidamoeje Tiopo.........................	US$	8,050.-
Norma Aloeboetoe.........................		8,050.-

to his children

Klucion Tiopo..................................	US$	16,104.-
Moitia Foto......................................		16,104.-

to his parents

Abinotoe Banai (deceased)............	US$	3,633.-
Ajong Aloeboetoe..........................		4,663.-

Mikuwendje Aloeboetoe

to his parents

Andeja Aloeboetoe.........................	US$	32,771.-
Masatin Koedemoesoe....................		32,529.-

<u>Richenel Voola</u>

to his wives

Mangoemaw Adjako (deceased).......	US$	8,173.-
Senda Palestina Esje Lugard...........		8,173.-

to his children

Stefan Adjako..................................	US$	5,451.-
Bertholina Adjako...........................		5,451.-
John Adjako.....................................		5,451.-
Godfried Franklin Adjako................		5,451.-
Pamela Jaja Adjako..........................		5,451.-
Baba Tiopo......................................		5,451.-

to his mother

Dadda Aside....................................	US$	11,263.-

<u>Indie Hendrik Banai</u>

to his wife

Adelia Koedemoesoe......................	US$	25,935.-

to his children

Elbes Koedemoesoe.........................	US$	7,408.-
Chris Enoi Vorswijk.......................		7,408.-
Aike Karo Vorswijk........................		7,408.-
Robert Vorswijk..............................		7,408.-
Etty Vorswijk..................................		7,408.-
Etmelia Adipi..................................		7,408.-
Jenny Alfonsoewa...........................		7,408.-

to his parents

Eketo Tiopo.....................................	US$	3,635.-
Goensikonde Banai.........................		5,088.-

<u>Bernard Tiopo</u>

to his wives

Dina Abauna.....................................	US$	4,946.-
Ajemoe Sampi..................................		4,946.-
Glenda Lita Toy..............................		4,946.-

to his children

Bakapina Abauna..............................	US$	4,947.-
Seneja Sampi....................................		4,947.-
Arisin Sampi....................................		4,947.-
Maritia Vivian Sampi.......................		4,947.-
Anthea Vorswijk..............................		4,947.-
Apintimonie Vorswijk......................		4,947.-

to his mother

Angaloemoeje Tiopo.........................	US$	8,719.-

<u>Asipee Adame</u>

to his parents

Pagai Amoida....................................	US$	35,565.-
Aoedoe Adame (deceased).................		36,291.-

XVI

99. In order to comply with the monetary compensation fixed by this judgment, the Government shall deposit the sum of US$453,102.- (four hundred fifty-three thousand, one hundred two dollars) before April 1, 1994, in the Surinaamse Trustmaatschappij N.V. (Suritrust), Gravenstraat 32, in the City of Paramaribo.

The Government may also fulfill this obligation by depositing the equivalent amount in Dutch Florins. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States Dollar and the Dutch Florin quoted on the New York market on the day before the date of payment.

100. With the funds received, Suritrust shall set up trust funds in dollars for the beneficiaries listed, under the most favorable conditions consistent with banking practice. Any deceased beneficiaries shall be replaced by their heirs.

Two trust funds shall be established, one on behalf of the minor children and the other on behalf of the adult beneficiaries.

A Foundation (hereinafter "the Foundation"), described in paragraphs 103 *et seq*. of this judgment, shall serve as trustee.

101. The trust fund for the minor children shall be set up with the compensation payable to all those unmarried beneficiaries who have still not reached the age of 21.

This trust fund shall continue to operate until such time as the last of the beneficiaries becomes of age or marries. As each of the minor beneficiaries meets those conditions, their

contributions shall become subject to the provisions governing the trust fund for the adult beneficiaries (**para. 102, *infra***).

102. The adult beneficiaries may withdraw up to twenty-five percent (25%) of the sum due to them at the time that the Government of Suriname makes the deposit. The trust fund for the adults shall be set up with the remaining funds. The duration of the trust fund shall be a minimum of three and a maximum of seventeen years; semi-annual withdrawals shall be permitted. The Foundation may set up a different system in special circumstances.

XVII

103. The Court hereby orders the creation of a Foundation, with a view to providing the beneficiaries with the opportunity of obtaining the best returns for the sums received in reparation. The Foundation, a non-profit organization, shall be established in the city of Paramaribo, the capital of Suriname, and shall be composed of the following persons, who have already accepted their appointments and shall carry out their functions *ad honorem*:

Albert Jozef Brahim
Ilse Labadie
John C. de Miranda
Antonius H. te Dorsthorst
John Kent
Rodney R. Vrede
Armand Ronald Tjong A Hung.

104. The Court expresses its appreciation to the persons who have agreed to participate in the Foundation, as a means of contributing to a true and effective protection of human rights in the Americas.

105. At a plenary meeting, the members of the Foundation shall, with the collaboration of the Executive Secretariat of the Court, define their organization, statutes and by-laws, as well as the operational structure of the trust funds. The Foundation shall transmit these documents to the Court after final approval.

The role of the Foundation shall be to act as trustee of the funds deposited in Suritrust and to advise the beneficiaries as to the allocation of the reparations received or of the income they obtain from the trust funds.

106. The Foundation shall provide advice to the beneficiaries. Although the children of the victims are among the principal beneficiaries, this fact does not release their mothers or the guardians in whose charge they may be from the obligation of providing them with assistance, food, clothing and education free of charge. The Foundation shall try to ensure that the compensation received by the minor children of the victims be used to cover subsequent study expenses, or else to create a small capital when they begin to work or get married, and that it only be used for ordinary expenses when grave problems of health or family finances require it.

107. For the operating expenses of the Foundation, the Government of Suriname shall, within thirty days of its establishment, make a one-time contribution in the amount of US$4,000 (four thousand dollars) or its equivalent in local currency at the selling rate of exchange in force on the free market at the time of such payment.

108. Suriname shall not be permitted to restrict or tax the activities of the Foundation or the operation of the trust funds beyond current levels, nor shall it modify any conditions currently in force nor interfere in the Foundation's decisions, except in ways that would be favorable to it.

XVIII

109. As the Court stated in the *Velásquez Rodríguez* and *Godínez Cruz* cases, "*the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and ... the location of their remains*" (***Velásquez Rodríguez Case, supra*** **46, para. 181;** ***Godínez Cruz Case, supra*** **46, para. 191**); this obligation is of particular importance in the instant case, given the family relationships that exist among the Saramacas.

XIX

110. The Commission requests that Suriname be ordered to pay the expenses relating to negotiations undertaken with the Government and those incurred in the proceedings before the Commission and the Court.

111. The Court has already decided that the Government, as requested by the Commission, shall reimburse the expenses incurred by the families of the victims in their dealings with the Surinamese authorities (**paras. 94 and 95,** ***supra***).

112. In the instant case, the events took place on December 31, 1987, and the petition was received by the Secretariat of the Commission on January 15, 1988, that is, fifteen days later. From that date on, the case was before, first, the Commission and then the Court. The families of the victims did not have to pursue lengthy proceedings in order to submit the case to the Commission, for the latter took up the petition immediately. For this reason, they were not obliged to seek the advice of a professional and, as a result, did not appoint anyone. Dr. Claudio Grossman, who is identified by the Commission as the attorney for the victims, acted as the legal advisor of the Commission when the case was brought to the Court (**cfr.** ***Aloeboetoe et al. Case, supra*** **introductory paragraph, para. 7 and cf. para. 36,** ***supra***).

113. The American Convention has established a system for the protection of human rights in the Continent, assigning responsibilities primarily to two organs, the Commission and the Court, whose costs are financed out of the budget of the Organization of American States.

114. In the instant case, the Commission has preferred to fulfill the functions assigned to it under the American Convention by contracting outside professionals instead of using its own staff. The Commission's operational arrangements are a matter of its own internal organization and not subject

to the intervention of the Court. However, the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American system is funded by the Member States by means of their annual contributions.

The Court also cannot assess as costs the expenses incurred by its Deputy Secretary in travelling to Suriname, nor the advisory services required on financial or actuarial issues. These are all expenses that the Court must incur as an organ of the system in order to fulfill the functions ascribed to it by the American Convention.

115. In view of the above and of the fact that Suriname has expressly accepted its international responsibility and has not in any way hindered the proceedings for the fixing of reparations, the Court dismisses the Commission's request for reimbursement of costs.

XX

116. **NOW, THEREFORE,**

THE COURT, unanimously,

1) sets reparations at US$453,102 (four hundred fifty-three thousand, one hundred two dollars), or the equivalent amount in Dutch Florins, to be paid by the State of Suriname before April 1, 1994, to the persons listed in paragraph 98 or their heirs, under the terms of paragraph 99.

