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Inter-American Court on Human Rights

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ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 1983

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

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

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

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

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

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

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

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

C. Composition of the Court

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

Pedro A. Nikken (Venezuela), President
Thomas Buergenthal (United States), Vice President
Huntley Eugene Munroe (Jamaica)
Máximo Cisneros Sánchez (Peru)
Carlos Roberto Reina (Honduras)
Rodolfo Piza Escalante (Costa Rica)
Rafael Nieto Navia (Colombia)

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

D. Competence of the Court

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

1. The Court's contentious jurisdiction

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

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

As these provisions indicate, a State Party does not subject itself to the contentious jurisdiction of the Court by ratifying the Convention. Instead, the Court acquires that jurisdiction with regard to the state only when it has filed the special declaration referred to in paragraphs 1 and 2 of Article 62 or concluded the special agreement mentioned in paragraph 3. The special declaration may be made when a state ratifies the Convention or at any time thereafter; it may also be made for a specific case or a series

of cases. But since the states parties are free to accept the Court's jurisdiction at any time in a specific case or in general, a case need not be rejected ipso facto when acceptance has not previously been granted, as it is possible to invite the state concerned to do so for that case.

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

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

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

> 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 the necessary jurisdiction.

The judgment rendered by the Court in any dispute submitted to it is "final and not subject to appeal." Moreover, the "States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." (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. <u>The Court's Advisory Jurisdiction</u>

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

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

Standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention; instead, any OAS Member State may ask for it as well as all OAS organs, including the Inter-American Commis-

sion on Human Rights, specialized bodies such as the Inter-American Commission of Women and the Inter-American Institute of Children, within their fields of competence. Secondly, the advisory opinion need not deal only with the interpretation of the Convention; it may also be founded on a request for an interpretation of any other treaty "concerning the protection of human rights in the American states."

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

> "Firstly: By unanimous vote, that the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have a right to become parties thereto.
>
> Secondly: By unanimous vote, that, for specific reasons explained in a duly motivated decision, the Court may decline to comply with a request for an advisory opinion if it concludes that, due to the special circumstances of a particular case, to grant the request would exceed the limits of the Court's advisory jurisdiction for the following reasons, inter alia: because the issues raised deal mainly with international obligations assumed by a non-American State or with the structure or operation of international organs or bodies outside the inter-American system; or because granting the request might have the effect of altering or weakening the system established by the Convention in a manner detrimental to the individual human being."

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

The Court's advisory jurisdiction power enhances the Organization's capacity to deal with complex legal issues arising under the Convention. 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 VII).

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.

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.

For the 1984-85 biennium, the Court, in accordance with the decisions of the Secretary General on the maximum level of expenses, submitted a budget of $323.0 for 1984 and $333.6 for the following year.

F. Relations with other organs of the system and with regional and world-wide 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. Seventh Regular Session of the Court

The Court held its Seventh Regular Session September 16-28, 1982 at its seat in San Jose. The following judges attended: Carlos Roberto Reina (President), Pedro A. Nikken (Vice President), Huntley Eugene Munroe, Máximo Cisneros Sánchez, Rodolfo Piza Escalante and Thomas Buergenthal. There was a vacancy on the Court due to the death of Judge César Ordóñez Quintero.

During this session the judges considered two requests for advisory opinions: the first presented by the Government of Peru and the second by the Inter-American Commission on Human Rights.

The Peruvian government requested an interpretation of Article 64 of the American Convention on Human Rights, which establishes the advisory jurisdiction of the Court. The Court was asked to determine if the treaties subject to its interpretation regarding the protection of human rights in the American states are only those adopted within the framework of the inter-American system, those entered into among the American states or all treaties in which one or more American states is a party.

The Inter-American Commission asked the Court for an advisory opinion on Articles 74(2) and 75 of the Pact of San Jose. The Commission posed the following question:

> 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 adherence or upon the termination of the period specified in Article 20 of the Vienna Convention on the Law of Treaties?

On September 17, 1982 a public hearing was held on the Peruvian request. The Government of Peru was represented by its Ambassador to Costa Rica, Bernardo Roca Rey. The Court also heard the points of view of the delegate of the Inter-American Commission, Carlos A. Dunshee de Abranches, and the representatives of the Government of Costa Rica, Carlos José Gutiérrez, Minister of Justice and Manuel Freer Jiménez, Procurator.

The Inter-American Commission's request was heard publicly on September 20. At that time, the Court heard the arguments of the Commission, represented by its President, Marco Gerardo Monroy Cabra, and those of the Government of Costa Rica, represented by Manuel Freer Jiménez.

With respect to the Peruvian request, the Court was of the opinion that the text of Article 64 of the Convention permits it to render advisory opinions on any point concerning human rights in any treaty in which one or more Member States of the OAS are parties. (See Appendix I.)

Regarding the request of the Commission, the Court interpreted Articles 74 and 75 of the Convention in the sense that a state is party to it on the date of the deposit of its instrument of ratification or adhesion. (See Appendix II.)

The Court delivered these opinions at a public reading that took place on September 28, 1982.

B. Twelfth Regular Session of the OAS General Assembly

The Court was represented at the Twelfth Regular Session of the General Assembly of the Organization, held November 15-21, 1982 in Washington, by its Permanent Commission.

President Reina, in his report on the activities of the Court for the year 1982 to the Commission on Juridical and Political Matters of the Assembly, gave particular attention to the first two advisory opinions of the Court which had been rendered in September of that year. These opinions can be found in Appendices I and II of this report.

In its Resolution on the Annual Report of the Court (AS/RES.623 (XII-O/82), the Assembly resolved:

1. To express the appreciation of the Organization of American States for the work accomplished by the Inter-American Court of Human Rights as reflected in its annual report.

2. To urge all the member states of the OAS to ratify or accede to the American Convention on Human Rights.

3. To express its hope that all of the states that are parties to the American Convention on Human Rights will recognize the binding jurisdiction of the Court.

4. To express its trust that the measures required in order for the Court to comply fully with the functions attributed to it by the Convention will continue to be adopted.

The States Parties to the Convention elected Rafael Nieto Navia of Colombia to fill the vacancy on the Court caused by the death of César Ordóñez Quintero.

The General Assembly also amended the Statute of the Court to make the beginning and end of the terms of office of the judges coincide with those of the members elected to the other organs and agencies of the OAS. Henceforth, the terms "shall run from January 1 of the year following that of their election to December 31 of the year in which their terms expire."

C. Eighth Regular Session of the Court

The Court held its Eighth Regular Session February 28-March 4, 1983 at its seat in San Jose. All of the judges attended except Judge Munroe, who was excused due to prior commitments.

The judges welcomed Judge Rafael Nieto Navia, a distinguished Colombian law professor, who had been elected to the Court by the States Parties to the Convention at the previous session of the OAS General Assembly. Judge Nieto fills the term of the late Judge Ordóñez.

The Court was received in private audience by Pope John Paul II, who was in San Jose as part of his visit to Central America. In his words to the Court (See Appendix VI), the Pope stated that "greater sensitivity and a sharpened concern over the recognition or the violation of the dignity and freedom of man have shown not only the advisability but the necessity that the protection and control that a state exercises be completed and strengthened through a supranational and autonomous juridical institution." Pope John Paul II offered his support and encouragement to the Court in its mission and, at the same time, he invited the pertinent bodies "to entrust to it the cases over which it has jurisdiction." President Reina, in his opening remarks, noted the importance of the visit of the Pope to the region. (See Appendix V).

A general revision of the Rules of Procedure was initiated. This work will be concluded at subsequent meetings.

Shortly prior to the session, the Secretariat entertained members of the "Library Advisory Council" of the Court with a three-day orientation program. This Council, through its generous donations, has been instrumental in the rapid growth of the library, which is increasingly being used by the public.

D. Third Special Session of the Court

The Court held its Third Special Session July 25-August 1, 1983 at its seat in San José. All of the judges attended this meeting.

This special session was convoked to consider the request for an advisory opinion presented by the Inter-American Commission on Human Rights. (See Appendix III). The Commission asks for an interpretation of the last sentence of Article 4(2) of the American Convention on Human Rights which deals with the application of the death penalty. In connection with the request, the Court held a public hearing on July 26 to which it invited the OAS Member States and organs to express their points of view. At that time it heard the delegates of the Inter-American Commission, Drs. Luis Demetrio Tinoco and Marco Gerardo Monroy Cabra, and the representatives of the Government of Costa Rica, Carlos José Gutiérrez, Minister of Justice and Manuel Freer Jiménez, Procurator, and that of the Government of Guatemala, Edgar Sarceño Morgan, Vice Minister of Foreign Affairs.

The Court also began consideration of the request for an advisory opinion presented by the Government of Costa Rica regarding the compatibility of a proposed amendment to the Constitution with the American Convention. (See Appendix IV). The proposal, if enacted, would change the standards for the acquisition of citizenship.

The Court plans to render its opinion on these matters at its Ninth Regular Session, scheduled to be held beginning September 1, 1983.

Cognizance was also taken on the resolution of the Inter-American Commission in the Matter of Viviana Gallardo et al., which had originally been presented to the Court.

At this session, the Court elected Pedro Nikken (Venezuela) and Thomas Buergenthal (United States) as President and Vice President, respectively, for a term of two years.

Among other decisions taken, the Court decided to hang a portrait of Simon Bolivar in its seat, in commemoration of the bicentennial of his birth.

APPENDIX I

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-1/82
OF SEPTEMBER 24, 1982

"OTHER TREATIES" SUBJECT TO THE
CONSULTATIVE JURISDICTION OF THE COURT
(ART.64 AMERICAN CONVENTION ON HUMAN RIGHTS)

REQUESTED BY PERU

Present: Carlos Roberto Reina, President
Pedro Nikken, Vice President
Huntley Eugene Munroe, Judge
Máximo Cisneros, Judge
Rodolfo E. Piza E., Judge
Thomas Buergenthal, Judge

For Peru:
Mr. Bernardo Roca Rey, Agent and Ambassador in Costa Rica

For Costa Rica:
Mr. Carlos José Gutiérrez, Agent and Minister of Justice, and
Mr. Manuel Freer Jiménez, Advisor

For the Inter-American Commission on Human Rights:
Mr. Carlos A. Dunshee de Abranches, Delegate and Member

I

STATEMENT OF THE ISSUES

8. The Government of Peru submitted the following question to the Court concerning Article 64 of the American Convention on Human Rights (hereinafter cited as "the Convention"):

> 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:
>
> Does this aforementioned phrase refer to and include:
>
> a) Only treaties adopted within the framework or under the auspices of the inter-American system? or
>
> b) The treaties concluded solely among the American states, that is, is the reference limited to treaties in which only American states are parties? or
>
> c) All treaties in which one or more American states are parties?

