

ORGANIZATION OF AMERICAN STATES

Inter-American Court on Human Rights



OEA/Ser.L/III.7
doc. 13
23 September 1982
Original: Spanish

ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 1982



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

1982

court

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I. ORIGIN, STRUCTURE AND COMPETENCE OF THE COURT

A. Creation of the Court

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

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

B. Organization of the Court

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

The Court consists of seven judges, nationals of the member states of the Organization of American States, who act in an individual capacity and are elected from among "jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the states of which they are nationals or the state that proposes them as candidates." (Article 52 of the Convention).

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

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

The judicial term runs from July 1 of the year in which a judge assumes office until June 30 of the year in which he completes his term. However, judges continue in office until the installation of their successors or to hear cases that are still pending. (Article 5 of the Statute).

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

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

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

The judges are at the disposal of the Court and, pursuant to the Rules of Procedure, meet in two regular sessions a year and in special sessions when convoked by the President or at the request of a majority of the judges. Although the judges are not required to reside at the seat of the Court, the President renders his services on a permanent basis. (Article 16 of the Statute and Articles 11 and 12 of the Rules of Procedure).

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

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

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

C. Composition of the Court

The Court is composed of the following judges, in order of precedence:

Carlos Roberto Reina (Honduras), President
Pedro A. Nikken (Venezuela), Vice President
Huntley Eugene Munroe (Jamaica)
César Ordóñez Quintero (Colombia)*
Máximo Cisneros Sánchez (Peru)
Rodolfo Piza Escalante (Costa Rica)
Thomas Buerghenthal (United States)

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

(*) Judge Ordóñez Quintero died on March 10, 1982. The vacancy caused by his death will be filled by the States Parties to the Convention at the Twelfth Regular Session of the General Assembly of the OAS.

D. Competence of the Court

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

1. The Court's contentious jurisdiction

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

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

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the states parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by special agreement.

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

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

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

The Convention, in Article 63.1, contains the following stipulation relating to the judgments that the Court may render:

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

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

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

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

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

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

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

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

2. The Court's Advisory Jurisdiction

The jurisdiction of the Inter-American Court of Human Rights to render advisory opinions is set forth in Article 64 of the Convention, which reads as follows:

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

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

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

The Court's advisory jurisdiction power enhances the Organization's capacity to deal with complex legal issues arising under the Convention. Its advisory jurisdiction therefore extends to the political organs of the OAS in dealing with disputes involving human rights issues.

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

Under the provision, this jurisdiction also extends to pending legislation. Resort to this provision could contribute very significantly to the uniform application of the Convention by national tribunals.

3. Acceptance of the jurisdiction of the Court

Four States Parties to the Convention have recognized as binding the jurisdiction of the Court on all matters relating to the interpretation and application of the Convention. (Article 62.1 of the Convention). They are Costa Rica, Peru, Venezuela and Honduras.

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

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

E. Budget

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

For the biennial 1982-83 the Court submitted a budget of \$356,700 for 1982 and \$382,300 for the following year. The proposed amounts were reduced by the Advisory Commission on Administrative and Budgetary Matters (CAAAP) and further reduced by the Commission on Program-Budget. However, the Commission later restored some of the cuts.

The General Assembly of the Organization, at its Eleventh Regular Session, approved a budget for the Court of \$300,000 for 1982 and \$305,100 for 1983.

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

The Court has close institutional ties with its sister organ of the American Convention, the Inter-American Commission on Human Rights. These ties have been solidified by a series of meetings between members of the two bodies. The Court also maintains cooperative relations with other OAS bodies working in the area of human rights, such as the Inter-American Commission of Women and the Inter-American Juridical

Committee. It has established especially strong ties with the European Court of Human Rights, which was established by the Council of Europe and exercises functions within the framework of that Organization comparable to those of the Inter-American Court. The Court also maintains relations with the pertinent bodies of the United Nations such as the Commission and Committee on Human Rights and the Office of the High Commissioner for Refugees.

II. ACTIVITIES OF THE COURT

A. Second Special Session of the Court

The Court held its Second Special Session November 9-14, 1981 at its seat in San Jose. The following judges attended this session: Carlos Roberto Reina (President), Pedro A. Nikken (Vice President), César Ordóñez Quintero, Máximo Cisneros Sánchez, Rodolfo Piza Escalante and Thomas Buergenthal. Judge Huntley Eugene Munroe was unable to attend because of previous commitments.

This special session was convoked to consider the "Case of Viviana Gallardo et at." (Appendix I) which had been presented directly to the Court by the Government of Costa Rica and concerned the death in prison of Viviana Gallardo and the wounding of her two cell-mates by a member of the security forces of the country.

With respect to this case, the Court had decided, at its previous session, to request the Government of Costa Rica and the Inter-American Commission on Human Rights to present their points of view on the jurisdiction of the Court in the case due to the fact that the Government of Costa Rica had waived the requirements of the exhaustion of domestic legal remedies and of the procedures before the Inter-American Commission on Human Rights.

In its decision, the Court reaffirmed the general rule that the individual, the object of international protection, must be favored in interpreting the Convention as long as such an interpretation does not result in a modification of the system. The judges had before them the question of whether the procedures before the Commission can be by-passed by the unilateral waiver of the State concerned. The Court held that these procedures "have not been created for the sole benefit of the States, but also in order to allow for the exercise of important individual rights, especially those of the victims." It was noted that the function of promoting friendly settlements had been assigned by the Convention exclusively to the Inter-American Commission on Human Rights and that "any

solution that denies access to these procedures before the Commission deprives individuals, especially victims, of the important rights to negotiate and accept freely a friendly settlement arrived at with the help of the Commission." The Court held that the procedures before the Commission cannot be dispensed with in this kind of case without impairing the institutional integrity of the protective system guaranteed by the Convention.

As to the waiver of the prior exhaustion of domestic legal remedies, the Court did not give an opinion, concluding that it was for the Inter-American Commission to pass on the matter in the first place.