2) Orders the creation of two trust funds and the establishment of a Foundation, as contemplated in paragraphs 100 to 108.

3) Determines that Suriname shall not restrict or tax the activities of the Foundation or the administration of the trust funds beyond current levels, nor shall it modify any conditions currently in force, except in ways that would be favorable to these entities, nor interfere in the decisions of the Foundation.

4) Orders the State of Suriname to make a one-time contribution to the Foundation for its operations, payable within 30 days of its establishment, in the amount US$4,000 (four thousand dollars), or its equivalent in local currency at the free market rate of exchange in force at the time of payment.

5) Also orders the State of Suriname, as an act of reparation, to reopen the school located in Gujaba and staff it with teaching and administrative personnel so that it will function on a permanent basis as of 1994, and to make the medical dispensary already in place in that locality operational during that same year.

6) Decides that the Court shall supervise compliance with the reparations ordered before taking any steps to close the file on this case.

7) Decides that payment of costs shall not be ordered.

Done in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica, this tenth day of September, 1993.

(s) Rafael Nieto-Navia
President

(s) Sonia Picado-Sotela

(s) Héctor Fix-Zamudio

(s) Julio A. Barberis

(s) Asdrúbal Aguiar-Aranguren

(s) Antônio A. Cançado Trindade

(s) Manuel E. Ventura-Robles
Secretary

So ordered.

(s) Rafael Nieto-Navia
President

(s) Manuel E. Ventura-Robles
Secretary

By note of June 4, 1993 to the President of the Court, Judge Thomas Buergenthal withdrew from this case for health reasons.

Judge Asdrúbal Aguiar-Aranguren, elected by the States Parties during the OAS General Assembly held in Nassau, Bahamas, in May, 1992, has participated in the instant case beginning with the hearings on compensation and costs.

APPENDIX IX

October 20, 1993

Mr. President:

I have the honor to present to the Inter-American Court of Human Rights the attached request for provisional measures relating to the mental integrity of minors Gonzalo Xavier and Matías Angel, Argentine citizens, whose case (No. 10.959) is currently before this Commission.

Pursuant to the provisions of Article 63(2) of the American Convention on Human Rights, I would greatly appreciate it, Mr. President, if you would order that this request be processed in accordance with Article 24 of the Rules of Procedure of the Court and, in particular, with paragraph 4 of that article as it relates to the adoption of urgent measures with respect to the situation described in the attached document.

In view of the foregoing, I request the Honorable Court to kindly inform this Commission of its decision and of the measures taken in this matter.

Please accept, Mr. President, the assurance of my highest consideration.

(s) Michael Reisman
First Vice President

Dr. Rafael Nieto Navia
President of the Inter-American
Court of Human Rights
San José, Costa Rica

REQUEST FOR PROVISIONAL MEASURES

Case 10.959
October 1993

I. PERTINENT FACTS

1. On June 23, 1991, the Inter-American Commission on Human Rights (the "Commission") received a petition from the Grandmothers of Plaza de Mayo, a non-governmental organization, regarding Gonzalo Xavier and Matías Angel, the minor children of Juan Enrique REGGIARDO and María Rosa Ana TOLOSA, a married couple who were the victims of a forced disappearance. The petition alleges that the minors in question have not been delivered to their biological family.

2. The principal basis of the petition is the demand of the legitimate family that the minors be placed under its care in provisional custody. This demand has not been met to date, a fact that severely endangers the mental integrity of the minors.

3. On February 12, 1987, National Federal Criminal and Correctional Court of First Instance No. 2, after lengthy proceedings which included the extradition of the defendants from the Republic of Paraguay, where they had taken refuge with the minors, found that the minor children held by the MIARA couple were the offspring of disappearance victims Juan Enrique REGGIARDO and María Rosa Ana TOLOSA. Identification was carried out by means of the hemogenetic procedure provided by Law 23.511, which established the National Genetic Data Bank. The minors were born durign the illegal detention of their mother.

II. FACTS RELATING TO THE MINORS

4. The minors were born in April 1977, during the captivity of their mother, and were immediately removed by Samuel MIARA, a former assistant police inspector of the Federal Police, and his wife Beatriz Alicia CASTILLO, who registered them as their own children.

5. It is important to point out that when the children reached the age of eleven, they became aware of the fact that the MIARA couple were not their real parents. Furthermore, in 1985, they were taken to Paraguay, where they lived for four years confined to their home. In 1989, they were brought back to Argentina and placed for a period of time with a foster family, pending the results of the immunogenetic tests. Despite evidence as to the true origins of these children, they continue to be held by the persons who abducted them and falsified their real identities.

III. PROCEEDINGS BEFORE THE COMMISSION

6. On August 21, 1992, the Commission received a request for provisional measures from the petitioners. Their argument was that the minors were caught in a situation which is being prolonged indefinitely and poses grave psychological risks to them as a result of the suppression of

their identities, their being withheld from their family, and their remaining in the hands of persons who have been prosecuted for crimes committed against them. This request was transmitted to the Government.

7. By note of September 16, 1992, the Government countered that the claim was not admissible because some important issues were still pending a decision by the Judiciary. The Government informed the Commission that on September 7 of that same year, the Office of Attorney General has requested the Trial Judge to declare the birth certificates of the minors to be null and void and to order their provisional registration under the surname of REGGIARDO-TOLOSA, or under an assumed surname, until such time as the family problem is resolved. It also reported that the preventive custody of the MIARAs had been confirmed by the National Federal Court of Criminal and Correctional Appeals of the Federal Capital because it had found them to be prima facie criminally responsible for the crimes of concealment and withholding of minors and misrepresentation of public documents accrediting the identity of persons.

8. By note of March 11, 1993, the Commission declared the case admissible, taking into account the fact that the minors had been identified as belonging to the REGGIARDO-TOLOSA couple and the inability of the family members of the minors to file appeals because they are deemed to be parties in the proceedings at which the custody of said minors is to be decided. Pursuant to Article 46(2)(c) of the Convention, the Commission determined that the unwarranted delay in rendering a final judgment exempted the petition from the requirement of exhaustion of domestic remedies. In accordance with Aricle 29 of its Regulations, the Commission furthermore requested that the Government of Argentina adopt provisional measures to provide without delay for the placement of the minor children in a foster home under temporary custody and to arrange for them to receive appropriate psychological treatment under the supervision of a professional appointed by their family, until such time as their delivery to their legitimate family is settled.

9. By note of June 2, 1993, the Government of Argentina responded to the request for provisional measures by informing the Commission that, on April 15, the Federal Judge with jurisdiction over Custody Arrangements for Minors had ordered two hearings to be held with the prupose of placing the minor children under temporary custody in a foster home. The Government also reported that the annulment of the birth registration of the MIARA minors had been ordered, and that they had been registered under the name of REGGIARDO-TOLOSA.

10. Nevertheless, on August 19, 1993, the Commission received a communication from the Association of Grandmothers of Plaza de Mayo, informing it that no steps had been taken to transfer the minors to a foster home. Consequently, they asked the Commission, pursuant to Article 63 of the Convention, to request the Inter-American Court to order provisional measures to ensure that the Argentine Government place the minors in a foster home.

IV. THE SERIOUSNESS OF THE SITUATION GIVING RISE TO THE PETITION

11. The longer the situation reported is allowed to continue without justification, the more serious the mental condition of the minors becomes. Their position is exacerbated by the suppression of their identities even as they continue to be withheld from their legitimate family without being transferred to a foster home under temporary custody.

12. There is no excuse for this delay in the administration of justice. As early as September, 1989, hemogenetic tests had already determined that the minors were members of the REGGIARDO-TOLOSA family. Since that time, they have remained in the hands of the persons who are being prosecuted for illegal acts committed against those very minors.

V. CONSIDERATIONS

13. The case history of the minors presents prima facie a serious case of imminent danger to their mental health.

14. The judicial record shows that the ordinary guarantees provided under Argentine law are insufficient to protect the mental integrity of the minors.

15. Article 63(2) of the American Convention authorizes the Commission to request provisional measures of the Court in matters not yet submitted to the Court, "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons."

16. The Government of Argentina has ratified the American Convention on Human Rights and has recognized the contentious jurisdiction of the Court under Article 62 of the Convention.

VI. PROVISIONAL MEASURES

17. In view of the foregoing, the Inter-American Commission on Human Rigths, pursuant to Article 63(2) of the Convention, requests that the Inter-American Court of Human Rights require the Government of Argentina to order the immediate transfer of the minor children to ensure that they be placed under temporary custody in a substitute location and be provided adequate psychological treatment until such time as the matter of their delivery to their legitimate family is settled.