9. 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.

10. A reading of the request indicates that the Government of Peru has in effect formulated one question with three possible answers. The main issue consists of defining which treaties may be interpreted by this Court in application of the powers granted it by Article 64 of the Convention. The request requires the Court to determine the limits of its advisory jurisdiction which are not clearly spelled out in Article 64 of the Convention. In analyzing and answering the question presented, the Court will have to determine which international treaties concerning the protection of human rights it has the power to interpret under Article 64(1); put more precisely, it will have to establish which of the human rights treaties must, a priori, be deemed to be excluded from the Court's advisory jurisdiction.

11. A direct answer to the issue presented implies an analysis of the differences between bilateral and multilateral treaties, as well as between both those adopted within and outside the inter-American system; between those treaties in which only Member States of the system are Parties and those in which Member States of the system are Parties together with non-Member States; as well between treaties in which American States are not, or cannot be, Parties. In dealing with each of these categories, the Court must also distinguish between treaties whose principal purpose is the protection of human rights and those which, although they have another purpose, include human rights provisions. Once these distinctions are made, the Court will have to determine which of these treaties it is empowered to interpret.

12. The instant request for an advisory opinion is attributable to the fact that the Convention does not expressly define the precise limits of the Court's advisory jurisdiction. Therefore, before embarking upon an analysis of the phrase "other treaties concerning the protection of human rights in the American states," the Court must determine the scope of its advisory jurisdiction under Article 64 of the Convention.

13. By its terms, Article 64 imposes on the authority of the Court certain generic limits, which provide the framework applicable to the interpretation of the aforementioned treaties. The instant request requires the Court to determine whether, given the general object of the Convention and the jurisdiction it assigns to the Court, it is necessary to further clarify the meaning of Article 64.

II

GENERAL FRAMEWORK OF THE ISSUES PRESENTED

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.

15. The broad scope of Article 64 of the Convention contrasts with the advisory jurisdiction of other international tribunals. For example, Article 96 of the UN Charter, while authorizing the International Court of Justice to render advisory opinions on any legal question, permits only the General Assembly and the Security Council or, under certain conditions, other organs and specialized agencies of the United Nations to request such opinions. It does not, however, give the Member States of the UN standing to seek advisory opinions.

16. As far as concerns the international protection of human rights, Protocol No. 2 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms confers on the European Court advisory jurisdiction, but restricts it severely. Only the Committee of Ministers may request an opinion, and the opinion may deal only with legal questions concerning the interpretation of the Convention and its Protocols. Furthermore, the Protocol excludes from the advisory jurisdiction of that tribunal the interpretation of any question relating to the content or scope of the rights or freedoms defined in the instruments, or any other question which the European Commission on Human Rights, the European Court, or the Committee of Ministers might have to consider in consequence of any proceedings that could be instituted in accordance with the Convention.

17. The preparatory work of the Convention indicates that this treaty sought to define the advisory jurisdiction of the Court in the broadest terms possible. The first text dealing with this matter was contained in the Preliminary Draft prepared by the Inter-American Commission on Human Rights at its Special Session held in July 1968, and adopted as such by the OAS Council in October 1968 (OAS/Ser.G/V/C-d-1631). Article 53 of that draft read as follows:

> The General Assembly, the Permanent Council, and the Commission may consult the Court concerning the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States; and the States Parties may consult the Court concerning the compatibility of any of their domestic laws with the aforesaid international instruments.

This text, which was broader than any similar contemporary international provision, was superseded by Article 64 of the present Convention, which further expanded the Court's advisory jurisdiction. The right to seek an advisory opinion was conferred upon the organs enumerated in Chapter X of the Charter and upon the Member States of the Organization, whether or not they are Parties to the Convention. With respect to matters which may be the subject of advisory opinions, the singular ("otro tratado concerniente") found in Article 53 of the Preliminary Draft was replaced by the plural ("otros tratados concernientes"), which indicates a clear intention to extend the Court's advisory jurisdiction. (This change appears in the Spanish text, which was the official working document of the Conference.)

18. The broad scope of the language in which Article 64 of the Convention is formulated cannot be taken to mean that there are no limits to the advisory jurisdiction of the Court. With regard to the subject matter of a request, and, in particular, as far as concerns treaties which the Court is empowered to interpret, there are certain limits of a general character implicit in the terms of Article 64, viewed in its context and taking into account the object and purpose of the treaty.

19. A first group of limitations derives from the fact that the Court is a judicial institution of the inter-American system. The Court notes, in this connection, that it is precisely its advisory jurisdiction which gives the Court a special place not only within the framework of the Convention but also within the system as a whole. This conclusion finds support, ratione materiae, in the fact that the Convention confers on the Court jurisdiction to render advisory opinions interpreting international treaties other than the Convention itself and, ratione personae, in the further fact that, the right to seek an opinion extends not only to all the organs mentioned in Chapter X of the OAS Charter, but also to all OAS Member States, whether or not they are Parties to the Convention.

20. Certain restrictions follow from the Court's status as an inter-American juridical institution. This status does not, however, necessarily limit its advisory jurisdiction to international instruments adopted within the inter-American system, if only because various OAS organs are often called upon to apply treaties which have an extra-regional application.

21. It is implicit in the first group of limitations that the Court can exercise neither its contentious nor advisory jurisdiction to establish the

scope of international agreements, whatever be their character, concluded by non-Member States of the inter-American system, or to interpret legal provisions governing the structure or operation of international organs or institutions not belonging to that system. On the other hand, the Court has the power to interpret any treaty as long as it is directly related to the protection of human rights in a Member State of the inter-American system.

22. Other limitations derive from the general function of the Court within the system established by the Convention and, particularly, from the purpose that the advisory jurisdiction is designed to perform. The Court is, first and foremost, an autonomous judicial institution with jurisdiction both to decide any contentious case concerning the interpretation and application of the Convention as well as to ensure to the victim of a violation of the rights or freedoms guaranteed by the Convention the protection of those rights. (Convention, Arts. 62 and 63 and Statute of the Court, Art. 1). Because of the binding character of its decisions in contentious cases (Convention, Art. 68), the Court also is the Convention organ having the broadest enforcement powers designed to ensure the effective application of the Convention.

23. The line which divides the advisory jurisdiction from the contentious jurisdiction of international tribunals has often been the subject of heated debate. On the international law plane, States have voiced reservations and at times even opposition to the exercise of the advisory jurisdiction in certain specific cases on the ground that it served as a method for evading the application of the principle requiring the consent of all States parties to a legal dispute before judicial proceedings to adjudicate it may be instituted. In the most recent instances in which those objections were raised to advisory opinions that were requested under the Charter of the United Nations, the International Court of Justice decided, for a variety of reasons, to render the opinions notwithstanding the above-mentioned objections. (See Interpretation of Peace Treaties, 1950 I.C.J. 65; South-West Africa, International Status of, 1950 I.C.J. 128; Certain Expenses of the United Nations, 1962 I.C.J. 151; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16).

24. Special problems arise in the human rights area. Since it is the purpose of human rights treaties to guarantee the enjoyment of individual human beings of those rights and freedoms rather than to establish reciprocal relations between States, the fear has been expressed that the exercise of the Court's advisory jurisdiction might weaken its contentious jurisdiction or, worse still, that it might undermine the purpose of the latter, thus changing the system of protection provided for in the Convention to the detriment of the victim. That is, concern has been expressed that the Court's advisory jurisdiction might be invoked by States for the specific purpose of impairing the effectiveness of the proceedings in a case being

dealt with by the Commission "to avoid having to accept the contentious jurisdiction of the Court and the binding character of the Court's decisions" (C. Dunshee de Abranches, "La Corte Interamericana de Derechos Humanos," in La Convención Americana sobre Derechos Humanos 117 (OEA, 1980)), thus interfering with the proper functioning of the Convention and adversely affecting the interests of the victim.

25. 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.

26. The above-mentioned considerations point to a second group of limitations which derive both from the context in which the Court was granted advisory jurisdiction and from the object and purpose of the Convention. The Convention does not, however, delimit the full scope of the Court's advisory jurisdiction. It is here that the American and European systems for the protection of human rights differ, because Protocol No. 2 of the European Convention (Article 1(2)) expressly excludes certain subjects, already referred to in paragraph 16, from the advisory jurisdiction of the European Court.

27. By contrast, Article 64 of the Convention does not expressly exclude any matter concerning the protection of human rights in the American States. This makes it necessary for the Court to establish the general limits on a case by case basis, which is also the approach adopted by general international law applicable to this problem.

28. The Court consequently holds, consistent with the jurisprudence of the International Court of Justice, 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. (See Interpretation of Peace Treaties, 1950 I.C.J. 65).

29. The broad terms in which Article 64 of the Convention is drafted and the fact that the Rules of Procedure of the Court state that, whenever appropriate, the procedure in advisory opinions should be guided by the rules which apply to contentious cases, clearly demonstrate that the Court enjoys an important power of appreciation enabling it to weigh the circumstances of each case, bearing in mind the generic limits established by the Convention for the Court's advisory jurisdiction.

30. This broad power of appreciation should not be confused, however, with unfettered discretion to grant or deny a request for an advisory opinion. The Court must have compelling reasons founded in the conviction that the request exceeds the limits of its advisory jurisdiction under the Convention before it may refrain from complying with a request for an opinion. Moreover, any decision by the Court declining to render an advisory opinion must conform to the provisions of Article 66 of the Convention, which require that reasons be given for the decision.

31. The aforementioned considerations compel the following conclusions about the limitations applicable to the Court's advisory jurisdiction. The first group of limitations derives from the fact that the Court, in exercising its advisory jurisdiction, may only consider the interpretation of treaties in which the protection of human rights in a Member State of the inter-American system is directly involved. The second group of limitations is related to the inadmissibility of any request for an advisory opinion 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. Finally, the Court has to consider the circumstances of each individual case and if, for compelling reasons, it decides to decline to render an opinion lest it exceed the aforementioned limitations and distort its advisory jurisdiction, it must do so by means of an opinion, containing the reasons for its refusal to comply with the request.