The Court decided, unanimously, a) not to admit the application of the Government of Costa Rica requesting the Court to examine the "Case of Viviana Gallardo et al."; b) to grant the subsidiary plea of the Government of Costa Rica and to refer the matter to the Inter-American Commission on Human Rights and c) to retain the application of the Government of Costa Rica on its docket pending the proceedings of the Commission.

B. Eleventh Regular Session of the OAS General Assembly

The Court was represented at the Eleventh Regular Session of the General Assembly of the Organization, held December 2-11, 1981 in Castries, Saint Lucia, by its Vice President, Pedro A. Nikken. The President of the Court, Judge Carlos Roberto Reina, was not able to attend for reasons beyond his control.

Judge Nikken, in his presentation of the Annual Report of the Court for the year 1981 to the Commission on Juridical and Political Matters of the Assembly referred primarily to the decision of the Court in the Case of Viviana Gallardo et al. The Court had rendered its decision in this case, which had been presented by the Government of Costa Rica, the month prior to the General Assembly. Copies of the decision were distributed at the Assembly.

A draft resolution was adopted by consensus expressing the appreciation of the Organization of American States for the work performed by the Court. As in previous years, the resolution expressed the hope that other member states of the OAS would ratify or adhere to the American Convention on Human Rights. The draft, recognizing that Peru, Venezuela and Honduras had accepted the binding jurisdiction of the Court during 1981, expressed the hope that "the necessary steps will continue so that the Court may carry out fully the functions

assigned to it by the Convention." This draft resolution was later ratified by a plenary session of the General Assembly. (AG/RES.538 (XI-0/81)).

At this session of the Assembly, the total budget of the OAS for the biennial 1982-83 was adopted. The Court's portion of the budget was \$300,000 for 1982 and \$305,100 for the following year.

The States Parties to the Convention re-elected for a period of six years Judges César Ordóñez Quintero, Pedro A. Nikken and Rodolfo Piza Escalante, whose terms were soon to expire.

C. Sixth Regular Session of the Court

The Sixth Regular Session of the Court was held June 28 - July 3, 1982 at its seat in San Jose. All of the judges attended this session.

The session began with an homage to the memory of Judge César Ordóñez Quintero, who had died on March 10, 1982. After observing a minute of silence, the judges recalled the important contributions that Judge Ordóñez Quintero had made to the Court since its creation in 1979.

The Court next considered the request for an advisory opinion that had been presented by the Government of Peru. (See Appendix II). The Government requested a clarification of the very provision -Article 64- of the American Convention on Human Rights that establishes the Court's advisory jurisdiction. Inasmuch as that Article does not limit the Court to the interpretation of the Convention alone but expressly extends to it the power to interpret "other treaties concerning the protection of human rights in the American states," the Government of Peru requests an interpretation of that phrase, asking specifically that the opinion cover the following question: "That phrase refers to and includes: a) only those treaties adopted within the framework or under the auspices of the inter-American system? or b) the treaties drawn up solely among the American states, that is, the reference is limited to the treaties in which the American states are parties exclusively? or c) all treaties in which one or more American states are parties?"

While meeting in San Jose, the Court received a request for an advisory opinion from the Inter-American Commission on Human Rights on the interpretation of Articles 74.2 and 75 of the American Convention on Human Rights. (See Appendix III). The specific request is formulated in the following terms:

"From what moment is a state deemed to have become a party to the American Convention on Human Rights when it ratifies or adheres to the Convention with one or more reservations: from the date of the deposit of instrument of ratification or adhesion or upon the termination of the period specified in Article 20 of the Vienna Convention on the Law of Treaties?"

The Commission presented the request because, from a practical point of view, it must know which states are parties to the Convention so that it might apply the relevant norms of its Statute which distinguish with respect to the effect given the petitions and communications received by the Commission between States Parties to the Convention and states that are not parties.

The Court decided to consider both requests for advisory opinions at its Seventh Regular Session to be held September 16 - October 2, 1982. The Court also resolved to hold public hearings in order to receive the oral arguments that the Member States and the organs of the Organization of American States might wish to make on the requests. The hearings on the Peruvian request and that of the Commission were set for September 17 and 20, 1982, respectively, at the seat of the Court.



CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CÔRTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS

APPENDIX I

San José, Costa Rica

GOVERNMENT OF COSTA RICA (IN THE MATTER OF VIVIANA GALLARDO ET AL.)

N° G 101/81

DECISION OF NOVEMBER 13, 1981

The Inter-American Court of Human Rights, sitting, in accordance with Article 62 (3) of the American Convention on Human Rights (the Convention) and the relevant provisions of its Statute and Rules of Procedure, with the following judges in attendance:

Carlos Roberto Reina, President
Pedro Antonio Nikken
César Ordóñez Quintero
Máximo Cisneros Sánchez
Rodolfo Piza Escalante
Thomas Buergenthal

Not participating was Judge Huntley Eugene Munroe, who was duly excused by the President,

Also present were Charles Moyer, Secretary, and Manuel Ventura, Deputy Secretary,

Having deliberated in private from November 9 through 13, 1981, the Court delivers the following decision:

BACKGROUND:

1. By telegram dated July 6, 1981, the Government of Costa Rica (the Government) announced the institution of a proceeding requesting the Court to hear the case of Viviana Gallardo et al. A formal application was presented on July 15. In its application the Government advised the Court of its decision to submit to it the case of Viviana Gallardo, a Costa Rican citizen who was killed in prison, as well that relating to the injuries suffered by her cell-mates, which death and injuries were inflicted on July 1, 1981 by a member of the Civil Guard, who was guarding them at that time in the First Commissariat of that institution. The Government's application, citing Article 62 (3) of the Convention, requested that the Court decide whether these acts constituted a violation by the national authorities of Costa Rica of the human rights guaranteed in Articles 4 and 5 of the Convention or of any other right guaranteed therein.

2. In its application, the Government declared that for purposes of this case it "formally waives the requirement of the prior exhaustion of the domestic legal remedies and the prior exhaustion of the procedures set forth in Articles 48 to

50 of the Convention," that is, the procedures before the Inter-American Commission on Human Rights (the Commission). The Government also declared that the waiver was designed to enable the Court to "consider the instant case immediately and without any procedural obstacle."