APPENDIX X

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF NOVEMBER 19, 1993

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

REGGIARDO-TOLOSA CASE

WHEREAS:

1. In a fax dated October 20, 1993, and received at the Secretariat of the Inter-American Court of Human Rights (hereinafter "the Court") on November 8 of that same year, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures in connection with Case 10.959 currently before the Commission. The provisional measures requested relate to "the mental integrity of minors Gonzalo Xavier and Matías Angel, Argentine citizens," who, according to the petition presented to the Commission on June 23, 1991, by the Grandmothers of the Plaza de Mayo, a non-governmental organization, are the "children of Juan Enrique Reggiardo and María Rosa Ana Tolosa, a married couple who were the victims of a forced disappearance";

2. The petition was filed with the Commission becasuse the aforementioned minors have not been delivered to their legitimate family and the family demands that they be placed under its care in provisional custody. This demand has not been met do date, a fact that severely endangers the mental integrity of the minors;

3. According to the petition, on February 12, 1987, the National Federal Criminal and Correctional Court of First Instance No. 2 applied the hemogenetic procedure provided by Law 23.511 establishing the National Genetic Data Bank in order to make an identification and determined that the aforementioned minors, who were born during the illegal detention of their mother, are the offspring of disappearance victims Juan Enrique Reggiardo and María Rosa Ana Tolosa;

4. According to the request for provisional measures, Gonzalo Xavier and Matías Angel were born in April 1977, during the captivity of their mother, and were immediately removed and later registered as the children of Samuel Miara, a former assistant police inspector of the Federal Police, and his wife, Beatriz Alicia Castillo. When the minors reached the age of eleven, they became aware of the fact that the Miara couple were not their real parents. In 1985, they were taken to Paraguay, where they

lived, confined to their home, until 1989. That year they were brought back to Argentina "and placed for a period of time with a foster family, pending the results of the immunogenetic tests. Despite evidence as to the true origins of these children, they continue to be held by the persons who abducted them and falsified their real identities";

5. According to the request for provisional measures, the proceedings before the Commission developed as follows:

> 6. On August 21, 1992, the Commission received a request for provisional measures from the petitioners. Their argument was that the minors were caught in a situtation which is being prolonged indefinitely and poses grave psychological risks to them as a result of the suppression of their identities, their being withheld from their family, and their remaining in the hands of persons who have been prosecuted for crimes committed against them. This request was transmitted to the Government.
>
> 7. By note of September 16, 1992, the Government countered that the claim was not admissible because some important issues were still pending a decision by the Judiciary. The Government informed the Commission that on September 7 of that same year, the Office of the Attorney General had requested the Trial Judge to declare the birth certificates of the minors to be null and void and to order their provisional registration under the surname of REGGIARDO-TOLOSA, or under an assumed surname, until such time as the family problem is resolved. It also reported that the preventive custody of the MIARAs had been confirmed by the National Federal Court of Criminal and Correctional Appeals of the Federal Capital because it had found them to be prima facie criminally responsible for the crimes of concealment and withholding of minors and misrepresentation of public documents accrediting the identity of persons.
>
> 8. By note of March 11, 1993, the Commission declared the case admissible, taking into account the fact that the minors had been identified as belonging to the REGGIARDO-TOLOSA couple and the inability of the family members of the minors to file appeals because they are deemed to be parties in the proceedings at which the custody of said minors is to be decided. Pursuant to Article 46(2)(c) of the Convention, the Commission determined that the unwarranted delay in rendering a final judgment exempted the petition from the requirement of exhaustion of domestic remedies. In accordance with Aricle 29 of its Regulations, the Commission furthermore requested that the Government of Argentina adopt provisional measures to provide without delay for the placement of the minor children in a foster home under temporary custody and to arrange for them to receive appropriate psychological treatment under the supervision of a professional appointed by their family, until such time as their delivery to their legitimate family is settled.
>
> 9. By note of June 2, 1993, the Government of Argentina responded to the request for provisional measures by informing the Commission that, on April 15, the Federal Judge with jurisdiction over Custody Arrangements for Minors had ordered two hearings to be held with the purpose of placing the minor children under temporary custody in a foster home. The Government also reported that the annulment of the birth registration of the MIARA minors had been ordered, and that they had been registered under the name of REGGIARDO-TOLOSA.
>
> 10. Nevertheless, on August 19, 1993, the Commission received a communication from the Association of Grandmothers of Plaza de Mayo, informing it that no steps had been taken to transfer the minors to a foster home. Consequently, they asked the Commission, pursuant to Article 63 of the Convention, to request the Inter-American Court to order provisional measures to ensure that the Argentine Government place the minors in a foster home.

6. The Commission considers that the situation giving rise to the petition is grave because "the longer [it]... is allowed to continue without justification, the more serious the mental condition of the minors becomes" and is further exacerbated by the suppression of their identities and by the fact that they are not being returned to their legitimate family or transferred to a foster home under temporary custody;

7. The Commission also believes that justice has been unjustifiably delayed, for the identity of the minors had already been established in 1989. Nevertheless, they continue to be held by the very persons who are being prosecuted for committing illegal acts against them. The case history of the minors presents a **prima facie** case of imminent danger to their mental health and the Commission considers that Argentine law does not provide adequate ordinary guarantees to protect their mental identity;

8. The Commission therefore requests that the Court, in application of Article 63(2) of the Convention "require the Government of Argentina to order the immediate transfer of the minor children to ensure that they be placed under temporary custody in a substitute location and be provided adequate psychological treatment until such time as the matter of their delivery to their legitimate family is settled"; and,

9. The President of the Court, Judge Rafael Nieto-Navia, recused himself from hearing this request for provisional measures on the ground that he is a "member and President of the Argentine-Chilean Arbitral Tribunal to delimit the boundary between Milestone 62 and Mount Fitz Roy". Consequently, the Presidency has been assumed by Judge Sonia Picado-Sotela, Vice President of the Court.

CONSIDERING THAT

1. Argentina is a State Party to the American Convention on Human Rights since November 5, 1984, date on which it also accepted the jurisdiction of the Court, in accordance with Article 62 of the Convention;

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

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

3. Article 24(4) of the Rules of Procedure stipulates that

> If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court to have the requisite effect.

4. Despite the fact that the Commission has not yet submitted the case to the Court, the mental integrity of the two minors is at stake and it is important to prevent them from suffering irreparable damage as a result of the situation alleged in the request for provisional measures. This situation is characterized by the gravity and urgency necessary for the request to be acted upon;

5. Argentina has the obligation to adopt all necessary measures to protect the mental integrity of, and prevent irreparable damage to, all persons whose rights might be threatened, in this case those of minors Gonzalo Xavier and Matías Angel;

NOW, THEREFORE:

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

taking into consideration Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on her by Article 24(4) of the Rules of Procedure, in consultation with the Judges of the Court,

ORDERS:

1. To enjoin the Government of the Republic of Argentina to adopt without delay whatever measures are deemed necessary to protect the mental integrity of, and avoid irreparable damage to, minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention, in order to ensure that the provisional measures that the Court may adopt during its next regular session, to be held from January 10 to 21, 1994, will have the requisite effect.

2. To request the Government of Argentina to submit a report on the measures taken pursuant to this order to the President of the Court no later than December 20, 1993, to enable her to bring this information to the attention of the Court.

3. To instruct the Secretariat to promptly transmit to the Inter-American Commission on Human Rights the report to be received from the Government of the Republic of Argentina.

(s) Sonia Picado-Sotela
President

(s) Manuel E. Ventura-Robles
Secretary

APPENDIX XI

EMBASSY OF THE REPUBLIC OF ARGENTINA

San José, December 20, 1993

AL 326/93

Mr. Manuel E. Ventura
Secretary
Inter-American Court of Human Rights
San José

Mr. Secretary:

I have the honor to address you with reference to your note CDH-S-462/93 regarding the Reggiardo-Tolosa Case (Case No. 10.958 (sic)), in which the Government of the Republic of Argentina was requested to report on the measures adopted in connection with that case.

This Embassy is pleased to inform you that the judicial authorities have already handed down a judgment on this matter, which is being sent to this mission by diplomatic pouch. Upon receipt of the judgment, it will be transmitted to the Court.

This notwithstanding, it is expected that the judgment will order the "lifting of the provisional custody of the minors...", "placing a substitute family in charge thereof", and "...attempting to bring about closer ties between the minors and their biological family."

These are the measures that were originally requested by the Court, it being understood that the aforementioned judgment will bring the case to a close.

Please, be advised, furthermore, that in a telephone conversation between the Office for Human Rights and Women of the Ministry of Foreign Affairs of Argentina and the Grandmothers of Plaza de Mayo, the latter expressed their approval of the substitute

family selected for the twins, an approval they have apparently made known to the Inter-American Court of Human Rights.