III

TREATIES SUBJECT TO ADVISORY OPINIONS

32. In the light of these general considerations, the Court can now turn to the specific question presented by the request of the Government of Peru. It seeks to ascertain which treaties fall within the scope of the Court's advisory jurisdiction, which States must be Parties to these treaties, and, to some extent, on the origin of these treaties. According to the Peruvian request, the narrowest interpretation would lead to the conclusion that only those treaties adopted within the framework or under the auspices of the inter-American system are deemed to be within the scope of Article 64 of the Convention. By contrast, the broadest interpretation would include within the Court's advisory jurisdiction any treaty concerning the protection of human rights in which one or more American States are Parties.

33. In interpreting Article 64, the Court will resort to traditional international law methods, relying both on general and supplementary rules of interpretation, which find expression in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

34. Neither the request of the Peruvian Government nor the Convention itself distinguishes between multilateral and bilateral treaties, nor between treaties whose main purpose is the protection of human rights and those treaties which, though they may have some other principal object, contain provisions regarding human rights, such as, for example, the Charter of the OAS. The Court considers that the answers to the questions posed in paragraph 32 are applicable to all of these treaties since the basic problem consists of determining what international obligations the American States have assumed are subject to interpretation by means of an advisory opinion. The Court, therefore, does not consider that the determining factor is the bilateral or multilateral nature of the treaty; equally irrelevant is the source of the obligation or the treaty's main purpose.

35. The meaning of the phrase "American states" is not defined in Article 64 of the Convention and the Peruvian request does not attempt to explain it. It is the opinion of the Court that, according to the ordinary meaning to be given to the terms of the treaty in their context, the phrase refers to all those States which may ratify or adhere to the Convention, in accordance with its Article 74, i.e., to Member States of the OAS.

36. The issues raised by the Government of Peru lead to the following question, which must be answered consistent with Article 64 and in light of the object and purpose of the treaty: Is it the purpose of the Convention to bar, a priori, an advisory opinion of the Court regarding the international human rights obligations assumed by American States simply because the source of such obligations is a treaty concluded outside the inter-American system, or because non-American States are also Parties to it?

37. The text of Article 64 of the Convention does not compel the conclusion that it is to be restrictively interpreted. In paragraphs 14 through 17, the Court has explained the broad scope of its advisory jurisdiction. The ordinary meaning of the text of Article 64 therefore does not permit the Court to rule that certain international treaties were meant to be excluded from its scope simply because non-American States are or may become Parties to them. In fact, the only restriction to the Court's jurisdiction to be found in Article 64 is that it speaks of international agreements concerning the protection of human rights in the American States. The provisions of Article 64 do not require that the agreements be treaties between American States, nor that they be regional in character, nor that they have been adopted within the framework of the inter-American system. Since a restrictive purpose was not expressly articulated, it cannot be presumed to exist.

38. The distinction implicit in Article 64 of the Convention alludes rather to a question of a geographical-political character. Put more precisely, it is more important to determine which State is affected by the obligations whose character or scope the Court is to interpret than the source of these obligations. It follows therefrom, that, if the principal

purpose of a request for an advisory opinion relates to the implementation or scope of international obligations assumed by a Member State of the inter-American system, the Court has jurisdiction to render the opinion. By the same token, the Court lacks that jurisdiction if the principal purpose of the request relates to the scope or implementation of international obligations assumed by States not members of the inter-American system. This distinction demonstrates once again the need to approach the issue presented on a case by case basis.

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 inter-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. There are, moreover, practical reasons that suggest that the interpretative function be exercised within the inter-American system even when dealing with international agreements not adopted within its framework. Regional methods of protection, as has been pointed out, "are more suited for the task and at the same time... more readily accepted by the states of this hemisphere...." (C. Sepúlveda, "Panorama de los Derechos Humanos," Boletín del Instituto de Investigaciones Jurídicas 1053, at 1054 (Mexico 1982).)

40. The nature of the subject matter itself, however, militates against a strict distinction between universalism and regionalism. Mankind's universality and the universality of the rights and freedoms which are entitled to protection form the core of all international protective systems. In this context, it would be improper to make distinctions based on the regional or non-regional character of the international obligations assumed by States, and thus deny the existence of the common core of basic human rights standards. The Preamble of the Convention gives clear expression to that fact when it recognizes that the essential rights of man "are based upon the attributes of the human personality and that they therefore justify international protection in the form of a convention."

41. A certain tendency to integrate the regional and universal systems for the protection of human rights can be perceived in the Convention. The Preamble recognizes that the principles on which the treaty is based are also proclaimed in the Universal Declaration of Human Rights and that "they have

been reaffirmed and refined in other international instruments, worldwide as well as regional in scope." Several provisions of the Convention likewise refer to other international treaties or to international law, without speaking of any regional restrictions. (See, e.g., Convention, Arts. 22, 26, 27 and 29). Special mention should be made in this connection of Article 29, which contains rules governing the interpretation of the Convention, and which clearly indicates an intention not to restrict the protection of human rights to determinations that depend on the source of the obligations. Article 29 reads as follows:

> No provision of the Convention may be interpreted as:
>
> a. permitting any State Party, group, or person to supress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
>
> b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
>
> c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
>
> d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

42. It is particularly important to emphasize the special relevance that Article 29(b) has to the instant request. The function that Article 64 of the Convention confers on the Court is an inherent part of the protective system established by the Convention. The Court is of the view, therefore, that to exclude, a priori, from its advisory jurisdiction international human rights treaties that are binding on American States would weaken the full guarantee of the rights proclaimed in those treaties and, in turn, conflict with the rules enunciated in Article 29(b) of the Convention.

43. The need of the regional system to be complemented by the universal finds expression in the practice of the Inter-American Commission on Human Rights and is entirely consistent with the object and purpose of the Convention, the American Declaration and the Statute of the Commission. The Commission has properly invoked in some of its reports and resolutions "other treaties concerning the protection of human rights in the American states," regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-

American system. This has been true most recently in the following reports of the Commission: the situation of human rights in El Salvador (OAS/Ser.L/V/II.46, doc.23, rev.1, November 17, 1979) at 37-38; the situation of political prisoners in Cuba (OAS/Ser.L/V/II.48, doc.24, December 14, 1979) at 9; the situation of human rights in Argentina (OAS/Ser.L/V/II.49, doc.19, April 11, 1980) at 24-25; the situation of human rights in Nicaragua (OAS/Ser.L./V/II.53, doc.25, June 30, 1981) at 31; the situation of human rights in Colombia (OAS/Ser.L/V/II.53, doc.22, June 30, 1981) at 56-57; the situation of human rights in Guatemala (OAS/Ser.L/V/II.53, doc.21, rev.2, October 13, 1981) at 16-17; the situation of human rights in Bolivia (OAS/Ser.L/V/II.53, doc.6, rev.2, October 31, 1981) at 20-21; and Case 7481 - Acts which occurred in Caracoles (Bolivia), Resolution No. 30/82 (OAS/Ser.L/V/II.55, doc.54, March 8, 1982).

44. This practice of the Commission which is designed to enable it better to discharge the functions assigned to it compels the conclusion that the States themselves have an interest in being able to request an advisory opinion from the Court involving a human rights treaty to which they are parties but which has been adopted outside the framework of the inter-American system. Situations might in fact arise in which the Commission might interpret one of these treaties in a manner deemed to be erroneous by the States concerned, which would then be able to invoke Article 64 to challenge the Commission's interpretation.

45. The Court's interpretation of Article 64, based on the ordinary meaning of its terms viewed in their context and taking into account the object and purpose of the treaty, is confirmed by the preparatory work of the Convention. It can accordingly be relied upon as a supplementary means of interpretation. (Vienna Convention on the Law of Treaties, Art. 32).

46. As the Court pointed out in paragraph 17, the evolution of the text which ultimately became Article 64 indicates a marked desire to expand the advisory jurisdiction of the Court. The very fact that it was drafted at a time when the narrowly drawn Article 1 of Protocol No. 2 of the European Convention had already been adopted demonstrates that the drafters of the Convention intended to confer on the Court the most extensive advisory jurisdiction, intentionally departing from the limitations imposed upon the European system.

47. During the initial phase of the drafting of the Convention, the majority of the States were clearly opposed to the notion of making a strict distinction between universalism and regionalism. As a matter of fact, after the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, which were drafted within the framework of the United Nations, were opened for signature, the OAS Council consulted the Member States of the Organization in June 1967 regarding the advisability of continuing the

work on an American convention, considering that the UN instruments had been adopted. Ten of the twelve States that replied to the inquiry favored continuing the work on the Convention, it being understood that an effort would be made to draw on the provisions of the UN Covenants. As a result of this poll, the Specialized Inter-American Conference was eventually held in Costa Rica in November 1969. The preparatory work of the Convention consequently demonstrates a tendency to conform the regional system to the universal one, which is evident in the text of the Convention itself.

48. Based on the foregoing analysis, the Court concludes that the very text of Article 64 of the Convention, the object and purpose of the treaty, the rules of interpretation set out in Article 29 of the Convention, the practice of the Commission and the preparatory work all point toward the same result: no good reason exists to hold, in advance and in the abstract, that the Court lacks the power to receive a request for, or to issue, an advisory opinion about a human rights treaty applicable to an American State merely because non-American States are also parties to the treaty or because the treaty has not been adopted within the framework or under the auspices of the inter-American system.

49. A number of submissions addressed to the Court both by Member States and certain OAS organs, urge a more restrictive interpretation of Article 64. Some of these arguments, already adverted to in paragraph 37, are based on the meaning to be ascribed to the phrase "in the American states." Two other contentions are more substantive in nature. The first is that a broad interpretation would authorize the Court to render opinions affecting States which have nothing to do with the Convention or the Court, and which cannot even be represented before it. As to that issue, the Court has already emphasized that, if a request for an advisory opinion has as its principal purpose the determination of the scope of, or compliance with, international commitments assumed by States outside the inter-American system, the Court is authorized to render a motivated opinion refraining to pass on the issues submitted to it. The mere possibility that the event hypothesized in the above argument might arise, which can after all be dealt with on a case by case basis, is hardly a sufficient enough reason for concluding that the Court, a priori, lacks the power to render an advisory opinion interpreting the human rights obligations assumed by an American State merely because such obligations originate outside the framework of the inter-American system.