3. The Government requested subsidiarily that "this application be referred to the Inter-American Commission on Human Rights pursuant to the terms of its jurisdiction if the Court resolves that it lacks the power to deal with this application before the procedures set forth in Articles 48 to 50 have been completed."

4. The Government in its application designated: Elizabeth Odio Benito, Attorney General, Minister of Justice, as Agent; Manuel Freer Jiménez and Farid Beirute Brenes as advisors; and Roberto Steiner Acuña, Martín Troyo Benavides and María I. Arias Méndez, as advocates.

5. By resolution of July 16, 1981 (CDH RP-05/81 Rev), the President of the Court, Judge Rodolfo Piza Escalante, decided to submit the Costa Rican application directly to the full Court for its consideration. He also decided, according to Article 5 (3) of the Rules of Procedure to yield the Presidency for the purposes of the hearing of this application to the Vice President, Judge Máximo Cisneros Sánchez. Judge Carlos Roberto Reina was elected President of the Court on July 17, 1981 and as of that date he assumed the function of presiding over the case.

6. In its decision dated July 22, 1981 (G-101/81), the Court determined that "the circumstances of this case require the Court to decide first on the effect to be given to the waiver of the aforementioned procedures by Costa Rica and, in general, to determine its jurisdiction to deal with the case at this stage." The Court next decided that "before determining whether it has jurisdiction and before considering any other aspect of the case, it is appropriate for this Court to give the Government of Costa Rica and the Inter-American Commission on Human Rights the opportunity to present their views concerning the jurisdiction of the Court to deal with the case at this stage." The Court consequently requested the Government to present its arguments concerning the jurisdiction of the Court. Likewise, taking into account Article 57 of the Convention, the Court requested the Commission to provide its views on the same subject.

7. The aforesaid decision instructed the President to set an appropriate period within which the pertinent submissions were to be presented and to convene the Court to render a decision. Having consulted the Government and the Commission, the President convened the Court for November 9, 1981.

8. On October 6, 1981 the Government submitted a brief to the Secretariat containing its arguments confirming its principal and subsidiary pleas. In its brief, the Government asserted that the rule for the prior exhaustion of domestic remedies is a procedural requirement and being a rule established for the benefit of the State can be waived by it. With regard to the waiver of the procedures before the Commission, the Government declared that, according to

Article 48 (1) (f), the Commission is to seek a friendly settlement of the matter submitted to it and that therefore there is no juridical interest in complying with the provisions of this article since the Government only requested that the Court decide whether the facts set forth constitute a violation of the Convention.

9. On October 20, 1981 the Secretariat received the Commission's reply dated October 13, stating that it had not received any communication or petition regarding the case. The Commission asserted furthermore, "that the procedures established in Articles 48 to 50 of the American Convention on Human Rights of November 22, 1969, of which Costa Rica is a State Party, can not be dispensed with in any case that might be brought before the Inter-American Court of Human Rights." Thus, the Commission is of the opinion that these procedures must be exhausted "before the Court can begin to hear the case."

10. On October 23, 1981 the Court requested the Government to provide it with information relating to the status of the case in the courts of Costa Rica and on the applicable domestic law. The Government complied with this request on October 30.

11. On November 3, 1981 the Government was requested to provide information on civil actions that might be brought in connection with this case under Costa Rican law. The Government complied with this request on November 9.

LEGAL CONSIDERATIONS:

12. From a legal point of view, this case is unique in that the Government, consistent with its country's well-known commitment to and traditional support for human rights and international cooperation and wishing to avoid lengthy delays in seeing justice done, has submitted the instant case directly to the Court before it had been examined by the Commission and before judicial proceedings that might be available in Costa Rican courts had been pursued and exhausted. Cognizant of the legal obstacles it faced in order to obtain direct access to the Court, the Government expressly declared that it waived:

- a) The requirement, set out in Article 61 (2) of the Convention, that "in order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 shall have been completed"; and
- b) The provision, contained in Article 46 (1) (a) of the Convention, which conditions the admissibility of petitions or communications lodged with the Commission whether by individuals or by States on the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

13. This matter then has its origin in the action of a State Party which presents to the Court a case of a possible violation of human rights guaranteed in the Convention that might be imputed to that State, which State, moreover,

has recognized as binding, ipso facto, and not requiring a special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention. The unusual character of this case requires the Court to seek the best way to reconcile, under the applicable rules of international law, the interests involved in this matter. These are first, the interest of the victims that the full enjoyment of the rights they have under the Convention be assured and protected; second, the need to safeguard the institutional integrity of the system that the Convention establishes; finally, the concern reflected in the application of the Government that the case be decided by a speedy judicial process.

14. Article 61 (2) of the Convention is sufficiently clear in indicating that the Court may not deal with any matter unless the procedures before the Commission have been exhausted. However, as soon as the Government expressed its willingness to waive this requirement in order to facilitate the speedy consideration of this case by this tribunal, the Court deemed it appropriate to assess the waiver and determine its scope in order to decide how to reconcile the interest of the victims and the integrity of the system guaranteed by the Convention. The Court, therefore, decided to consider the arguments which aided the Government in justifying the waiver of the aforementioned procedures as well as the views of the Commission, which, under Article 57 of the Convention, has the obligation to appear in all cases before the Court.

15. The object of international human rights protection is to guarantee the individual's basic human dignity by means of the system established in the Convention. Therefore, the Court as well as the Commission have an obligation to preserve all of the remedies that the Convention affords victims of violations of human rights so that they are accorded the protection to which they are entitled under the Convention. In this respect, it should be mentioned that neither the family of Viviana Gallardo, nor the other victims in this case, nor any person entitled, under Article 44, to present complaints to the Commission can submit them directly to the Court because individuals do not have standing, under the Convention, to present cases to it, which is another problem inherent in this case.