It must be pointed out that the Office for Human Rights and Women of the Ministry of Foreign Affairs of Argentina has today informed this Embassy that the minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, are currently living with their Tolosa uncle and aunt, members of their legitimate family.

Please accept the assurances of my highest consideration.

(s) Haydée V. Osuna
Chargée d'Affairs, a.i.

HVO/et

cc: File

APPENDIX XII

November 8, 1993

Mr. Secretary:

I have the honor to submit to you the request for an Advisory Opinion that the Inter-American Commission on Human Rights, at its 84th Session, agreed to present to the Inter-American Court of Human Rights. The request seeks the interpretation of Article 4, paragraphs 2 and 3, of the American Convention on Human Rights.

Please accept, Mr. Secretary, this expression of my highest consideration.

(s) Edith Márquez-Rodríguez
Executive Secretary

Lic. Manuel Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

REQUEST FOR ADVISORY OPINION

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Washington, D.C.

The Inter-American Commission on Human Rights, as the organ of the Organization of American States charged with promoting the observance and protection of human rights and in the exercise of the powers granted to it by Article 64(1) of the American Convention on Human Rights, hereby requests the Inter-American Court of Human Rights to render an advisory opinion relating to the interpretation of **Article** 4, paragraph 2 (**in fine**) and paragraph 3, of the Convention.

This issue has been considered by the Commission in several contexts. The need to examine it at this time, however, has taken on a new urgency as a result of the inclusion of a provision in Article 140 of the new Constitution of Peru which, in violation of Article 4, paragraphs 2 and 3, of the American Convention, extends the application of the death penalty to crimes which were not subject to such a penalty under the Political Constitution that entered into force in 1979.

It is the opinion of the Commission that this problem is generic in nature and can arise with regard to several articles of the Convention. Nevertheless, pursuant to Article 51, paragraphs 1 and 2, of the Rules of Procedure of the Inter-American Court of Human Rights, the Commission submits this request for an advisory opinion with regard to the specific provisions detailed below:

A. Provisions to be interpreted

Under the Political Constitution of 1979, the death penalty in Peru was applicable exclusively to the crime of treason against the state in time of external war.

In view of the extension of the scope of application of the death penalty authorized by Article 140 of the new Peruvian Constitution, the Inter-American Commission on Human Rights seeks an advisory opinion with regard to Article 4, paragraphs 2 (**in fine**) and 3, of the American Convention on Human Rights. The relevant provisions read as follows:

Article 235 of the Political Constitution of 1979:

There is no death penalty, except for treason of the homeland in case of a foreign war.

Article 140 of the new Peruvian Constitution:

The death penalty shall only be imposed for the crime of treason of the homeland in case of war, and for the crime of terrorism, in accordance with the laws and treaties to which Peru is a party.

Article 4, American Convention:

. . .

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

The Commission wishes to point out that its request for an advisory opinion refers to two different specific situations.

The first relates to the legal effect, as far as concerns the obligations that a State Party to the Convention has, that results from the adoption by that State of a provision which constitutes a manifest violation of its obligations under the Convention, such as, for example, a law or other legal norm that extends the application of the death penalty to cases to which it did not previously apply under that State's law.

The second situation has to do with the duties and responsibilities of the agents or officials of a State when the latter promulgates a law whose enforcement would constitute a manifest violation of the American Convention on Human Rights.

1. With regard to the first situation, the Commission poses the following question:

Insofar as the international obligations of a State Party to the American Convention on Human Rights are concerned, what are the legal effects of a law promulgated by such State that manifestly violates the obligations it assumed upon ratifying the Convention?

2. With regard to the second situation:

What are the duties and responsibilities of the agents or officials of a State Party to the Convention which promulgates a law whose enforcement by them would constitute a manifest violation of the Convention?

B. The request for an advisory opinion relates to the sphere of competence of the Commission

Under Article 33 of the American Convention on Human Rights, the Commission is one of the organs having competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to the Convention.

In addition, Article 41 of the Convention stipulates that the Commission has as its main function the promotion of the respect for and defense of human rights. Furthermore Article 64(1) of the Convention provides that the Commission is one of the organs of the OAS which may, within their spheres of competence, consult the Court on the interpretation of the Convention.

C. Name and address of the Delegate of the Inter-American Commission on Human Rights

For all purposes relating to this request, the Inter-American Commission on Human Rights hereby names Professor W. Michael Reisman as its Delegate. Any notifications, summonses and other communications shall be sent to the Secretariat of the Commission, located at 1889 F Street, N.W., Washington, D.C. 20006, U. S. A.

APPENDIX XII-A

OPINION

CJ/067

Request for Advisory Opinion submitted to the Inter-American Court of Human Rights regarding the interpretation of Article 4, paras. 2 and 3, of the American Convention on Human Rights

The Inter-American Commission on Human Rights, pursuant to Article 64(1) of the American Convention on Human Rights, requested the Inter-American Court of Human Rights to render an advisory opinion regarding the interpretation of Article 4, paras. 2 (in fine) and 3, of the abovementioned Convention.[1] The request relates to Article 140 of the new Peruvian Constitution[2] which, when compared with the previous Constitution of 1979[3], has expanded the number of offenses to which the death penalty can be applied, in contravention of the abovementioned provisions of the Convention.

The Commission emphasized that its request for an advisory opinion contemplates two different situations.

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1 Article 4. Right to Life

. . . .

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

2 Article 140 of the 1993 Peruvian Constitution:

"The death penalty shall only be imposed for the crime of treason against the state in time of war, and for the crime of terrorism, in accordance with the laws and treaties to which Peru is a party."

3 Article 235 of the 1979 Political Constitution of Perú:

"There shall be no death penalty, except for treason against the state in time of external war."

As regards the legal effects on the international obligations of a State Party to the Convention that would result from the adoption by that State of a provision which constitutes a manifest violation of its obligations under the Convention, the Commission posed the following question:

"Insofar as the international obligations of a State Party to the American Convention on Human Rights are concerned, what are the legal effects of a law promulgated by such State that manifestly violates the obligations it assumed upon ratifying the Convention?"

On the matter of the obligations and responsibilities of the agents or officials of the State, the question is as follows:

"What are the duties and responsibilities of the agents or officials of a State Party to the Convention which promulgates a law whose enforcement by them would constitute a manifest violation of the Convention?"

Upon examining the articles cited from the last two Peruvian Constitutions, it is evident that the number of crimes sanctioned with the death penalty has increased. Whereas the 1979 Constitution only contemplated **treason against the state in time of external war** as punishable by death, the 1993 version added **terrorism**. Two aspects of Article 140 of the Constitution currently in effect in Perú are worthy of note. First, the article speaks of treason against the state in time of war, without adding the qualifier **external**, which raises the possibility of the death penalty being applied even in cases of civil war. Second, the final part of the article in question is important, for it subordinates the application of the death penalty not only to the domestic laws of Perú, but also to the international treaties to which that country is a party. It can thus be assumed that, with the country continuing to be a party to the American Convention on Human Rights, domestic and international legal principles will be certain to present obstacles to the application of the death penalty to terrorism in Perú while that country is bound by Article 4, paragraph 2, of the abovementioned Convention.

As regards the first question posed by the Commission, although it was formulated as a hypothesis it is important to point out that the mere fact of promulgation of the 1993 Constitution does not constitute a violation by Perú of the obligations it had assumed upon ratifying the Convention[4]. This is so because, as has already been said, even though the spectrum of crimes subject to the death penalty has been broadened, its application is nevertheless conditioned on conformity with not only domestic law, but also the international treaties to which Perú is a party. In response to the hypothetical question, I believe the following: First, the mere adoption of a conflicting law would not constitute a violation of its international obligations, since for such a violation to occur its provisions would have to be implemented. Second, the instant problem could be resolved by reference to the theory that each State follows on the matter of hierarchy of laws. If the State adopts a true monistic approach, that is, monism with the supremacy of International Law, the international

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4 It could be said, at most, that Perú, which signed but has not yet ratified the 1969 Vienna Convention on the Law of Treaties, was not complying with the provisions of Articles 26, which affirms that every treaty in force is binding upon the parties to it and must be performed by them in good faith, and 27, which prevents a party from invoking the provisions of its internal law as justification for its failure to perform a treaty. It should be recalled that, in addition to the fact that those norms impose no sanctions for nonperformance, Article 27, clearly drafted along internationalist lines, is tempered by Article 46 of that same Convention, which admits exceptions that are constitutional in character.

treaty norm will prevail. If, on the contrary, dualism is preferred, the subsequent provision will prevail -- the later law supersedes the prior one -- it being irrelevant whether or not it is international in character. A solution along these lines, which omits the application of a norm having its source in an international commitment, can give rise to international responsibility. Despite this drawback, that school of thought currently has many adherents, with the United States of America its leading exponent. One last observation regarding the first question posed by the Commission: it should be recalled that modern sovereign states, which see their Constitution as the cornerstone of their domestic legal systems, do not as a rule accept the fact that any norm, whether prior or subsequent, can derogate a constitutional provision, even if it has its source in an international treaty.