50. The other argument that has been advanced is that the extension of the limits of the Court's advisory jurisdiction might produce conflicting interpretations emanating from the Court and from those organs outside the inter-American system that might be called upon also to apply and interpret treaties concluded outside of that system. The Court believes that it is here dealing with one of those arguments which proves too much and which, moreover, is less compelling than it appears at first glance. It proves too

request would exceed the limits of the Court's advisory jurisdiction for the following reasons, inter alia: because the issues raised deal mainly with international obligations assumed by a non-American State or with the structure or operation of international organs or bodies outside the inter-American system; or because granting the request might have the effect of altering or weakening the system established by the Convention in a manner detrimental to the individual human being.

Done in English and Spanish, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this 24th day of September, 1982.

CARLOS ROBERTO REINA
PRESIDENT

PEDRO NIKKEN HUNTLEY EUGENE MUNROE MAXIMO CISNEROS

RODOLFO E. PIZA THOMAS BUERGENTHAL

CHARLES MOYER
SECRETARY

APPENDIX II

INTER-AMERICAN COURT OF HUMAN RIGHTS

ADVISORY OPINION OC-2/82
OF SEPTEMBER 24, 1982

THE EFFECT OF RESERVATIONS ON THE ENTRY INTO FORCE OF THE AMERICAN CONVENTION (ARTS. 74 AND 75)

REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Present: Carlos Roberto Reina, President
Pedro Nikken, Vice President
Huntley Eugene Munroe, Judge
Máximo Cisneros, Judge
Rodolfo E. Piza E., Judge
Thomas Buergenthal, Judge

Also present: Charles Moyer, Secretary
Manuel Ventura, Deputy Secretary

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The Inter-American Commission on Human Rights (hereinafter cited as "the Commission"), by a cable dated June 28, 1982, requested an advisory opinion of the Inter-American Court of Human Rights.

2. By notes dated July 2, 1982, the Secretary, in accordance with a decision of the Court acting pursuant to Article 52 of its Rules of Procedure, requested observations of all of the Member States of the Organization of American States as well as, through the Secretary General, of all of the organs referred to in Chapter X of the Charter of the OAS.

3. The President of the Court fixed August 23, 1982 as the time-limit for the submission of written observations or other relevant documents.

4. Responses to the Secretary's request were received from the following states: Costa Rica, Mexico, Saint Vincent and the Grenadines and the United States of America. In addition, the following OAS organs responded: the Permanent Council, the Inter-American Juridical Committee and the General Secretariat. The majority of the responses included substantive observations on the issues raised in the advisory opinion.

5. Furthermore, the following organizations offered their points of view on the request as amici curiae: the International Human Rights Law Group and the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law.

6. The Court, meeting in its Sixth Regular Session, set a public hearing for Monday, September 20, 1982 to receive the oral arguments that the Member States and the organs of the OAS might wish to give regarding the request for the advisory opinion.

7. In the course of the public hearing, oral arguments were addressed to the Court by the following representatives:

For the Inter-American Commission on Human Rights:
Marco Gerardo Monroy Cabra, Delegate and President

For Costa Rica:
Manuel Freer Jimenez, Advisor and Procurador of the Republic

I

STATEMENT OF THE ISSUES

8. The Commission submitted the following question to the Court:

> 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 adherence or upon the termination of the period specified in Article 20 of the Vienna Convention on the Law of Treaties?

9. The Commission notes that its request calls for the interpretation of Articles 74 and 75 of the American Convention on Human Rights (hereinafter cited as "the Convention"). It submits, in this connection, that the issue presented to the Court falls within the Commission's sphere of competence, as that phrase is used in Article 64 of the Convention. To substantiate this contention, the Commission points to the power vested in it by Articles 33, 41(f), and 44 through 51 of the Convention as well as in Articles 1, 19 and 20 of the Statute of the Commission. The Commission emphasizes that in order to be able to exercise its functions, it must distinguish between States that are parties to the Convention and those that are not.

10. Articles 74 and 75 of the Convention read as follows:

> Article 74
>
> 1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.
>
> 2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. 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.
>
> 3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.
>
> Article 75
>
> 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.

II

COMPETENCE OF THE COURT

11. In addressing the request of the Commission, the Court must resolve a number of preliminary issues bearing on it. One of them has to do with the question whether the Court is at all competent to hear this request, considering that the Secretary General of the OAS has been assigned depositary functions relating to this Convention (see Arts. 74, 76, 78, 79 and 81), and considering further that, in the practice of the OAS, disputes concerning ratification of treaties, their entry into force, reservations attached to them, etc., have been dealt with traditionally through consultations between the Secretary General and the Member States. (See "Standards on Reservations to Inter-American Multilateral Treaties," OAS/AG/RES./102 (III-0/73). See also, M. G. Monroy Cabra, Derecho de los Tratados at 58-72 (Bogotá, Colombia, 1978); J. M. Ruda,"Reservations to Treaties," 146 Recueil des Cours 95, at 128 (1973)).

12. The Court has no doubt whatsoever that it is competent to render the advisory opinion requested by the Commission. Article 64 of the Convention is clear and explicit in empowering the Court to render advisory opinions "regarding the interpretation of this Convention," which is precisely what the Commission's request seeks to obtain. Moreover, Article 2 (2) of the Statute of the Court, which was approved by the General Assembly of the OAS at its Ninth Regular Session in October 1979, declares that the Court's "advisory jurisdiction shall be governed by the provisions of Article 64 of the Convention."

13. It must be emphasized also that, unlike other treaties of which the Secretary General of the OAS is the depositary, the Convention establishes a formal judicial supervisory process for the adjudication of disputes arising under that instrument and for its interpretation. The Court's competence in this regard finds expression not only in the language of Articles 62, 63, 64, 67 and 68, but also in Article 33(b), which confers on the Court "competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention." This competence is reinforced by Article 1 of the Court's Statute, which declares that the Court "is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights." It is thus readily apparent that the Court has competence to render an authoritative interpretation of all provisions of the Convention, including those relating to its entry into force, and that the Court is the most appropriate body to do so.

III

COMPETENCE OF THE COMMISSION TO REQUEST THE INSTANT OPINION

14. It must be determined next whether the Commission has standing to request the particular advisory opinion it has asked the Court to render. In this regard, the Court notes that the Convention, in conferring the right to request advisory opinions, distinguishes between Member States of the OAS and organs of the Organization. Under Article 64 all OAS Member States, whether or not they have ratified the Convention, have standing to seek an advisory opinion "regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states." OAS organs enjoy the same right, but only "within their spheres of competence." Thus, while OAS Member States have an absolute right to seek advisory opinions, OAS organs may do so only within the limits of their competence. The right of OAS organs to seek advisory opinions is restricted consequently to issues in which such entities have a legitimate institutional interest. While it is initially for each organ to decide whether the request falls within its sphere of competence, the question is, ultimately, one for this Court to determine by reference to the OAS Charter and the constitutive instrument and legal practice of the particular organ.

15. With reference to the instant request, the Court notes, first, that the Commission is one of the organs listed in Chapter X of the OAS Charter (OAS Charter, Art. 51(e)). Moreover, the powers conferred on the Commission qua organ of the OAS are spelled out in Article 112 of the OAS Charter, which reads as follows:

> There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.
>
> An Inter-American Convention on Human Rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

Finally, Articles 33, 41 and 44 through 51 of the Convention, and Articles 1, 19 and 20 of the Statute of the Commission confer upon it extensive powers. The Commission's competence to exercise these powers depends, in part, on a prior determination whether it is dealing with a State which either has or has not ratified the Convention. Article 112 of the OAS Charter, Article 41 of the Convention, and Articles 1, 18 and 20 of its Statute empower the Commission "to promote the observance and defense of human rights" and to serve "as a consultative organ of the Organization in this matter." The Commission exercises these powers in relation to all OAS Member States, whether or not they have ratified the Convention; it has even

more specific and more extensive powers in relation to the States Parties to the Convention. (Convention, Arts. 33, 41(f) and 44 - 51; Statute of the Commission, Art. 19).

16. It is obvious, therefore, that the Commission has a legitimate institutional interest in a question, such as the one that it presented, which relates to the entry into force of the Convention. The Court accordingly holds that the requested advisory opinion falls within the Commission's sphere of competence. Furthermore, given the broad powers relating to the promotion and observance of human rights which Article 112 of the OAS Charter confers on the Commission, the Court observes that, unlike some other OAS organs, the Commission enjoys, as a practical matter, an absolute right to request advisory opinions within the framework of Article 64(1) of the Convention.

IV

ENTRY INTO FORCE OF THE CONVENTION

17. Having resolved these preliminary issues, the Court is now in a position to address the specific question submitted to it by the Commission, which wishes to know when the Convention is deemed to enter into force for a State that ratifies or adheres to the Convention with a reservation.

18. In answering this question, the Court notes that two provisions of the Convention provide a starting point for its inquiry. The first is Article 74(2), which reads as follows:

> Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. 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.

The second provision is Article 75. It declares 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.

19. The language of Article 74(2) is silent on the issue whether it applies exclusively to ratifications and adherences which contain no reservations or whether it also applies to those with reservations. Furthermore, whether and to what extent Article 75 helps to resolve the question before

the Court can be answered only following an analysis of that stipulation as well as of other relevant provisions of the Convention in their context and in the light of the object and purpose of the Convention (Vienna Convention on the Law of Treaties,hereinafter cited as "Vienna Convention," Art. 31) and, where necessary, by reference to its drafting history. (Vienna Convention, Art. 32). Moreover, given the reference in Article 75 to the Vienna Convention, the Court must also examine the relevant provisions of that instrument.

20. The reference in Article 75 to the Vienna Convention raises almost as many questions as it answers. The provisions of that instrument dealing with reservations provide for the application of different rules to different categories of treaties. It must be determined, therefore, how the Convention is to be classified for purposes of the here relevant provisions of the Vienna Convention, keeping in mind the language of Article 75 and the purpose it was designed to serve.