16. The Convention has a purpose -the international protection of the basic rights of human beings- and to achieve this end it establishes a system that sets out the limits and conditions by which the States Parties have consented to respond on the international plane to charges of violations of human rights. This Court, consequently, has the responsibility to guarantee the international protection established by the Convention within the integrity of the system agreed upon by the States. This conclusion, in turn, requires that the Convention be interpreted in favor of the individual, who is the object of international protection, as long as such an interpretation does not result in a modification of the system.

17. The application presented to the Court by the Government raises, prima facie, two issues bearing on the system established by the Convention. The first has to do with the fact that Article 61 (2) requires that the procedures before the Commission be exhausted before the Court can hear a case.

The second concerns Article 46 (1) (a), which conditions the admissibility of a petition or complaint before the Commission on the requirement that the remedies under domestic law be pursued and exhausted in accordance with generally recognized principles of international law. Neither of these requirements has been complied with in this case.

18. Before considering these issues, the Court holds that, with regard to the question that is common to both issues, there can be no doubt that under the applicable norms of general international law, the Government, through its duly authorized agent, is competent to make the aforesaid waiver. This conclusion of the Court, for which there is ample support in international law, bears exclusively on the issue of the Government's competence to make the aforesaid declarations before Convention organs and does not address the question relating to their domestic legal effect in Costa Rica, which are matters governed by domestic law.

19. Having decided that the Government has the necessary competence, the Court must determine what legal consequences attach to its waivers. For if the requirements of Articles 61 (2) and 46 (1) (a) of the Convention are waivable by a State Party, the instant case is admissible. The opposite would be true if one or the other requirement is not waivable.

a) Waiver of the procedures before the Commission

20. The Court notes the very clear language of Article 61 (2), which provides that "in order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 shall have been completed." Naturally, under international law relating to the interpretation of treaties, the aforementioned provision must be read in accordance with "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Vienna Convention on the Law of Treaties, Article 31 (1)

21. It is clear that in this matter no procedures at all have been initiated before the Commission. It is, therefore, not a question of deciding whether these procedures have been exhausted or when they might be considered to have been exhausted, but strictly one of determining whether the procedures can be avoided by the mere unilateral waiver of the State concerned. In order to make this determination, it is necessary to define the role that the Convention assigns to the Commission as a body having preparatory or preliminary tasks relating to the adjudicatory functions of the Court and, more particularly, whether the role assigned to the Commission has been created for the sole benefit of States, in which case it is waivable by them.

22. The Convention, in effect, in addition to giving the Commission formal standing to submit cases to the Court and to request advisory opinions and to giving it in proceedings before the Court a quasi-judicial role, like that assigned to the "Ministerio Público" of the inter-American system, obligated

to appear in all cases before the Court (Article 57 of the Convention), gives it other attributes connected with functions which pertain to the Court and which by their nature are completed before it begins to hear a particular matter. Thus, the Commission has, inter alia, the function of investigating allegations of violations of human rights guaranteed by the Convention which must be carried out in all cases that do not concern disputes relating to mere questions of law. It follows therefrom that, although the Court, as any other judicial organ, does not lack the power to carry out its own investigations particularly if these are necessary to provide the Court with the information it needs to discharge its functions, the Convention entrusts to the Commission the initial phase of the investigation into the allegations. The Commission also has a conciliatory function empowering it to propose friendly settlements as well as to make the appropriate recommendations to remedy the violation it has found to exist. It is also the body to which the States concerned initially provide all the pertinent information and submissions. But the Commission is also, and this is a fundamental aspect of its role in the system, the body which is authorized to receive individual complaints, that is, the entity to which victims of violations of human rights and other persons referred to in Article 44 can resort directly to present their complaints and allegations. The Convention is unique among international human rights instruments in making the right of private petition applicable against States Parties as soon as they ratify the Convention; no special declaration to that effect is required for individual petitions, although it must be made for inter-State communications.

23. The Commission thus is the channel through which the Convention gives the individual, qua individual the possibility to activate the international system for the protection of human rights. As a strictly procedural matter, it should be remembered that just as individuals cannot submit cases to the Court, States can submit them to the Commission only if the conditions of Article 45 have been met. This is yet another factor that bears on the institutional interest in fully preserving the ability of the individual by means of his own complaint to initiate proceedings before the Commission.

24. The Court notes, in addition, that it lacks the power to discharge the important function of promoting friendly settlements, within a broad conciliatory framework, that the Convention assigns to the Commission precisely because it is not a judicial body. To the individual claimant this process has the advantage of ensuring that the agreement requires his consent to be effective. Any solution that denies access to these procedures before the Commission deprives individuals, especially victims, of the important right to negotiate and accept freely a friendly settlement arrived at with the help of the Commission and "on the basis of the human rights recognized in (the) Convention." (Article 48 (1) (f)).

25. These considerations suffice to demonstrate that the aforementioned procedures before the Commission have not been created for the sole benefit of the States, but also in order to allow for the exercise of important individual rights, especially those of the victims. Without questioning

the good intentions of the Government in submitting this matter to the Court, it follows from the above that the procedures before the Commission cannot be dispensed with in this kind of case without impairing the institutional integrity of the protective system guaranteed by the Convention. These procedures may therefore not be waived or excused unless it were to be clearly established that their omission, in a specific case, would not impair the functions which the Convention assigns to the Commission, as might be the case when a matter is initially presented by a State against another State and not by an individual against a State. In the instant case, the existence of such an exceptional situation is far from having been shown. The Government's waiver of the rule contained in Article 61 (2) consequently lacks the force necessary to dispense with the procedures before the Commission. This conclusion, in and of itself, suffices not to admit the instant application.

b) Waiver of the prior exhaustion of domestic remedies

26. Notwithstanding the above conclusion, the fact that the Government has informed the Court of its waiver of the requirement of Article 46 (1) (a) of the Convention leads the Court to consider the general issues involved in that waiver. In cases of this type, under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts which have been imputed to it before it has had the opportunity to remedy them by internal means. The requirement is thus considered a means of defense and, as such, waivable, even tacitly. A waiver, once effected, is irrevocable. (Eur. Court H. R., DeWilde, Ooms and Versyp Cases ("Vagrancy" Cases), judgment of 18th June 1971).