The response to the second question posed by the Commission will vary depending on the point of view of the commentator. Constitutionally, the State's agents and officials are bound by their Constitution; they are not free to seek any justification for non-performance, even by looking to international conventions to which the State is a party. Looking at the problem from an international perspective, the opposite would be true. To illustrate the practical effect of such a distinction one need only recall the crimes against humanity, as defined in some international conventions or expressed by customary international law. Before an international court, a hypothetical agent or official of a State could not rely on the constitution of his State to excuse such acts. In any event, the specific matter addressed by the Peruvian Constitution in force does not fit perfectly into the abovementioned example. Who would respond for Perú and in what terms, if that country were to condemn and execute somebody for terrorism, without having denounced the American Convention on Human Rights? Would it be the members of the constituent assembly who drafted Article 140 of the Constitution in force (it should be recalled that that Constitution was finally approved in a popular referendum), the judges who pronounced judgment, or the person who actually executed the sentence?

This is my considered opinion.

Brasilia, December 23, 1993.

(s) (João Grandino Rodas)
Legal Adviser

APPENDIX XII-B

REPUBLIC OF COSTA RICA
MINISTRY OF FOREIGN AFFAIRS

December 20, 1993

Dr. Rafael Nieto Navia
PRESIDENT
Inter-American Court of Human Rights
San José, Costa Rica

Mr. President:

I have the honor to address Your Excellency to acknowledge receipt of the note dated November 11, 1993 regarding Advisory Opinion Request 14/007-93 submitted by the Inter-American Commission on Human Rights, seeking the interpretation of Article 4, paragraphs 2 and 3, of the American Convention on Human Rights.

The Government of Costa Rica has the following observations to make in this regard:

1. ADMISSIBILITY OF THE REQUEST FOR ADVISORY OPINION.

It is important to recall that at the time that the IACHR filed the request, the new Constitution of Peru had not yet entered into effect. The official results of the referendum have not been made known and, consequently, it has not been possible to promulgate the Constitution. As a result, the Constitution in question must be deemed to be a "Draft Constitution."

It follows from the above that the request presented by the IACHR regarding the compatibility of the Draft Constitution of Perú with the aforementioned articles of the American Convention on Human Rights is perfectly admissible.

That admissibility has its basis in the opinion expressed by the Inter-American Court of Human Rights, as follows:

"22. The foregoing considerations led the Court, on that occasion, to render the advisory opinion and to hold that, in certain circumstances and pursuant to the powers conferred on it by Article 64(2), the Court may render advisory opinions regarding the compatibility of 'draft legislation' with the Convention." (Advisory OC-12/91 of December 6, 1991.)

2. FACTS LEADING TO THE REQUEST FOR AN ADVISORY OPINION.

It is the opinion of the Government of Costa Rica that, without undermining the questions posed by the IACHR to the Court, the substantive problem here is identical to that already decided by the Court in its Advisory Opinion OC-3/83 of September 8, 1983. Consequently, the Court's responses on that occasion are still valid and applicable to the facts which led to the instant advisory opinion request, as quoted below:

"THE COURT,

2. unanimously, finds that it has the jurisdiction to render this advisory opinion; and

3. as regards the questions contained in the request for an advisory opinion presented by the Commission on the interpretation of Articles 4(2) and 4(4) of the Convention,

IS OF THE OPINION:

a.) In reply to the question

1.- May a government apply the death penalty for crimes for which the domestic legislation did not provide such punishment at the time the American Convention on Human Rights entered into force for said state?

By a unanimous vote

that the Convention imposes an absolute prohibition on the extension of the death penalty and that, consequently, the Government of a State Party cannot apply the death penalty to crimes for which such a penalty was not previously provided for under its domestic law, and

b.) In reply to the question

2.- May a government, on the basis of a reservation to Article 4(4) of the Convention made at the time of ratification, adopt subsequent to the entry into force of this Convention a law imposing the death penalty for crimes not subject to this sanction at the moment of ratification?

By a unanimous vote

that a reservation restricted by its own wording to Article 4(4) of the Convention does not allow the Government of a State Party to extend by subsequent legislation the application of the death penalty to crimes for which this penalty was not previously provided for."

3. FIRST QUESTION PRESENTED BY THE IACHR:

Insofar as the international obligations of a State Party to the American Convention on

Human Rights are concerned, what are the legal effects of a law promulgated by such State that manifestly violates the obligations it assumed upon ratifying the Convention?

It is important to take the following factors into account when expressing an opinion on this issue:

The provisions contained in the current Constitution of Peru relating to the supremacy of international treaties over domestic law, including the Constitution now in effect. This is important in determining whether the new Constitution of Peru, once it becomes law, can contradict what has been internationally agreed upon in a multilateral treaty such as the American Convention on Human Rights.

4. SECOND QUESTION PRESENTED BY THE IACHR:

What are the duties and responsibilities of the agents or officials of a State Party to the Convention which promulgates a law whose enforcement by them would constitute a manifest violation of the Convention?

We believe this to be the most complex issue to decide. Furthermore, the question has been drafted in a way that raises many doubts as to its merits and scope. It would, therefore, be necessary to obtain a clarification regarding its intended purpose.

The Government of Costa Rica accords great importance to this request for an advisory opinion filed by the IACHR with the Inter-American Court of Human Rights for, as the Court itself has held:

"to decline to hear a government's request for an advisory opinion because it concerned 'proposed laws' and not laws duly promulgated and in force, ... might in some cases have the consequence of forcing a government ... to violate the Convention by the formal adoption and possibly even application of the legislative measure, which steps would then be deemed to permit the appeal to the Court." (Advisory Opinion OC-12/91 of December 6, 1991, para. 20.)

Please accept, Mr. President, the assurances of my highest consideration.

(s) Dr. Bernd H. Niehaus Q.
MINISTER

cc: Lic. Hermes Navarro del Valle
MINISTER COUNSELOR OF C.R., OAS

Lic. Melvin Sáenz Biolley
DIRECTOR OF FOREIGN POLICY

Dr. Jorge A. Corrales Ulloa
DIRECTOR, LEGAL OFFICE

RRB/MJO**

APPENDIX XII-C

REPUBLIC OF PERU
MINISTRY OF FOREIGN AFFAIRS

Lima, December 29, 1993

The President of the
Inter-American Court of Human Rights
San José, Costa Rica

Mr. President:

The Inter-American Commission on Human Rights (IACHR), a specialized organ of the system of the Organization of American States (OAS), recently requested an Advisory Opinion (OC-14) from the Honorable Court, seeking the interpretation of Article 4, paragraph 2 (in fine) and paragraph 3 of the American Convention on Human Rights, in the exercise of the powers which, according to the Commission, are granted to it by Article 64 (1) of that Convention.

The provisions on which an advisory opinion is requested relate to Article 4 of the Convention (Right to Life), which sets out the conditions under which the death penalty may be imposed and, in addition, prohibits the extension of such punishment to crimes to which it does not presently apply (Article 4(2)) and its reestablishment in states that have abolished it.

In accordance with Article 54(2) of the Rules of Procedure of the Inter-American Court of Human Rights, the Government of Peru hereby submits its written comments on the request for an advisory opinion filed by the IACHR for the Court's consideration.

In order to conduct a proper analysis of the IACHR's request and determine its legality and legal soundness, the request in question has been subjected to a legal analysis focusing on three issues:

- a. **Standing of the party.**
- b. **Formal requirements for presentation.**
- c. **Substantive issues.**

a. Standing of the party to request an advisory opinion from the Court.

This matter is governed by Article 64 of the Convention.

The article in question establishes two procedures for access to the Court's advisory mechanisms. The first is set forth in paragraph 1 of Article 64 of the Convention, which refers to the standing of OAS member states and other organs "within their spheres of competence" to request advisory opinions. This is the mechanism that has been invoked by the IACHR in its request for

an advisory opinion to the Honorable Court, a request it files in its capacity as the organ of the OAS system "charged with promoting the observance and protection of human rights."

Paragraph 2 of that same Article 64 provides a second mechanism granting OAS member states the exclusive right to request advisory opinions regarding "the compatibility of any of [their] domestic laws" with the Convention or other international instruments of regional scope that deal with human rights.