21. The provisions of the Vienna Convention that bear on the question presented by the Commission read as follows:

Article 19
Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Article 20
Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;

(b) an objection of another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;

(c) an act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

22. Turning first to Article 19, the Court concludes that the reference in Article 75 to the Vienna Convention was intended to be a reference to paragraph (c) of Article 19 of the Vienna Convention. Paragraphs (a) and (b) are inapplicable on their face since the Convention does not prohibit reservations and since it does not specify the permissible reservations. It follows that Article 75 must be deemed to permit States to ratify or adhere to the Convention with whatever reservations they wish to make, provided only that such reservations are not "incompatible with the object and purpose" of the Convention.

23. The foregoing interpretation of Article 75 is confirmed by the preparatory work of the Convention, which indicates that its drafters wished to provide for a flexible reservations policy. As is well known, the Convention was adopted at the Specialized Inter-American Conference on Human Rights, which met in San José, Costa Rica, from November 7 to 22, 1969.

(The proceedings and documents of this Conference are contained in Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre de 1969, Actas y Documentos, OEA/Ser.K/XVI/1.2, Washington, D. C. 1973 (hereinafter cited as "Actas y Documentos").) The San José conference had before it, as its basic working document, the Draft Inter-American Convention on Human Rights, prepared by the Inter-American Commission on Human Rights. (The Spanish text of the draft is reproduced in Actas y Documentos at 13; the English text can be found in 1968 Inter-American Yearbook of Human Rights at 389 (1973).) Article 67 of this text dealt with reservations and read as follows:

> 1. Any State Party, at the time of the deposit of its instrument of ratification of or adherence to this Convention, may make a reservation if a constitutional provision in force in its territory should be contrary to any provision of this Convention. Every reservation should be accompanied by the text of the constitutional provision referred to.
>
> 2. A provision that has been the subject of a reservation shall not be in force between the reserving state and the other States Parties. In order for the reservation to have this effect, it shall not be necessary for the other States Parties to accept it.

24. Already in their preliminary comments on the Draft Convention, a number of governments found Draft Article 67 too restrictive. The clearest articulation of this view can be found in the following statement submitted by the Government of Argentina:

> Article 67, paragraph 1. The system of reservations established in this Article is based exclusively on the existence of contrary constitutional provisions of the State making the reservation, and is not acceptable, since it restricts the sovereign power of the States to make the reservations.
>
> It is accordingly suggested, as more desirable, to have a broader formula similar to that contained in Article 86 of the draft prepared by the Inter-American Council of Jurists, according to which there is a right to make a reservation if a constitutional or legal provision in force in the State concerned is contrary to a provision of the Convention.
>
> Article 67, paragraph 2. The elimination of this paragraph is suggested since it departs from the system provided for in the Draft Convention on the Law of Treaties recently prepared in Vienna (United Nations Conference on the Law of Treaties, April 22 to May 24, 1968). In the proposed Article 67, "acceptance" is eliminated as an element of the system and it is proposed

> that the reservation operate between the "reserving State and the other States Parties" from the very time it is formulated.
>
> It does not appear wise to make innovations in this difficult subject when a worldwide conference has prepared a different system and, moreover, one that is more suited to international practice and jurisprudence. (Actas y Documentos at 48).

25. Similar views were expressed by other Governments, either in their official comments or in their interventions at the Conference. Like Argentina, a number of States also sought to amend Draft Article 67 by adding the words "and legal" after "constitutional." This effort, which would have significantly liberalized the right to make reservations, obtained the approval of the Working Group of Committee II of the San José Conference, but was defeated subsequently in Committee II because it was deemed to conflict with Article 1(2) of the Draft Convention, now Article 2 of the Convention. (Actas y Documentos at 365-66 and 379). The earlier attempt by the U.S. Delegation to substitute a reference to the Vienna Convention for the disputed provisions failed in the Working Group (Actas y Documentos at 379) but succeeded at the third plenary meeting of the Conference, where the present text of Article 75 was adopted on the motion of Uruguay. (Actas y Documentos at 459). In short, it is impossible to read the drafting history of the Convention without recognizing that the primary purpose of the reference to the Vienna Convention in Article 75 was to provide for a system that would be very liberal in permitting States to adhere to the Convention with reservations.

26. Having concluded that States ratifying or adhering to the Convention may do so with any reservations that are not incompatible with its object and purpose, the Court must now determine which provisions of Article 20 of the Vienna Convention apply to reservations made to the Convention. The result of this inquiry will of necessity also provide the answer to the question posed by the Commission. This is so because, if under the Vienna Convention reservations to the Convention are not deemed to require acceptance by the other States Parties, then for the here relevant purposes Article 74 of the Convention applies and a State ratifying or adhering to it with or without a reservation is deemed to be a State Party as of the date of the deposit of the instrument of ratification or adherence. (Vienna Convention, Art. 20(1)). On the other hand, if acceptance of the reservation is required under the Vienna Convention, a reserving State would be deemed to become a State Party only on the date when at least one other State Party has accepted the reservation either expressly or by implication. (Vienna Convention, Arts. 20(4)(c) and 20(5)).

27. In the opinion of the Court, only paragraph 1 or paragraph 4 of Article 20 of the Vienna Convention can be deemed to be relevant in applying Articles 74 and 75 of the Convention. Paragraph 2 of Article 20 is inappli-

cable, inter alia, because the object and purpose of the Convention is not the exchange of reciprocal rights between a limited number of States, but the protection of the human rights of all individual human beings within the Americas, irrespective of their nationality. Moreover, the Convention is not the constituent instrument of an international organization. Therefore, Article 20(3) is inapplicable.

28. In deciding whether the Convention envisages the application of paragraph 1 or paragraph 4 of Article 20 of the Vienna Convention, the Court notes that the principles enunciated in Article 20(4) reflect the needs of traditional multilateral international agreements which have as their object the reciprocal exchange, for the mutual benefit of the States Parties, of bargained for rights and obligations. In this context, and given the vastly increased number of States comprising the international community today, the system established by Article 20(4) makes considerable sense. It permits States to ratify many multilateral treaties and to do so with the reservations they deem necessary; it enables the other contracting States to accept or reject the reservations and to determine whether they wish to enter into treaty relations with the reserving State; and it provides that as soon as at least one other State Party has accepted the reservation, the treaty enters into force with respect to the reserving State.

29. The Court must emphasize, however, that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. The distinct character of these treaties has been recognized, inter alia, by the European Commission on Human Rights, when it declared

> that the obligations undertaken by the High Contracting Parties in the European Convention are essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringements by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves. (Austria vs. Italy, Application No. 788/60, 4 European Yearbook of Human Rights 116, at 140 (1961)).

The European Commission, relying on the preamble to the European Convention emphasized, furthermore,

much because the possibility of conflicting interpretations is a phenomenon common to all those legal systems that have certain courts which are not hierarchically integrated. Such courts have jurisdiction to apply and, consequently, interpret the same body of law. Here it is, therefore, not unusual to find that on certain occasions courts reach conflicting or at the very least different conclusions in interpreting the same rule of law. On the international law plane, for example, because the advisory jurisdiction of the International Court of Justice extends to any legal question, the UN Security Council or the General Assembly might ask the International Court to render an advisory opinion concerning a treaty which, without any doubt, could also be interpreted by this Court under Article 64 of the Convention. Even a restrictive interpretation of Article 64 would not avoid the possibility that this type of conflict might arise.

51. Moreover, the conflicts being anticipated, were they to occur, would not be particularly serious. It must be remembered, in this connection, that the advisory opinions of the Court and those of other international tribunals, because of their advisory character, lack the same binding force that attaches to decisions in contentious cases. (Convention, Art. 68). This being so, less weight need be given to arguments based on the anticipated effects that the Court's opinions might have in relation to States lacking standing to participate in the advisory proceedings here in question. Viewed in this light, it is obvious that the possibility that the opinions of the Court might conflict with those of other tribunals or organs is of no great practical significance; there are no theoretical obstacles, moreover, that would bar accepting the possibility that such conflicts might arise.

52. For these reasons, responding to the request of the Government of Peru for an interpretation of the meaning of the phrase "or of other treaties concerning the protection of human rights in the American states," contained in Article 64 of the Convention.

THE COURT IS OF THE OPINION

Firstly: By unanimous vote, that the advisory jurisdiction of the Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have a right to become parties thereto.

Secondly: By unanimous vote, that, for specific reasons explained in a duly motivated decision, the Court may decline to comply with a request for an advisory opinion if it concludes that, due to the special circumstances of a particular case, to grant the

> that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realize the aims and ideals of the Council of Europe... and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions,ideas, freedom and the rule of law. (Ibid. at 138).

30. Similar views about the nature of modern humanitarian treaties have been enunciated by the International Court of Justice in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, (1951 I.C.J. 15). They find expression also in the Vienna Convention itself, particularly in Article 60 (5). (See generally E. Schwelb, "The Law of Treaties and Human Rights," 16 Archiv des Volkerrechts 1 (1973), reprinted in Toward World Order and Human Dignity at 262 (W.M. Reisman & B. Weston, eds. 1976).)

31. These views about the distinct character of humanitarian treaties and the consequences to be drawn therefrom apply with even greater force to the American Convention whose first two preambular paragraphs read as follows:

> Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;
>
> Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.

32. It must be emphasized also that the Convention, unlike other international human rights treaties, including the European Convention, confers on private parties the right to file a petition with the Commission against any State as soon as it has ratified the Convention. (Convention, Art. 44). By contrast, before one State may institute proceedings against another State, each of them must have accepted the Commission's jurisdiction to deal with inter-State communications. (Convention, Art. 45). This structure indicates the overriding importance the Convention attaches to the commitments of the States Parties vis-à-vis individuals, which can be readily implemented without the intervention of any other State.

33. Viewed in this light and considering that the Convention was designed to protect the basic rights of individual human beings irrespective of their nationality, against States of their own nationality or any other State Par-

ty, the Convention must be seen for what in reality it is: a multilateral legal instrument or framework enabling States to make binding unilateral commitments not to violate the human rights of individuals within their jurisdiction.