27. The application of this general principle may differ from case to case. Since the prior exhaustion of domestic remedies is a requirement for the admissibility of a complaint before the Commission, the first question that arises is whether the Court can decide, at this time, on the applicability of that principle to this case, that is, on the scope of the waiver of the Government of this defense. Following the precedent established by international tribunals (see case cited above), the Court notes that the question whether the requirements of admissibility of a complaint before the Commission have been complied with is a matter that concerns the interpretation or application of the Convention, specifically its Articles 46 and 47, and is therefore, ratione materiae, within the scope of the Court's jurisdiction. However, since we are dealing with the admissibility requirements of a complaint or application before the Commission, it is in principle for the Commission in the first place to pass on the matter. If, thereafter, in the course of the judicial proceedings there is a dispute relating to the question whether the admissibility requirements before the Commission have been complied with, it will be for the Court to decide, which for that purpose it has the power to accept or reject the views of the Commission in the manner

analogous to its power to accept or reject the Commission's final report. Therefore, having before it a complaint that has not as yet been dealt with by the Commission, and since it is a case that cannot be examined directly by this Court, the Court does not give an opinion, at this state of the proceedings, on the scope and effect of the waiver by the Government of the requirement concerning the prior exhaustion of domestic legal remedies.

c) Consequences of the prior conclusions

28. One of the unusual characteristics of this case and of the aforementioned conclusions is that the Court cannot hear this case in its present state although, as an abstract proposition, it fulfills the requirements for the exercise of its jurisdiction. In effect, this is a case that involves the application and interpretation of the Convention, especially its Articles 4 and 5, and is therefore, ratione materiae, within the scope of the Court's jurisdiction. The case, moreover, has been submitted by a State Party and thus fulfills the requirement of Article 61 (1) of the Convention. Finally, this case presents the question whether or not there was a violation of the human rights guaranteed in the Convention, attributable to a State which has recognized as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court. The inadmissibility of the application which the Government instituted does not therefore turn strictly on the lack of jurisdiction of the Court to hear the case but rather on its failure to fulfill the procedural requirements that must be met in order that the Court hear a case. Thus, consistent with the spirit of Article 42 (3) of its Rules of Procedure, the Court holds that it is empowered to retain the case on its docket until the conditions which have made it inadmissible in its present state have been complied with.

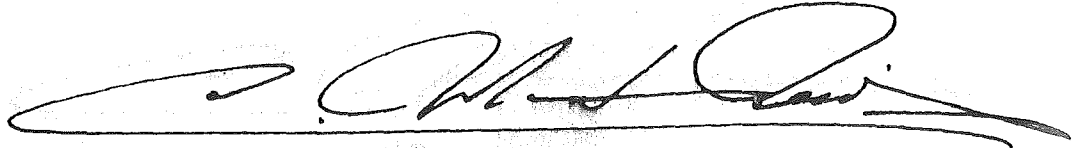
d) Subsidiary plea of the Government

29. Anticipating the difficulties that this case might present, the Government, in the form of a subsidiary plea, requested the Court in the event that it determined that the procedures provided for in Articles 48 to 50 of the Convention were not waivable, to refer the matter to the Commission, to the extent that the latter has jurisdiction. Despite the fact that such power is not expressly granted to the Court in the Convention, its Statute and its Rules of Procedure, the Court has no objection to complying with the request, it being understood that this action implies no decision by it concerning the Commission's jurisdiction in the instant case.

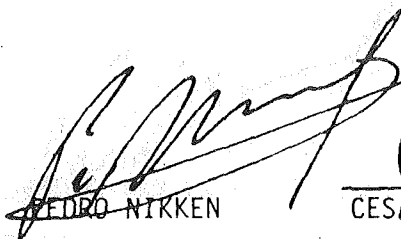
NOW, THEREFORE, THE COURT:

1. Decides, unanimously, not to admit the application of the Government of Costa Rica, requesting the Court to examine the case of Viviana Gallardo et al.;
2. Decides, unanimously, to grant the subsidiary plea of the Government of Costa Rica and to refer the matter to the Inter-American Commission on Human Rights;
3. Decides, unanimously, to retain the application of the Government of Costa Rica on its docket pending the proceedings of the Commission.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 13th day of November, 1981.



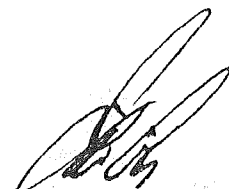
C. ROBERTO REINA
PRESIDENT



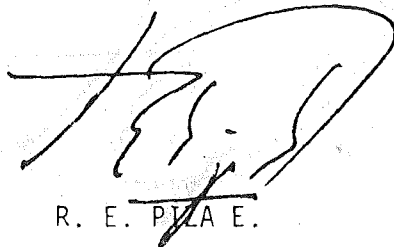
PEDRO NIKKEN



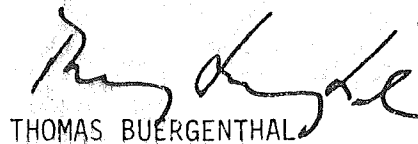
CESAR ORDOÑEZ QUINTERO




MAXIMO CISNEROS



R. E. PIZA E.



THOMAS BUERGENTHAL



CHARLES MOYER
SECRETARY



CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME
CÔRTE INTERAMERICANA DE DIREITOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS

Rodolfo E. Piza Escalante
Judge

APARTADO 6906 - SAN JOSE, COSTA RICA

In accordance with Article 66 (2) of the
American Convention on Human Rights,
I express my views by means of the following

EXPLANATION OF VOTE

I have concurred in the unanimous decision of the Court because I share its general conclusion that, within the protective system established by the American Convention on Human Rights, it does not appear possible to dispense with all of the procedures before the Inter-American Commission on Human Rights, set forth in Articles 48 to 50 of the Convention, the exhaustion of which Article 61 (2) imposes as a condition precedent to the contentious jurisdiction of the Court. Therefore it is not possible to admit the waiver of the procedures expressly made by the Government of Costa Rica, which in doing so demonstrated an exalted interest in overcoming the limitations, shortcomings and delays which ordinarily afflict international justice, especially in matters such as the present which should be characterized by effectiveness and promptness.