The IACHR, as a **specialized organ of the Organization,** invokes the procedure set forth in paragraph 1 of Article 64; however, it encroaches on an area that is reserved exclusively to States whose domestic laws are involved, something contemplated in another provision (paragraph 2 of that same Article 64) which addresses a totally different situation and, furthermore, constitutes a mechanism with a different purpose from that which was invoked by the IACHR in its request for an advisory opinion. That article clearly states that "[t]he Court, at the request of **a member state of the Organization,** may provide that state with opinions regarding the compatibility of any of its **domestic laws** with the aforesaid international instruments."

The fact that the Convention establishes two separate mechanisms reflects the legislative intent of the treaty to clearly set out who is empowered to request advisory opinions from the Court and on what issues. The ratio legis of Article 64, paragraph 2, of the Convention is to spell out in a manner that leaves no room for doubt that only States -- whose domestic laws are at issue -- are empowered to resort to the Court's advisory jurisdiction when there is a perceived incompatibility between one of their domestic norms and the Convention.

It is manifestly clear -- one has but to read the text of the IACHR's request -- that procedural logic has been distorted in the IACHR's request. That organ of the Inter-American system makes express reference to a domestic Peruvian situation and seeks to indirectly question a national law, namely, the new norm contained in Article 140 of the new Constitution of Peru. The IACHR expects the Honorable Court to render an opinion regarding the scope of the aforementioned constitutional provision of Peru and the resulting obligations of the Government of Peru pursuant to the provisions contained in Article 4, paragraph 2 (in fine) and paragraph 3 of the Convention. The IACHR forgets that on issues bearing on aspects relating to the compatibility of a domestic law with the international obligations established by the Convention and the other regional human rights treaties, the consultation mechanism is the one provided in paragraph 2, Article 64. That mechanism belongs **exclusively to the State seeking an interpretation on the scope of its domestic laws** and the resulting international obligations that arise out of a treaty, in the instant case, the Convention. The IACHR may not invoke or resort to that particular mechanism.

In this regard, it is evident that the IACHR is not empowered to request that type of interpretation through an advisory opinion request to the Honorable Court. It lacks standing to come before the Court, because the matter at issue is dealt with by the Convention in a specific provision that is different from the one invoked by the IACHR. To admit the advisory opinion request under these conditions would set an unfortunate precedent, in the sense that it would encourage disproportionate interference in the domestic legislative mechanisms of the Member States of the Organization of American States by an organ that is a part of that system. The Convention has reserved that power for the exclusive use of the States in cases involving the interpretation of their own domestic laws. Consequently, the IACHR's request is inadmissible because that body does not have the standing to address the Honorable Court, in view of the fact that the matter at issue is the exclusive concern of the States, as provided in paragraph 2 of Article 64 of the Convention, which is the provision applicable to the instant case.

On this issue, the Government of Peru wishes to especially emphasize its grave preoccupation -- given the way in which the request has been formulated -- as far as concerns the IACHR's apparent intention of seeking to obtain from the Honorable Court an indirect opinion on a domestic Peruvian law through a request for an advisory opinion filed by an organ of the regional system (the IACHR) which does not have the power to make this type of consultation, since it is prevented from so doing by paragraph 2, Article 64 of the Convention. That is the only explanation for the very generic way in which the questions that do not allude to Peru nor to its domestic legislation have been posed, for the IACHR lacks the standing for it. Nevertheless, in the preambular part of the request, direct and express references are made to the Peruvian situation and to the new constitutional provision contained in Article 140. In other words, it is evident that the IACHR seeks to obtain indirectly what it is prevented from achieving directly by the aforementioned provision of the Convention.

The Government of Peru considers that it has the obligation to draw the Honorable Court's attention to the special way in which the advisory opinion request has been presented, in order to prevent the IACHR -- in the unlikely event that the merits of the case be examined -- from later inferring that the scope of the answer it might eventually receive to its request applies to the specific situation of Peru. On this point the Peruvian Government makes a reservation, on the grounds that **it is not the express topic of the advisory opinion request.**

The request of the IACHR does not comply with the procedural rules, an indispensable prerequisite if a valid legal relationship is to exist between the party invoking the interpretation or implementation of the law, the party who assumes the obligation by virtue of that decision, and the judicial organ charged with applying or, as in the instant case, interpreting the law.

According to the Theory of Procedure, standing or procedural competence is the power vested in one of the parties to carry out valid procedural acts by the active subjects of the procedural relationship. The IACHR lacks that legitimacy, to the extent that it seeks to perform an action for which it has no normative or functional standing.

The matter of the IACHR's standing is of fundamental importance in determining the admissibility of the advisory opinion requested. In that connection, the Government of Peru transcribes below a series of relevant portions of various Advisory Opinions rendered by that Honorable Court, wherein the criteria thereon applied in previous cases are clearly enunciated:

(1) In its Advisory Opinion OC-1/82, the Inter-American Court referred to the general framework of Article 64 of the American Convention in the following terms: "14. Article 64 of the Convention confers on this Court an advisory jurisdiction that is more extensive than that enjoyed by any international tribunal in existence today. All the organs of the OAS listed in Chapter X of the Charter of the Organization and every OAS Member State, whether a party to the Convention or not, are empowered to seek advisory opinions. The Court's advisory jurisdiction is not limited only to the Convention, but extends to other treaties concerning the protection of human rights in the American States. In principle, no part or aspect of these instruments is excluded from the scope of its advisory jurisdiction. Finally, all OAS Member States have the right to request advisory opinions on the compatibility of any of their domestic laws with the aforementioned international instruments."

In another paragraph, under the heading "Treaties Subject to Advisory Opinions," the Court held: "39. The latter conclusion gains special importance given the language of Article 64(2) of the Convention, which authorizes the Member States of the OAS to request advisory opinions regarding the compatibility of their domestic laws with treaties concerning the protection of human rights in the American States. This provision enables the Court to perform a service for all of the members of the i nter-American system and is designed to assist them in fulfilling

their international human rights obligations. Viewed in this perspective, an American State is no less obligated to abide by an international agreement merely because non-American States are or may become Parties to it. The Court can find no good reasons why an American State should not be able to request an advisory opinion on the compatibility of any of its domestic laws with treaties concerning the protection of human rights which have been adopted outside the framework of the inter-American system. ..."

(2) In Advisory Opinion OC-3/83, the Court examined a number of procedural issues that "should be disposed of at the outset," given the objection of the Government of Guatemala that the Commission did not have the jurisdiction to request the advisory opinion:

"23. (...) On the contrary, it is quite clear that the exercise of the Court's advisory jurisdiction is subject to its own prerequisites which relate to the identity and legal capacity of the entities having standing to seek the opinion, that is, OAS Member States and OAS organs acting 'within their spheres of competence.'..."

(3) In Advisory Opinion OC-5/85, the Court made the following distinction:

"6. In view of the fact that the advisory opinion request, as formulated, raised issues involving the application of both Article 64(1) and Article 64(2) of the Convention, the Court decided to sever the proceedings because, whereas the first was of interest to all Member States and principal organs of the OAS, the second involves legal issues of particular concern to the Republic of Costa Rica."

Consistent with that distinction, two public hearings were held: The first, on September 5, 1985, dealt with the application of Article 64(2) of the Convention; the Commission did not take part in that hearing. The second, on November 8, 1985, concerned the application of Article 64(1) of the Convention. The Commission did participate in the second hearing (See, paras. 7-10 of OC-5/85); in taking up the matter of "Admissibility," therefore, the Court determined that:

"16. As has already been observed, the advisory jurisdiction of the Court has been invoked with respect to Article 64(1)of the Convention with regard to the general question and with respect to Article 64(2) concerning the compatibility of Law No. 4420 and the Convention. Since Costa Rica is a Member State of the OAS, it has standing to request advisory opinions under either provision,..."

(4) In Advisory Opinion OC-6/86, the Court determined that

"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)."

(5) Similarly, in its Advisory Opinion OC-7/86 the Court held that

"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; ..."

In that Advisory Opinion, Judges Rafael Nieto-Navia and Pedro Nikken wrote a joint dissenting opinion, in which they argued the following: "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 .... 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 ...." "16. .... 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. ... 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."

(6) In OC-9/87, the Court stated the following on the matter of "admissibility":

"16. The terms of the request and the considerations which, according to the Government, prompted the request, show that the matter submitted to the Court is a juridical question which does not refer, specifically or concretely, to any particular fact situation. The Court recognizes that these circumstances could, in certain cases, lead it to make use of the discretionary powers implied in its advisory jurisdiction and to abstain from responding to a request formulated in those terms...."