34. In this context, it would be manifestly unreasonable to conclude that the reference in Article 75 to the Vienna Convention compels the application of the legal regime established by Article 20(4), which makes the entry into force of a ratification with a reservation dependent upon its acceptance by another State. A treaty which attaches such great importance to the protection of the individual that it makes the right of individual petition mandatory as of the moment of ratification, can hardly be deemed to have intended to delay the treaty's entry into force until at least one other State is prepared to accept the reserving State as a party. Given the institutional and normative framework of the Convention, no useful purpose would be served by such a delay.

35. Accordingly, for the purpose of the present analysis, the reference in Article 75 to the Vienna Convention makes sense only if it is understood as an express authorization designed to enable States to make whatever reservations they deem appropriate, provided the reservations are not incompatible with the object and purpose of the treaty. As such, they can be said to be governed by Article 20(1) of the Vienna Convention and, consequently, do not require acceptance by any other State Party.

36. The Court notes, in this connection, that Article 20(1), in speaking of "a reservation expressly authorized by a treaty," is not by its terms limited to specific reservations. A treaty may expressly authorize one or more specific reservations or reservations in general. If it does the latter, which is what the Court has concluded to be true of the Convention, the resultant reservations, having been thus expressly authorized, need not be treated differently from expressly authorized specific reservations. The Court wishes to emphasize, in this connection, that unlike Article 19(b), which refers to "specified reservations," Article 20(1) contains no such restrictive language, and therefore permits the interpretation of Article 75 of the Convention adopted in this opinion.

37. Having concluded that reservations expressly authorized by Article 75, that is, all reservations compatible with the object and purpose of the Convention, do not require acceptance by the States Parties, the Court is of the opinion that the instruments of ratification or adherence containing them enter into force, pursuant to Article 74, as of the moment of their deposit.

38. The States Parties have a legitimate interest, of course, in barring reservations incompatible with the object and purpose of the Convention. They are free to assert that interest through the adjudicatory and advisory machinery established by the Convention. They have no interest in delaying

the entry into force of the Convention and with it the protection that treaty is designed to offer individuals in relation to States ratifying or adhering to the Convention with reservations.

39. Since the instant case concerns only questions bearing on the entry into force of the Convention, the Court does not deem it necessary to deal with other issues that might arise in the future in connection with the interpretation and application of Article 75 of the Convention and which, in turn, might require the Court to examine the provisions of the Vienna Convention applicable to reservations not treated in this opinion.

40. For these reasons,

With regard to the interpretation of Articles 74 and 75 of the American Convention on Human Rights concerning the effective date of the entry into force of the Convention in relation to a State which ratifies or adheres to it with one or more reservations,

THE COURT IS OF THE OPINION

By unanimous vote, that the Convention enters into force for a State which ratifies or adheres to it with or without a reservation on the date of the deposit of its instrument of ratification or adherence.

Done in English and Spanish, the English text being authentic, at the seat of the Court in San Jose, Costa Rica, this 24th day of September, 1982.

CARLOS ROBERTO REINA
PRESIDENT

PEDRO NIKKEN HUNTLEY EUGENE MUNROE MAXIMO CISNEROS

RODOLFO E. PIZA THOMAS BUERGENTHAL

CHARLES MOYER
SECRETARY

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 Article 4.2 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 provision with regard to which the Inter-American Commission on Human Rights seeks an advisory opinion is the last sentence of Article 4.2 of the American Convention on Human Rights. That article reads as follows:

> 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. (Emphasis added)

The Commission wishes to emphasize that its request for an advisory opinion refers specifically to the last sentence of the aforementioned Article 4.2 and poses the following questions:

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?

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 the Convention a law imposing the death penalty for crimes not subject to this sanction at the moment of ratification?

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

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.

Moreover, Article 41 of the Convention states that the Commission has as its main function the promotion of the respect for and the defense of human rights and Article 19 of the Statute of the Commission provides that it may consult the Court on the interpretation of the American Convention on Human Rights.

C. Considerations giving rise to the request

1. As a result of sentences handed down by the Courts of Special Jurisdiction (Tribunales del Fuero Especial) imposing the death penalty on Héctor Haroldo Morales Lopez, Walter Vinicio Marroquín Gonzales, Sergio Marroquín Gonzales and Marco A. González --who were subsequently executed on March 4, 1983-- the Commission took various steps in an effort to deter the executions. One of the arguments used in its cable, dated February 9 of this year, to the Minister of Foreign Affairs of Guatemala is the following:

> FURTHER TO LAST CABLE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, I AM OBLIGED TO INFORM YOU THAT IACHR FINDS THAT THE IMPOSITION OF SUCH PUNISHMENT IS IN OPEN CONTRADICTION WITH THE PROVISIONS OF THE LAST SENTENCE OF ARTICLE 4.2 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS TO WHICH GUATEMALA MADE NO RESERVATION AT THE TIME OF RATIFICATION NOR AT ANY OTHER TIME. THAT SENTENCE READS:
>
> > THE APPLICATION OF SUCH PUNISHMENT SHALL NOT BE EXTENDED TO CRIMES TO WHICH IT DOES NOT PRESENTLY APPLY.
>
> IN EFFECT, NONE OF THE CRIMES SET OUT IN THE ARTICLES OF THE PENAL CODE MENTIONED IN ARTICLE 4 OF DECREE-LAW No. 46-82, WHICH ESTABLISHED THE SPECIAL COURTS AND WHICH AUTHORIZES THEM TO APPLY THE DEATH PENALTY, APPEARS TO PROVIDE FOR THE DEATH PENALTY. FURTHER CONSIDERING THAT ARTICLE 7 OF THE BASIC STATUTE OF GOVERNMENT NOW IN FORCE IN GUATEMALA STATES:
>
> > AS PART OF THE INTERNATIONAL COMMUNITY, GUATEMALA WILL FAITHFULLY FULFILL ITS INTERNATIONAL OBLIGATIONS, ABIDING IN ITS RELATIONS WITH OTHER STATES BY THE NORMS OF THIS STATUTE OF GOVERNMENT, INTERNATIONAL TREATIES AND THE NORMS OF INTERNATIONAL LAW ACCEPTED BY GUATEMALA.

AND, TAKING INTO ACCOUNT THAT IN RATIFYING THE AMERICAN CONVENTION ON HUMAN RIGHTS, GUATEMALA ACCEPTED WITHOUT RESERVATION THAT THE APPLICATION OF THE DEATH PENALTY HENCEFORTH WOULD NOT BE EXTENDED TO CRIMES FOR WHICH IT WAS NOT PROVIDED AT THE TIME OF RATIFICATION, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS URGES THE GOVERNMENT OF YOUR EXCELLENCY, IN APPLICATION OF ARTICLE 4.2 OF THE AMERICAN CONVENTION, NOT TO CARRY OUT THE DEATH SENTENCES HANDED DOWN BY THE COURTS OF SPECIAL JURISDICTION AND SUBSEQUENTLY MODIFY ARTICLE 4 OF DECREE-LAW 46-82.

2. In response to this argument, the Government of Guatemala, in a note dated March 15, 1983, that is, after the death sentences were carried out, stated the following:

REGARDING THE FACT THAT THE CONVENTION ESTABLISHES THAT THE DEATH PENALTY CAN NOT BE APPLIED WITH RESPECT TO CRIMES FOR WHICH IT WAS NOT PROVIDED IN THE DOMESTIC LAW OF A COUNTRY AT THE TIME OF RATIFICATION OF THE CONVENTION, IT IS CLEAR THAT THIS PRECEPT CANNOT LIMIT THE SOVEREIGN POWER OF A STATE TO AMEND ITS DOMESTIC PENAL LEGISLATION WHEN SPECIAL OR EXCEPTIONAL CIRCUMSTANCES IN A COUNTRY MAKE IT IMPERATIVE TO PUNISH THE COMMISSION OF SERIOUS CRIMES WITH THE DEATH PENALTY AS A MEANS OF PROTECTING SOCIETY ITSELF.

THE COUNTRIES WHICH FACE THE PROBLEM OF SUBVERSION, WHOSE ELEMENTS CONTINUALLY COMMIT SERIOUS COMMON CRIMES FOR POLITICAL PURPOSES, ARE OBLIGED ON THE BASIS OF THEIR FUNDAMENTAL DUTY OF GUARANTEEING THE SECURITY OF THE CITIZENRY TO TAKE ALL THE MEASURES NECESSARY TO COMBAT THESE DELINQUENTS, WHO CONSTITUTE A PUBLIC DANGER AND WHOSE ACTIONS ARE A THREAT TO THE POPULATION. THEREFORE, A RIGID AND RESTRICTIVE INTERPRETATION OF THE ABOVE-MENTIONED PROVISION WOULD ONLY LEAD TO A SITUATION IN WHICH EVERY STATE WHICH HAS RATIFIED THE CONVENTION WOULD FIND ITSELF DEPRIVED OF THE SOVEREIGN POWER TO MODIFY ITS DOMESTIC LEGISLATION. THIS WOULD LEAD TO A DENIAL OF THE REALITY THAT LAW IS PER SE ESSENTIALLY CAPABLE OF BEING CHANGED AND THAT IT MUST BE ADAPTED TO THE SOCIAL CHANGES --POSITIVE AND/OR NEGATIVE-- WHICH OCCUR IN ALL NATIONS.

IN ADDITION, IN RATIFYING THE AMERICAN CONVENTION ON HUMAN RIGHTS, GUATEMALA MADE AN EXPRESS RESERVATION TO THE EFFECT THAT IT WOULD CONTINUE IMPOSING THE DEATH PENALTY FOR COMMON CRIMES RELATED TO POLITICAL OFFENSES.

THE RESERVATION MUST BE INTERPRETED IN GENERAL TERMS SINCE ARTICLE 4.4 OF THE CONVENTION WAS SPECIFICALLY CITED BECAUSE IT IS HERE THAT THE PROHIBITION ON APPLYING THE DEATH PENALTY TO COMMON CRIMES RELATED TO POLITICAL OFFENSES IS CON-

TAINED. THE RESERVATION, HOWEVER, SHOULD IN NO WAY BE INTERPRETED AS REFERRING SOLELY TO THAT CLAUSE, BUT RATHER TO ANY PART OF THE CONVENTION IN WHICH A SIMILAR NORM IS FOUND.