However, I dissent from some of the juridical reasoning found in the majority opinion, as well as from the form in which other points, which I share, are expressed in the decision. My concurring opinion therefore should be understood only to the extent that it is compatible with the majority opinion.

First, the action of the Government of Costa Rica presents to the Court a complex problem, without precedent, of "competence" in the very generic and imprecise sense of the language of the Convention, which involves three different kinds of matters: of JURISDICTION, in the sense of the specific "jurisdictional function" that the case requires of this Court; of COMPETENCE, in the sense of the measure of the general powers of the Court to hear it; and of STANDING, in the sense of the Court's specific power to admit this case in its present state.

I believe, in general, that the decision should have expressly explained the conclusion implicit in the majority opinion that the action brought clearly requires the Court to exercise its CONTENTIOUS JURISDICTION; a jurisdiction which, in my opinion, the Convention organizes and regulates as ordinary, giving it an obvious condemnatory nature, as in penal jurisdiction, whose specific object is not that of defining the right in question but rather that of re-establishing the violated right, specifically deciding whether there has been a violation of the rights guaranteed by the Convention that can be imputed to a State Party which in every case is the "passive party", the accused, in detriment to the individual who is the true "active party", the one who has been offended, the holder of the rights whose protection is being sought, and imposing

on the States the appropriate consequences, in favor of the individual. This framework is important in order to understand the structure of the jurisdiction and why the procedural equation is always the same even though the case might have been presented by the State Party accused of this violation, which State Party does not therefore become converted into an "actor" just as it is not the delinquent in penal jurisdiction, even though the State itself has invoked the jurisdiction by submitting itself to be judged; or even though the jurisdiction has been invoked by the Inter-American Commission which never has the role of a substantial party, accuser or accused but rather a sui generis role, purely procedural, as an auxiliary of the judiciary, like that of a "State Attorney" (Ministerio Público) of the inter-American system for the protection of human rights. This latter reason also makes it regrettable that the Court has not been able to have available in this case the reasons that were the bases of the conclusion, succinct and without explanation, of the response of the Commission to the request contained in Resolution G 101/81.

I believe, moreover, that the majority opinion is incomplete in setting out in paragraph 27 of the decision the COMPETENCE *ratione materiae*, of the Court with respect to the case presented by the Government of Costa Rica; it appears to me to be necessary to explain that the general competence does not come about only from the fact that a specific problem has been presented of a possible violation of human rights guaranteed by the Convention, in the case of Viviana Gallardo and her cellmates, but rather that the possible violation could be prima facie imputed to the Costa Rican state in that it is attributed to an agent under its authority who apparently was on duty, using the juridical and material means of his post (weapon, access to the cell of the victim, etc.). This is important to point out because the doubt has been raised in this case whether, since we are dealing with a subordinate authority, the responsibility of the State could not be derived directly from the very act of that subordinate but rather only directly, in the event that it is determined that there was a culpable omission on his part in protecting the victims, or in granting reparation and indemnization for the consequences of the act. There also exists the doubt whether, in view of these circumstances, the prior exhaustion of domestic legal remedies are indispensable and, therefore, not capable of being waived. It is my strong belief that violations of human rights attributable to public authorities, in exercise or as a result of their duties, or utilizing the juridical or material means thereof, are per se attributable to the State, aside from the responsibility that it subjectively has due to the bad faith or the fault of the high authorities.

With respect to the problem of the STANDING of this Court to hear the case in its present state, I share the opinion of the majority in that, given its general competence, the State of Costa Rica, as a State Party to the Convention which has moreover accepted the jurisdiction of the Court in the manner provided for by Article 62, has the procedural standing, in accordance with Article 61 (2) of the Convention, to submit the case to the Court, even though it is the State to which the alleged violations are imputed or can be imputed. I also think it important to link this conclusion to the structure that I have already mentioned of the contentious jurisdiction of the Court as one of a condemnatory nature. I also reiterate that the State concerned always plays the role in the procedure before

the Court the passive party, the accused, even though the State itself might have lodged the complaint.

In addition, regarding the fulfillment of the procedural requirements that determine the admissibility of the action of the Government of Costa Rica and, therefore, of the standing of the Court to hear it in its present state, I agree with the majority opinion in the sense that the exhaustion of domestic remedies is a procedural condition, in principle capable of being waived. I also agree with the decision not to decide on the question of the admissibility of the waiver of Costa Rica in the present case because of the decision of inadmissibility of this case by the Court, so that the Commission might decide it in the first place.

But I do not share the reasoning of the majority when it gives as a basis for rejecting the waiver of the Government of Costa Rica of the procedures before the Commission the fact that these procedures are indispensable to guarantee individuals, especially the victims of alleged violations, the full exercise of their interests, in view of the fact that the Convention expressly prohibits them direct access to the Court, and even in the supposition, still not resolved by the Court, that the Court might eventually give them an independent procedural standing once the proceedings have begun. In my case, my dissenting opinion obliges me to express once and for all that, in my judgment, the Convention only bars the individual from submitting a case to the Court. (Article 61 (1). This limitation, as such, is, in the light of the principles, an "odious matter" (*materia odiosa*) and should thus be interpreted restrictively. Therefore, one cannot draw from that limitation the conclusion that the individual is also barred from his autonomous condition of "party" in the procedures once they have begun. On the other hand, it is possible, even imperative, to grant to the individual that role and the independent rights of a party which would permit him to exercise before the Court all of the possibilities that the Convention gives him in the procedures before the Commission. However, in my opinion, the lack of procedural standing of the individual to initiate the process is not important because the foregoing presupposes that it already has begun through the action of the Commission or the State that makes the waiver.