(7) OC-10/89, which dealt with the interpretation of Article 64(1) of the Convention, clearly established the standing of the Commission, and of other organs of the OAS, to request advisory opinions relating exclusively to the interpretation of international treaties; no mention is made of the domestic law of States as comprising part of that competence.

(8) In OC-11/90, the Commission does not mention the domestic law of any Member State of the OAS in setting out the considerations that prompted it to file that advisory opinion request.

b. Formal requirements of a request for an advisory opinion

Article 51 of the Rules of Procedure of the Court lists in a restrictive manner the requirements that must be met by a request for an advisory opinion under Article 54(1) of the Convention, the mechanism which the IACHR attempts to invoke and resort to.

The aforementioned article of the Rules of Procedure of the Court points to three fundamental issues which must be clearly addressed in the request:

i. . State with precision the specific questions on which the opinion of the Court is sought.

ii. . Identify the provisions to be interpreted.

iii. . Identify the considerations giving rise to the request.

i. As regards the first point mentioned, the two questions posed by the IACHR in its request are generic in character and do not refer specifically to any of the rights protected under the

Convention. As presented, both of the IACHR's questions could apply to any type of situation in which an apparent contradiction exists between a domestic law and the human rights obligations imposed by the Convention on the States Parties. They bear no direct relationship to the specific provisions of Article 4, paragraph 2 (in fine) and paragraph 3 of the Convention, Right to Life.

In this connection, the IACHR's request for an advisory opinion asks the Court two questions that are totally generic in character and that, strictly speaking, do not help clarify any legal concern in the area of human rights at the regional level. The request is drawn up in a sui generis manner. It attempts to direct the petition towards the specific case of Peru and its domestic laws, so that the interpretative scope of a possible reply might be applied in a pervasive fashion to Peru's domestic situation, whereas the content of the questions themselves -- a cursory reading of them leaves no doubt in this regard -- do not refer to Peru, nor to capital punishment, let alone to the measures adopted in this area by the country's Legislature, in its capacity as a constituent organ. If the Honorable Court focuses exclusively on the content of the two questions presented, it will find no way of rendering an opinion because of the general manner in which they are framed. In procedural terms, when the purpose of the issue to be decided cannot be determined with clarity, the Court cannot render an opinion.

Consequently, there is clearly a formal defect which renders the advisory opinion request presented by the IACHR inadmissible, since the requirement of precision in the content of the questions provided in Article 51, paragraph 1, of the Rules of Procedure of the Court has not been met.

According to Procedural Theory, the general nature of the questions put to the Honorable Court by the IACHR makes them non-justiciable. This is so because the assumptions on which an interpretation is sought -- based exclusively on the manner in which this request has been formulated -- have no direct legal relevance to Article 4, paragraphs 2 and 3, of the Convention nor to the internal situation in Peru as of the date of the entry into force of the new Constitution and the provisions relating to capital punishment. For these reasons, therefore, the questions put to the Honorable Court by the IACHR are not issues that can be brought before the Court for an opinion.

ii. As for the requirement to identify the provisions to be interpreted, the IACHR's petition has requested the interpretation of the scope of Article 4, paragraphs 2 (in fine) and 3 of the American Convention on Human Rights and, using the request as a point of departure, attacks the domestic laws of the Peruvian State, specifically Articles 235 of the 1979 Constitution of Peru and 140 of the new Constitution. In other words, under the guise of requesting an interpretation of Article 4 of the Convention, the IACHR's intention is to have the Honorable Court render an opinion on a presumed incompatibility or contradiction between that provision of the Convention and the domestic laws of Peru. The IACHR, we repeat, lacks the authority to resort to the Inter-American Court of Human Rights for this purpose.

In the instant case, as has been pointed out, the IACHR's lack of procedural standing renders its request for an advisory opinion inadmissible. The Honorable Court must declare the IACHR's request inadmissible ab initio, without considering the merits of the matter.

iii. As for the considerations which gave rise to the request, the express mandate contained in Article 64, paragraph 2, of the Convention amply demonstrates that the issue, as presented by the IACHR, concerns the apparent incompatibility between the obligations imposed by the Convention and the scope of domestic laws. As has been clearly explained, this is a situation in which the IACHR has no functional legitimacy or standing. In these cases, requests for advisory opinion are reserved exclusively to the States. Hence, this is yet another reason why the request for an advisory opinion filed by the IACHR should be declared inadmissible.

Procedural Theory holds that any breach in formally complying with the requirements for an advisory opinion request makes the request procedurally inadmissible.

c. **Substantive issues of the IACHR request**

It is not the intention of the Government of Perú to enter into the merits of the advisory opinion request filed by the IACHR. In the Government's opinion, the reasons set out above suffice for it to be found inadmissible. Nevertheless, there are certain aspects of the request that should be emphasized for a better understanding of the IACHR's intentions.

The IACHR's request points out that in view of the extension of the scope of application of the death penalty in Perú (Article 140 of the new Peruvian Constitution), that norm is, in the words of the IACHR "in violation of Article 4, paragraph 2 (in fine) and paragraph 3 of the Convention." That is to say, the IACHR arrogates unto itself the roles of Prosecutor and Judge of Perú and assumes prerogatives that are the exclusive function of that Honorable Court. In this connection it is important to remind the IACHR that, under Article 1 of its Statute, the Inter-American Court of Human Rights is the "autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights." Consequently, when the IACHR declares that a domestic law of Perú is in violation of the Convention, it is anticipating judgment, prejudging and assuming functions which have not been conferred upon it. With all due respect, the Government of Perú considers that the elements contained in the IACHR's request which have been described above are indicative of a frame of mind that is not devoid of prejudice; there is no place for such an attitude in this type of proceeding.

The request of the IACHR should have limited itself to clarifying a legal concern by consulting the Court. On the contrary, it prejudges and anticipates judgments on the domestic laws of Perú by stating in the section titled "Provisions to be Interpreted" that the law promulgated by Perú through its National Congress, in the exercise of its constituent duties, constitutes "a manifest violation of its obligations under the Convention." Such an assertion becomes unacceptable, because in making it the IACHR is arrogating unto itself powers of interpretation that belong exclusively to the Honorable Court.

There are additional reasons why the Government of Perú considers that the IACHR has acted precipitously in the instant case. The request for an advisory opinion was submitted to the Honorable Court on November 9, 1993, as evidenced by the date of receipt. In other words, it was filed when the official results of the national referendum on the new Peruvian Constitution -- which does, indeed, contain a new provision regarding capital punishment -- were as yet unknown. Hence, it was not known with any degree of certainty whether or not the Constitution would be approved; but the IACHR nevertheless went ahead with a request for an advisory opinion regarding a provision contained in a new body of law that had no effect whatsoever.

There is still more for which no justification can be found. The entire text of the IACHR's request is drafted as though the last part of Article 140 of the new Constitution of Perú did not exist. That portion clearly states that the promulgation of any new norms relating to the death penalty would be required to be "**in accordance with the laws and treaties to which Peru is a party.**" There can be no doubt that this constitutional provision could under no circumstances exclude the American Convention on Human Rights, an international instrument to which Perú is a State Party. That is an express requirement of the new Constitution of Perú, which the IACHR has completely ignored or disregarded. The IACHR's position is thus incomprehensible to the Government of Perú, insofar as it has not taken into account the last part of the new constitutional article quoted above and, in an

unfortunate decision, has proceeded to file an advisory opinion request that is absolutely inadmissible as to form and on its merits -- if the substance of the matter were to be addressed. Furthermore, the relevance of this advisory opinion request cannot be defended and it adds an unnecessary burden to the work of that Honorable Court.

It should be borne in mind that the provision contained in Article 140 of the new Constitution is a benchmark provision of a constitutional character and that it will be necessary to wait and see whether the National Congress, in the exercise of its legislative powers, deems it advisable to pass specific laws implementing that new constitutional provision. Such specific laws, if they are ever proposed, discussed and approved, must take into account the treaties to which Peru is a party, as expressly mandated by the new Constitution. Article 140 of the new Constitution of Peru does not compel a legislator to promulgate laws on the subject within the new constitutional framework that has been adopted. This is an elementary aspect of constitutional law that, surprisingly, has been ignored by the IACHR in its request to the Honorable Court for an advisory opinion.

In keeping with principles of legality, criminal law -- which includes capital punishment -- must define the concrete behavior for which that sanction is to be applied. In that sense, the IACHR's request lacks merit to validate it at this point or to provide the grounds for issuance of an advisory opinion, for it is based on a factual and legal consideration that has not yet been presented.