3. The Government of Guatemala subsequently delivered to the Commission on April 8, 1983, a document in which it states:

> The Government of the Republic of Guatemala maintains that the reservation made to Article 4.4 of the Convention allows it to regulate and legislate with respect to the death penalty for common crimes related to political offenses. Guatemala bases its thesis on the fact that the reservation encompasses the right to legislate with regard to the death penalty for common crimes related to political offenses subsequent to the entry into force of the Convention because, were it not so, the reservation would be devoid of meaning. If at the time the Convention entered into force Guatemala could no longer legislate with regard to common crimes related to political offenses, why did it make the reservation? What purpose would a reservation have if Guatemala subsequently was unable to legislate because of the prohibition of Article 4.4 of the Convention? Assuming that the Inter-American Commission on Human Rights were right and the death penalty consequently could not be applied for crimes for which it was not applicable on July 18, 1978 (the date of the entry into force of the Convention) --Why did Guatemala make the reservation, since with or without reservation it could not apply the death penalty to any crime other than those to which it was already applicable at the time of the entry into force of the Convention?
>
> Guatemala considers that the purpose of the reservation that it made was to reserve the right to be able to apply the death penalty for common crimes related to political offenses. No other interpretation is possible since, if the thesis of the Commission were correct, there would have been no reason to make the reservation, because with or without it, it would not be possible to regulate the death penalty for common crimes related to political offenses. The purpose of the reservation is precisely that a State, in ratifying a treaty, manifests its desire not to be bound by a particular provision. This was precisely what Guatemala manifested: its desire not to be bound by Article 4.4. Why? --to be able to legislate on the matter of the death penalty for common crimes related to political offenses.
>
> It is worth emphasizing that it is an accepted principle of International Law that the intention of the parties must be taken into account in the interpretation of international con-

APPENDIX VII

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

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF THE INSTRUMENT OF RATIFICATION OR ADHERENCE
Barbados	20/VI/78	05/XI/81
Bolivia[1]		19/VII/79
Chile[2]	22/XI/69	
Colombia	22/XI/69	31/VII/73
Costa Rica[4]	22/XI/69	08/IV/70
Dominican Republic[2]	07/IX/79	19/IV/78
Ecuador[2]	22/XI/69	28/XII/77
El Salvador[2,3]	22/XI/79	23/VI/78
Grenada	14/VII/78	18/VII/78
Guatemala[3]	22/XI/69	25/V/78
Haiti[1]		27/IX/77
Honduras[6]	22/XI/69	08/IX/77
Jamaica[2]	16/IX/77	07/VIII/78
Mexico [1]		24/III/81
Nicaragua	22/XI/69	25/IX/79
Panama	22/XI/69	22/VI/78
Paraguay	22/XI/69	
Peru[5]	27/VII/77	28/VII/78
United States	01/VI/77	
Uruguay[3]	22/XI/69	
Venezuela[2,3,7]	22/XI/69	09/VIII/77

1. Adhered.
2. With a declaration.
3. With a reservation.
4. Recognized the competence of the Inter-American Commission on Human Rights and of the Inter-American Court on Human Rights on July 2, 1980. (Convention, Arts. 45 and 62.)
5. Recognized the competence of the Commission and of the Court on January 21, 1981. (Convention, Arts. 45 and 62.)
6. Recognized the competition of the Court on September 9, 1981. (Convention, Art. 62.)
7. Recognized the competition of the Comission on August 9, 1977 and of the Court on June 24, 1981. (Convention, Arts. 45 and 62.)

ventions. What was the intention of Guatemala in making the reservation? -- the clear intention of the Government of Guatemala was to reserve the right to legislate and to establish the death penalty for common crimes related to political offenses, if the circumstances so required. Treaties must be interpreted in accordance with their reasonable meaning: this is a principle accepted by International Law. Consequently, having made the reservation, Guatemala has the power to legislate with respect to the death penalty for common crimes related to political offenses. Otherwise, there would be no reason for the reservation. The fact that no reservation was made regarding Article 4.2 cannot have any bearing on this matter, for the reservation was made precisely in order to reserve the right to legislate with respect to the death penalty for common crimes related to political offenses. No other interpretation is possible, for if a reservation was made it was made for some reason, and this reason is that which we have stated. In addition, the accessory follows the principal, and the reservation to Article 4.4 is the principal part.

4. The Commission disagrees entirely with the interpretation given by the Government of Guatemala to Article 4.2 of the American Convention on Human Rights. To allege, as does the Government of Guatemala, that a State can undo unilaterally the obligations imposed on it by an international treaty because "law is per se capable of being changed and it must be adapted to the social changes --positive and/or negative-- which occur in all nations," or even more serious, to suggest that a State can reject a solemn, internationally agreed to obligation and proceed to amend its domestic penal legislation "when special or exceptional circumstances in a country make it imperative to punish the commission of serious crimes with the death penalty" is to fail to understand the very essence of International Law, much less the international obligations of a State in the field of human rights which, moreover, always constitute an advance in the preservation of the dignity of the human person and never a regression to situations which were considered to have been overcome.

5. The Commission also believes that the reservation formulated by the Government of Guatemala, being a reservation to a human rights treaty, must per force be read restrictively. The Inter-American Court of Human Rights has so stated in its Advisory Opinion No. OC-2/82 of September 24, 1982, in which it points out the special nature of human rights conventions as opposed to ordinary multilateral treaties.

In these circumstances, the reservation can only be interpreted in its most restrictive form; no other form of interpretation is possible. Thus, contrary to the position maintained by the Government of Guatemala, the scope of its reservation is strictly limited by the very terms of Article 4.4 and cannot be extended, as the Guatemalan position would have it, to other provisions of Article 4 of the Convention.

APPENDIX VI

REMARKS OF POPE JOHN PAUL II AT THE PRIVATE AUDIENCE WITH THE JUDGES OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS SAN JOSE, COSTA RICA, MARCH 3, 1983

Gentlemen:

Within the framework of my visit to the Central American countries, I have with great pleasure accepted the invitation to meet with you who, by virtue of the high duty you perform, have been called on to carry out an important task of protection of human rights in this beloved and tormented hemisphere. I greet you, then, with profound esteem.

The establishment of the Inter-American Court of Human Rights, the purpose of which is the application and interpretation of the American Convention on Human Rights, which entered into force in 1978, has marked a particularly outstanding stage in the process of ethical maturation and legal development of the protection of human dignity. In fact, this institution, which not without reason selected the city of San Jose, Costa Rica as its seat, shows an acute awareness of the American peoples and governors that the promotion and defense of human rights is not a mere ideal, so noble and lofty as may be desired, but in practice abstract and without agencies of effective control; but rather, that it should have effective instruments of verification and, if necessary, of timely punishment.

It is true that the control of respect for human rights corresponds first of all to each state's legal system. But greater sensitivity and a sharpened concern over the recognition or the violation of the dignity and freedom of man have shown not only the advisability but the necessity that the protection and control that a state exercises be completed and strengthened through a supranational and autonomous juridical institution.

The Inter-American Court of Human Rights, of which you are members, has been set up precisely to perform this specific juridical function, contentious as well as advisory. In view of that noble mission, I wish to express to you, Gentlemen, my support and encouragement. At the same time, I invite the pertinent bodies to resort without fear to this Court, to entrust to it the cases over which it has jurisdiction, thus giving concrete proof of according the Court the value embodied in its Statute. This will be the path toward a better application of the content of the Universal Declaration of Human Rights, to which I referred rather extensively during my address to the UN General Assembly on October 2, 1979, paragraphs 9, 13-20.

To you, distinguished judges, I wish to make the fervent supplication that, with the performance of your duties, exercised with a profound ethical feeling and impartiality, you will cause the growth of respect for the dignity and the rights of man; that man whom you, educated in a Christian tradition, recognize as the image of God redeemed by Christ; and, consequently, the most valuable being in creation.

I ask God to bless you and enlighten you in the faithful performance of this vast task, so necessary and so important in the present moment of human history.

6. Moreover, Article 4.4 of the Convention --to which Guatemala has made a reservation-- expressly states "In no case shall capital punishment be inflicted for political offenses or related common crimes," which the Commission understands to mean that Guatemala's reservation at the most authorizes it to apply the death penalty to common crimes related to political offenses already subject to this punishment in its legislation, but not to others which at the time did not impose such punishment.

7. The Commission also considers that the decision of a Government to apply the death penalty is, in addition, subject to various conditions which emanate from the text of the Pact of San Jose, given that human rights treaties must be interpreted in accordance with their object and purpose, which are none other than that of protecting before all else the fundamental rights of human beings against violations by States.

As modern international law has already recognized, human rights provisions are jus cogens, that is, an overriding legal norm, and derogations from them must be well-defined and well-founded, which is not the case in the matter under consideration here.

8. In these circumstances, the text of the reservation must be understood to mean that Guatemala may --if the other conditions are met-- apply the death penalty for common crimes related to political offenses which its laws already punished with this penalty at the time of ratification of the Convention. But with regard to crimes which were not subject to this sanction prior to the Guatemala's ratification of the Pact of San Jose, however, the Inter-American Commission on Human Rights maintains that the Government, in applying the death penalty, is in flagrant violation of Article 4.2 of the Convention, since the last sentence of that provision states that "The application of such punishment shall not be extended to crimes to which it does not presently apply."

9. Thus, crimes not punishable by the death penalty by the legislation in force on the day when the ratification of the Convention took effect and which have become punishable by the death penalty, as for example those included in the "Law of Courts of Special Jurisdiction," adopted by the Government of General Rios Montt on July 1, 1982, cannot legally be punished with the death penalty, not only because Guatemala has not made a reservation with respect to Article 4.2 of the Convention, but also because no legitimate basis for the link between the common crime and political offense has been furnished. In other words, in order to be able to punish common crimes related to political offenses with the death penalty, it is essential to establish the connection between one crime and the other, which has certainly not occurred here since neither what is a political crime nor its connection with a common crime has been defined. Thus, we have an obvious violation by the Government of Guatemala of the obligations accepted pursuant to the American Convention on Human Rights.

10. As the Court can appreciate, a fundamental disagreement exists between a Member State of the Organization of American States and the Commission concerning one of the most important provisions of the American Convention on Human Rights. The Commission, therefore, considers that the Court could make an important contribution to International Humanitarian Law by interpreting the true meaning of the last sentence of Article 4.2 of the Pact of San Jose and by answering the questions presented by the Commission in this request for an advisory opinion.