It could be argued that there is one exception to the possibilities favoring the individual in the procedures before the Commission: that the victim might benefit from a friendly settlement proposed by the Commission that certainly, according to the majority opinion, would not be possible before the Court. But apart from the value, to my mind relative and doubtful, of the procedures of conciliation which to my way of thinking are rather tilted toward the interests of the States, it cannot be disputed that there always exists the possibility, even with the intervention of the Commission, if not as part of at least parallel to the procedures before the Court, that it also may result with a withdrawal, a friendly settlement or an extra-judicial agreement, with the advantage that it would have to be approved by the jurisdictional organ. (Article 42 of the Rules of Procedures of the Court and the doctrine of Articles 41 (b), 50 (3) and 51 of the Convention).

On the other hand, except for the procedure of conciliation, I believe that nothing that the Commission might be able to do, within the procedures set forth in the Convention, in the interest of an effective protection of human rights, the Court itself cannot do during the proceedings; and do it even better, since its intervention would add certainty and authority to the proceedings and, at the same time, would reduce considerably the length of the proceedings, contributing to the fulfillment of the ideal of prompt and full justice, the absence of which is one of the most serious and frequent violations of human rights, and source and guardian of almost all of the rest.

In conclusion, if I share the reasoning of the decision that, in the instant case, the waiver of the Government of the procedures before the Commission is not admissible, I do not do so because I consider it essential in order to have the best protection of human rights but rather I have come to the conclusion that unfortunately the system of the Convention appears to make it impossible since the American States in drafting it did not wish to accept the establishment of a swift and effective jurisdictional system but rather they hobbled it by interposing the impediment of the Commission, by establishing a veritable obstacle course that is almost insurmountable, on the long and arduous road that the basic rights of the individual are forced to travel.

For the foregoing reasons, my concurrence in the unanimous decision should be understood in the following terms:

- 1) The action submitted by the Government of Costa Rica to this Court in the case of Viviana Gallardo et al. is not admissible because the waiver of the Government of the prior procedures before the Inter-American Commission on Human Rights is not admissible, since unfortunately it does not appear possible to dispense with them in their totality, within the limitations set out by the system of the Pact of San José.
- 2) In view of the inadmissibility of the principal plea that the Court now hear the case, the Court should accept the subsidiary plea and send the matter to the Inter-American Commission on Human Rights so that it might consider it in accordance with its powers under the Convention.
- 3) This Court should also, because of its general competence in the case, retain the application of the Government of Costa Rica on its docket awaiting the procedures before the Commission.

R.E. PIZA E.

CHARLES MOYER

APPENDIX II

Lima,

The Secretary of the
Inter-American Court of Human Rights:

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

In accordance with the provisions of Article 49 of the Rules of Procedure adopted by the Inter-American Court of Human Rights, the Government of Peru formulates its request for an advisory opinion in the following terms:

I

INDICATION OF THE PROVISIONS TO BE INTERPRETED AND SPECIFIC
QUESTIONS ON WHICH THE OPINION OF THE COURT IS SOUGHT

The provision on which the interpretation is requested is, precisely, Article 64 of the American Convention on Human Rights because that Article, in establishing the advisory jurisdiction of the Court, does not limit the Court to the interpretation of the Convention alone but expressly extends to it the power to interpret "other treaties concerning the protection of human rights in the American States." The Government of Peru now seeks the learned criterion of the Court because it wishes to know the true meaning of that phrase and because it believes that clarifying and establishing the scope of that Article would aid in the proper functioning of the inter-American system for the protection of human rights.

Therefore, the opinion that the Government of Peru requests of the Inter-American Court of Human Rights is, concretely, the following:

How should the phrase "or of other treaties concerning the protection of human rights in the American states" be interpreted?

With respect to this matter, the Government of Peru requests that the opinion cover the following specific questions:

That phrase refers to and includes:

- a) Only those treaties adopted within the framework or under the auspices of the inter-American system? or
- b) The treaties drawn up solely among the American states, that is, the reference is limited to the treaties in which the American states are parties exclusively? or
- c) All treaties in which one or more American states are parties?

II

CONSIDERATIONS WHICH GIVE RISE TO THE ADVISORY OPINION

As was stated in the introduction of this request, the Inter-American Court of Human Rights is being consulted by the Government of Peru as a Member State of the Organization of American States and in use of the power granted it by Article 64 of the American Convention on Human Rights.

The Government believes that the wording of the phrase "or other treaties concerning the protection of human rights in the American States" contained in Article 64 raises reasonable doubts as to the scope of the advisory jurisdiction of the Court.

The Government of Peru is aware of the importance that the Convention has desired to give to this advisory jurisdiction of the Court and believes that the timely interpretation of its scope might facilitate its use by the Member States to the benefit of the strengthening of the inter-American system for the protection of human rights.

III

DESIGNATION OF THE AGENT OF THE GOVERNMENT OF PERU

The Government of Peru names as its agent in the proceedings arising from this request His Excellency Bernardo Roca Rey, Ambassador Plenipotenciary of Peru to the Government of Costa Rica, and designates as its address for service the office of the Embassy of Peru in the city of San José, Costa Rica to receive the notifications, summonses and communications regarding this matter.

In accordance with the pertinent provisions of the American Convention on Human Rights and the Statute and Rules of Procedure of the Inter-American Court of Human Rights, I hereby request that you take the appropriate action regarding this request.

For the Government of Peru

JAVIER ARIAS STELLA
Minister of Foreign Affairs

APPENDIX III

REQUEST FOR AN ADVISORY OPINION PRESENTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Inter-American Commission on Human Rights, as the organ under the Charter of the Organization of American States having the function to promote the observance and protection of human rights and in exercise of the powers granted 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 two articles of the Convention.

In accordance with the provisions of Article 49 (2)(b) of the Rules of Procedure of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights presents its request for an advisory opinion as follows:

a) Provisions to be interpreted:

The provisions with regard to which the Inter-American Commission on Human Rights seeks an advisory opinion are Article 74(2), last sentence, and Article 75 of the American Convention on Human Rights. The first of these provisions reads as follows:

With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

Article 75 provides that

This 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.