Lastly, Mr. President, the decision to be adopted by the Honorable Court with regard to the IACHR's request is very important to the Government of Perú and to the whole regional international community. It must be kept in mind that proceedings before the Court are not subject to appeal; as a result, its judgments, decisions or advisory opinions, once rendered, cannot be reviewed or amended. Consequently, extreme care must be exercised regarding the admissibility of all petitions at the very outset of contentious and non-contentious cases and, once the admissibility stage has been completed, that caution must be redoubled in studying the legal basis of the actions themselves when examining the merits of the case. This will help promote, develop and strengthen a vigorous international judicial system at the regional level, which offers the best guarantee against actions or petitions that have not been sufficiently weighed and are unfortunately presented in an impetuous manner, contradicting what is expressly stated in the Convention and unnecessarily damaging the rights and obligations of the States Parties to that treaty.

THE GOVERNMENT OF PERU:

Taking into account all of the above points set forth in its written observations on the Request for Advisory Opinion (OC-14) filed by the Inter-American Commission on Human Rights, hereby requests that the Honorable Court refuse to render the opinion sought, in line with the precedent established in its own Advisory Opinions; or, alternatively, that the request be held inadmissible because of the lack of standing of the IACHR, because of defects in the manner of its presentation or, if applicable, inadmissible on the merits, insofar as the request of the IACHR seeks the interpretation of a domestic norm of Peruvian law, for which it has no standing.

MOREOVER: In the event that the Inter-American Court of Human Rights decides to proceed with the public hearing, the Government of Perú hereby requests that it be given sufficient advance notice to enable it to appear before that hearing.

APPENDIX XIII

RATIFICATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

WHEREAS the American Convention on Human Rights was opened for signature and ratification by or adherence of any member state of the Organization of American States.

AND WHEREAS ratification of or adherence to the Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States.

AND WHEREAS Article 75 of the said Convention provides that the Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

NOW THEREFORE the Commonweath of Dominica hereby ratifies the American Convention on Human Rights subject to the following reservations:

"1) Article 5. This should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act.

2) Article 4 (4). Reservations is made in respect of the words "or related common crimes".

3) Article 8 (2) (c). This Article shall not apply in respect of Dominica.

4) Article 21 (2). This must be interpreted in the light of the provisions of the Constitution of Dominica and is not to be deemed to extend or limit the rights declared in the Constitution.

5) Article 27 (1). This must also be read in the light of our Constitution and is not to be deemed to extend or limit the rights declared by the Constitution.

6) Article 62. The Commonwealth of Dominica does not recognise the jurisdiction of the Court."

IN WITNESS WHEREOF, I, BRIAN GEORGE KEITH ALLEYNE, MINISTER FOR EXTERNAL AFFAIRS AND OECS UNITY have this day signed this Instrument of Ratification and have hereunto affixed the seal of the Commonwealth of Dominica.

Done at Roseau this 3rd day of June One Thousand Nine Hundred and Ninety Three.

APPENDIX XIV

ANDRES RODRIGUEZ

PRESIDENT OF THE REPUBLIC OF PARAGUAY

TO WHOMEVER SEES THIS DOCUMENT,

MAKES KNOWN:

The promulgation of Decree Nº 16.078 of January 8, 1993, which recognizes the competence of the Inter-American Court of Human Rights to interpret and apply the American Convention on Human Rights or Pact of San José of Costa Rica.

THEREFORE,

this recognition is for an indefinite period and should be interpreted in conformity with the principles of International Law, in the sense that this recognition refers specifically to events occurring subsequent to this act and only in thoses cases in which there is reciprocity.

IN WITNESS WHEREOF, I sign this instrument which carries the Seal of Arms of the Republic and is countersigned by the Minister of Foreign Relations, Doctor ALEXIS FRUTOS VAESKEN, in the City of Asunción, Capital of the Republic of Paraguay, on the eleventh day of March, 1993.

APPENDIX XV

JAIME PAZ ZAMORA

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF BOLIVIA

WHEREAS:

The Constitutional Government of the Republic, pursuant to Article 59, paragraph 12, of the Political Constitution of the State, by Law 1430 of February 11, provided for the approval and ratification of the American Convention on Human Rights, "Pact of San José de Costa Rica", signed in San José, Costa Rica, on November 22, 1969, and the recognition of the competence of the Commission and of the Inter-American Court of Human Rights, in conformity with Articles 45 and 62 of the Convention.

THEREFORE:

In exercise of the power conferred upon me by paragraph 2, Article 96 of the Political Constitution of the State, I issue this Instrument of Ratification of the American Convention on Human Rights "Pact of San José de Costa Rica", which recognizes the competence of the Inter-American Commission on Human Rights and unconditionally recognizes the competence of the Inter-American Court of Human Rights, as legally binding, for an indefinite period, in conformity with Article 62 of the Convention.

Signed by may hand, sealed with the Great Seal of State and countersigned by the Minister of Foreign Relations and Worship, so it may be deposited with the General Secretariat of the Organization of American States, Washington.

Done in the Palace of Government of the City of La Paz, on the twentieth day of May of 1993.

APPENDIX XVI

STATUS OF RATIFICATIONS AND ACCESSIONS

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

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

ENTRY INTO FORCE: 18 July 1978, in accordance with Article 74(2) of the Convention

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS Treaty Series, No. 36

UN REGISTRATION: 27 August 1979, No. 17955

Signatory Countries	Date of Signature	Date of Deposit of Instrument of Ratification or Adherence	Date of Acceptance of the Jurisdiction of the Court
Argentina	02/II/84	05/IX/84	05/IX/84
Barbados	20/VI/78	27/XI/81	27/VII/93
Bolivia		19/VII/79	
Brazil		25/IX/92	
Chile	22/XI/69	21/VIII/90	21/VIII/90
Colombia	22/XI/69	31/VII/73	21/VI/85
Costa Rica	22/XI/69	08/IV/70	02/VII/80
Dominica		10/VI/93	
Dominican Rep.	07/IX/77	19/IV/78	
Ecuador	22/XI/69	28/XII/77	24/VII/84
El Salvador	22/XI/69	23/VI/78	
Grenada	14/VII/78	18/VII/78	
Guatemala	22/XI/69	25/V/78	09/III/87
Haiti		27/IX/77	
Honduras	22/XI/69	08/IX/77	09/IX/81
Jamaica	16/IX/77	07/VIII/78	
Mexico		24/III/81	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panama	22/XI/69	22/VI/78	9/V/90
Paraguay	22/XI/69	24/VIII/89	26/III/93
Peru	27/VII/77	28/VII/78	21/I/81
Suriname		12/XI/87	12/XI/87
Trinidad and Tobago		29/V/91	29/V/91
United States	01/VI/77		
Uruguay	22/XI/69	19/IV/85	19/IV/85
Venezuela	22/XI/69	09/VIII/77	24/VI/81

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC SOCIALES, AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

Signed at San Salvador, El Salvador, on November 17, 1988,
at the Eighteenth Regular Session of the General Assembly

ENTRY INTO FORCE: When eleven States have deposited their respective instrument of ratification or accession

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS Treaty Series, No. 69.

UN REGISTRATION:

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF INSTRUMENT OF RATIFICATION OR ADHRENCE
Argentina	17/XI/88	
Bolivia	17/XI/88	
Costa Rica	17/XI/88	
Dominican Rep.	17/XI/88	
Ecuador	17/XI/88	25/III/93
El Salvador	17/XI/88	
Guatemala	17/XI/88	
Haiti	17/XI/88	
Mexico	17/XI/88	
Nicaragua	17/XI/88	
Panama	17/XI/88	18/II/93
Peru	17/XI/88	
Suriname		10/VII/90
Uruguay	17/XI/88	
Venezuela	27/I/89	

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH DEATH PENALTY

Signed at Asunción, Paraguay, on June 9, 1990, at the Twentieth Regular Session of the General Assembly

ENTRY INTO FORCE: For the States which ratify or adhere to it, upon the deposit of the respective instrument of ratification or accession

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS, Treaty Series, No. 73

UN REGISTRATION:

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF INSTRUMENT OF RATIFICATION OR ADHRENCE
Costa Rica	28/X/91	
Ecuador	27/VIII/90	
Nicaragua	30/VIII/90	
Panama	26/XI/90	28/VIII/91
Uruguay	2/X/90	
Venezuela	25/IX/90	6/X/93

LIST OF ERRATA

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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. Its Charter was signed in Bogota in 1948 and entered into force on December 13, 1951. It was amended by the Protocol of Buenos Aires signed in 1967 and in force since February 27, 1970. It was later amended by the Protocol of Cartagena de Indias signed in 1985 and in force since November 16, 1988. Today the OAS has thirty-five member states.

MEMBER STATES: Antigua and Barbuda, Argentina, The Bahamas *(Commonwealth of)*, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica *(Commonwealth of)*, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, 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.