With reference to these two provisions, the Inter-American Commission on Human Rights formulates its request for an advisory opinion in the following terms: From what moment is a state deemed to have become a party to the American Convention on Human Rights when it ratifies or adheres to the Convention with one or more reservations: from the date of the deposit of instrument of ratification or adhesion or upon the termination of the period specified in Article 20 of the Vienna Convention on the Law of Treaties?

b) The request for an advisory opinion refers to the sphere of competence of the Commission

It is quite clear that, in accordance with the provisions of Article 33 of the American Convention on Human Rights, the Inter-American Commission on Human Rights 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.

Under Article 41(f), the Commission may take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of the Convention.

Likewise, Articles 1, 19 and 20 of the Statute of the Commission clearly distinguish, as far as concerns the effect of the petitions and communications received by the Commission, between States Parties to the Convention and states that are not parties.

As a result, the major importance and interest of this request for an advisory opinion derives from the fact that, given the provisions of the Convention and Statute, the clarification sought by the request has a direct bearing on the application of the different procedures that govern individual petitions and other communications under the Statute of the Commission in relation to States Parties and to states that are not parties.

c) Considerations giving rise to the request:

The Inter-American Commission on Human Rights requests this advisory opinion, as has already been pointed out, as one of the organs established by the Convention with respect to matters relating to the fulfillment of the commitments made by the States Parties to the Convention and in exercise of the powers granted it as one of the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires. (Articles 33 and 64, respectively, of the Convention).

The General Secretariat of the Organization of American States, as the depositary of the Convention and on the basis of Article 75, read in conjunction with Articles 19 through 23 of the Vienna Convention on the Law of Treaties signed on May 23, 1969, took the position, for example, that Barbados -which deposited its instrument of ratification on November 5, 1981- was not a State Party to the Convention until the expiration of

one year from the date on which the other States Parties to the Convention received notification of the pertinent reservations or expressed their consent to be bound by the treaty with respect to the reservations.

Given the aforementioned Article 75, it is important to clarify the question whether the legal norms governing reservations -namely, the provisions of the Vienna Convention on the Law of Treaties- modify Article 74 so that the Convention would be deemed to enter into force on a date different from that specified in the latter Article.

From a practical point of view, it is necessary, as has already been mentioned, for the Commission to know which states are parties to the Convention so that it might apply the relevant norms.

In light of the foregoing, the Inter-American Commission on Human Rights believes that the interpretation and resolution of this request for an advisory opinion will benefit the system of international protection of human rights created by the Pact of San Jose of Costa Rica.

d) Name and address of the delegates of the Inter-American Commission on Human Rights:

The Inter-American Commission on Human Rights names as its delegates for all purposes relating to this request its Chairman, Dr. Marco Gerardo Monroy Cabra; its First Vice Chairman, Dr. César Sepúlveda; and its Second Vice Chairman, Dr. Luis Demetrio Tinoco Castro, who are authorized to act jointly or separately. The address for notifications, summonses, communications and the like is the office of the Secretariat of the Commission located in the City of Washington, D. C., seat of the Organization of American States, 19th Street and Constitution Avenue, N. W., Washington, D. C. 20006, USA.

APPENDIX IV

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

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

<u>SIGNATORY COUNTRIES</u>	<u>DATE OF DEPOSIT OF THE INSTRUMENT OF RATIFICATION OR ADHERENCE</u>
Barbados ¹	*
Bolivia ²	July 19, 1979 ²
Chile ³	
Colombia	July 31, 1973
Costa Rica**	April 8, 1970
Dominican Republic ^{3,4}	April 19, 1978
Ecuador ³	December 28, 1977
El Salvador	June 23, 1978 ^{3,5}
Grenada ⁶	July 18, 1978
Guatemala	May 25, 1978 ⁵
Haiti ²	September 27, 1977 ²
Honduras	September 8, 1977***
Jamaica ⁷	August 7, 1978 ³
Mexico	April 3, 1982 ⁸
Nicaragua	September 25, 1979
Panama	June 22, 1978
Paraguay	
Peru ^{9**}	July 28, 1978
United States ¹⁰	
Uruguay ⁵	
Venezuela	August 9, 1977 ^{3,5****}

* Date of receipt of the instrument of ratification: November 5, 1981. It contains reservations. The necessary procedure of consultation was initiated in conformity with the Vienna Convention on the Law of Treaties.

** Costa Rica and Peru deposited, at the General Secretariat on July 2, 1980 and January 21, 1981, respectively, instruments recognizing the competence of the Inter-American Commission of Human Rights and the jurisdiction of the Inter-American Court of Human Rights, in accordance with Articles 45 and 62 of the Convention on Human Rights.

*** Honduras deposited, at the General Secretariat on September 9, 1981, the instrument recognizing the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the said Convention.

(Cont.)

APPENDIX IV

*** Venezuela recognized the competence of the Inter-American Commission of Human Rights on August 9, 1977 and the jurisdiction of the Inter-American Court of Human Rights on June 24, 1981, in accordance with Articles 45 and 62 of the Convention on Human Rights.

1. Signed at the General Secretariat on June 20, 1978.
2. Adhered.
3. With a declaration.
4. Signed at the General Secretariat on September 7, 1977.
5. With a reservation.
6. Signed at the General Secretariat on July 14, 1978.
7. Signed at the General Secretariat on September 16, 1977.
8. Date of receipt of the instrument of accession: March 24, 1981. It contains one reservation and two interpretative declarations. The procedure for consultation was taken in conformity with the Vienna Convention on the Law of Treaties. The term of twelve months for the consultation expired on April 2, 1982, without any objection being raised to the reservation.
9. Accession with reservations.
10. Signed at the General Secretariat on July 27, 1977.
11. Signed at the General Secretariat on June 1, 1977.

The original instrument is deposited with the General Secretariat, which is also the depository of the instruments of ratification.

This Convention entered into force on July 18, 1978, the date on which Grenada deposited its instrument of ratification, constituting the eleventh ratification required by the Convention. With respect to any state that ratifies or adheres thereafter, the Convention will enter into force on the date of the deposit of its instrument of ratification or adherence.

It was registered with the United Nations on August 27, 1979.

July 8, 1982

20-I