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. Cesar Sepulveda; 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, 1889 F Street, N.W., Washington, D.C. 20006, U.S.A.

APPENDIX IV

REQUEST FOR AN ADVISORY OPINION PRESENTED BY THE GOVERNMENT OF COSTA RICA

INTER-AMERICAN COURT OF HUMAN RIGHTS:

The Government of Costa Rica has been duly advised of the request for an advisory opinion presented to the Court by the Special Committe named by the Legislative Assembly to give its opinion on the proposed amendment to Articles 14 and 15 of the Constitution and of the defect of form of the presentation.

In order to correct those formal defects and comply with the provisions of Article 64(2) of the American Convention on Human Rights and Article 51 of the Rules of Procedure of the Court, the Government presents the following request:

I. NECESSARY CLARIFICATION

The Goverment believes it necessary to make the following qualifications:

1. The point of view on the amendments found in the Opinion of the Special Committee is, to the moment, that of its signers. It does not express the point of view of the Legislative Assembly which hasn't taken cognizance of the Opinion and much less that of the Executive Branch which does not intervene in the process of amending the Constitution until after an amendment has been approved in the first reading. (Article 195 of the Constitution).

2. The Government considers it necessary to present its excuses to the Inter-American Court for the fact that a Committee of the Legislative Assembly presented the request directly, without observing the norms set out by the Convention, the Rules of Procedure of the Court and international law.

3. The purpose of this presentation of the Government, that is, of the Executive Branch, is to correct the defects and to make it easier to obtain the opinion of the Court on a proposed constitutional amendment that will be debated in the plenary of the Assembly. The request does not mean that the Government endorses the proposed amendment regarding which it shall give its points of view in the hearing on the matter.

II. PROVISIONS TO BE ANALYZED IN THE DETERMINATION OF COMPATIBILITY

Given the preceding clarifications and in compliance with the requisites of Article 51 of the Rules of Procedure of the Court, the provisions to be analyzed to determine their compatibility are:

a) Domestic legislation:

1) Present text of Articles 14 and 15 of the Constitution of Costa Rica:

"ARTICLE 14. The following are Costa Ricans by naturalization:

1) Those who have acquired this status by virtue of former laws;

2) Nationals of the other countries of Central America, who are of good conduct, who have resided at least one year in the republic, and who declare before the civil registrar their intention to be Costa Ricans;

3) Native-born Spaniards and Ibero-Americans who obtain the appropriate certificate from the civil registrar, provided they have been domiciled in the country during the two years prior to application;

4) Central Americans, Spaniards and Ibero-Americans who are not native-born, and other foreigners who have been domiciled in Costa Rica for a minimum period of five years immediately preceding their application for naturalization, in accordance with the requirements of the law;

5) A foreign woman who by marriage to a Costa Rican loses her nationality or who indicates her desire to become a Costa Rican;

6) Anyone who receives honorary nationality from the Legislative Assembly."

"ARTICLE 15. Anyone who applies for naturalization must give evidence in advance of good conduct, must show that he has a known occupation or means of livelihood, and must promise to reside in the republic regularly.

For purposes of naturalization, domicile implies residence and stable and effective connection with the national community, in accordance with regulations established by law."

2) Amendments proposed by the Special Committee of the Legislative Assembly in its Opinion of June 22, 1983.

"Article 14.- The following are Costa Ricans by naturalization:

1) Those who have acquired this status by virtue of previous laws;

2) Native-born nationals of the other countries of Central America, Spaniards and Ibero-Americans with five years official residence in the country and who fulfill the other requirements of the law;

3) Central Americans, Spaniards and Ibero-Americans, who are not native-born, and other foreigners who have held official residence for a minimum period of seven years and who fulfill the other requirements of the law;

4) A foreign woman who by marriage to a Costa Rican loses her nationality or who after two years of marriage and the same period of residency in the country, indicates her desire to take on our nationality; and

5) Anyone who receives honorary nationality from the Legislative Assembly."

"Article 15.- Anyone who applies for naturalization must give evidence in advance of good conduct, must show that he has a known occupation or means of livelihood, and must know how to speak, write and read the Spanish language. The applicant shall submit to a comprehensive examination on the history of the country and its values and shall, at the same time, promise to reside within the national territory regularly and swear to respect the constitutional order of the Republic.

The requirements and procedures for applications of naturalization shall be established by law."

3) Motion of amendment to Article 14.4 of the Constitution presented by the Deputies of the Special Committee:

"A foreigner who by marriage to a Costa Rican loses his or her nationality and who after two years of marriage and the same period of residence in the country, indicates his or her desire to take on the nationality of the spouse."

b) Articles of the Convention

The above-mentioned legal texts should be compared to the following articles of the American Convention on Human Rights in order to detemine their compatibility:

"Article 17. Rights of the Family

Paragraph 4.- The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests."

"Article 20. Right to Nationality.

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it."

"Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

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

In accordance with the request originally made by the Special Committee to study amendments to Articles 14 and 15 of the Constitution, the Government of Costa Rica requests that the Court determine:

a) If any compatibility exists between the proposed amendments and the aforementioned provisions of the American Convention on Human Rights.

Specifically, within the context of the proceding question, the following questions should be answered:

b) Is the right of any person to have a nationality, stipulated in Article 20(1) of the Convention, affected in any way by the proposed amendments to Articles 14 and 15 of the Constitution?

c) Is the proposed amendment to Article 14.4, according to the text proposed in the Opinion of the Special Committee, compatible with Article 17(4) of the Convention with respect to equality between the spouses?

ch) Is the text of the motion of the Deputies found in their opinion to amend this same paragraph compatible with Article 20(1) of the Convention?

IV. NAME AND ADDRESS OF THE REPRESENTATIVES OF THE GOVERNMENT OF COSTA RICA

The Government of the Republic of Costa Rica names as its agents for all effects that might arise due to this request, the undersigned, Carlos José Gutiérrez, Minister of Justice, and the Procurators, Manuel Freer and Odilón Méndez.

Any communication referring to this matter should be sent to the Ministry of Justice, San Jose, Costa Rica.

San Jose, August 8, 1983 /s/ Carlos José Gutiérrez, MINISTER

APPENDIX V

REMARKS OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, DR. CARLOS ROBERTO REINA, AT THE PRIVATE AUDIENCE WITH HIS HOLINESS JOHN PAUL II, SAN JOSE, COSTA RICA, MARCH 3, 1983

Your Holiness:

Allow me to express, on behalf of the Inter-American Court of Human Rights, our profound appreciation for your having received us today in private audience, and for having conversed with us and our wives at this very significant moment in the history of Central America.

The Inter-American Court of Human Rights and the whole hemispheric system of defense of the fundamental rights of man take their inspiration from that pristine source that the Rabbi of Galilee proclaimed and from the belief that you have expressed in your enlightening encyclicals, that it is necessary to acquire fully the human dimension of man.

We firmly believe that our fundamental task is to make human rights the inviolable rights of man. That is our greatest responsibility in the face of the destiny of America.

There is a very well-known saying that international organizations are what the respective states want them to be. We hope that all the republics of this hemisphere, demonstrating their faith in law as the irreplaceable instrument of peace, will ratify or adhere to the Pact of San Jose and accept the jurisdiction of our Court, so that we may thus broaden our field of action in pursuit of a justice that will be effective against the violations of the rights, freedoms, and guarantees that safeguard man in the face of the excesses of power in all their forms.

Distinguished apostolic pilgrim, your long journey to come to share the sorrow of the peoples of the severely shaken isthmus of the heart of America fills us with the holy emotion that seized the Apostles on hearing the teachings of the Master. We all understand that our strong feeling for justice today and always is the testimony of the secular protest over the great injustices committed against the Son of God during his life on earth.

Your Holiness, you have arrived in the New World in dramatic moments for the region that unites the Americas. Much blood, much sorrow, and innumerable anxieties have overwhelmed us in recent times. World tensions still loom as a huge threat to our precarious situation of backwardness, of instability and uncertainty. You arrived as one sent by the Lord, to bring the spirits peace and to seek the common good that can give us a fair and peaceful social order worthy of man.

We know your concerns and your inspiration as a true disciple of Jesus of Nazareth. Your very presence moves us to thought and to valuing

more highly the gifts of the spirit. Those gifts that you have so much praised as a suitable reply to the antivalues that materialize and destroy man.

You have defined living in justice as "The Sign of Our Times" for that we should be thoroughly informed about our immense responsibilities. We must profoundly understand the sense of what is just and seek the path that will lead us to that noble end, and make the decision never to depart from that path.

You have made manifest in words of profound content the Christian sense of the common good when you said to the diplomats of the world: "There is a common good of mankind, with large interests in play that require the concerted action of the governments and of men of good will: the human rights that must be guaranteed, problems of food, of health, of culture, international economic cooperation, reduction of arms, elimination of racism - the common good of mankind."

With respect to moral participation in public life, you indicated, with a sense of eternity, that: "The essential aspect of the State as a political community consists in the fact that the society and those who make it up, the people, are sovereign over their own destiny. This feeling is not realized if, instead of the exercise of power through the moral participation of a society and its people, we see the imposition of power by a certain group over all the other members of that society."

Wise and inspired are your words. Our fervent desire is that they may open the minds and hearts of those who have responsibilities of command, so that, applying strict moral standards to their actions, they may succeed in consolidating standards of greater ethical content and make possible for the peoples a social life with greater justice and more dignity, since only thus will they find the so longed-for peace of their souls.

Your Holiness, your presence in Central America is vital for world peace, for the noble cause of human rights, and for the strengthening of the international protection of the essential rights of man.

Most blessed Father, humble inspirer of the humble, in the face of the harsh reality that Central America is living through, your voice of faith becomes a message of living hope. The internal divisions, the fratricidal wars, the hatreds between brothers, the executions based on special laws, the age-old injustices, and the world-wide ideological confrontations, will have to make way for the moral paths that will produce democracy, justice, freedom, and peace through a change in attitudes.

High Pontiff, lavish your blessings on these long-suffering peoples of Central America, and may your visit be the holy dawn of a better destiny. So be it.

Also present: Charles Moyer, Secretary
Manuel Ventura, Deputy Secretary

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The Government of Peru, by note received April 28, 1982, requested the instant advisory opinion of the Inter-American Court of Human Rights.

2. By notes dated April 28, 1982, the Secretary, in accordance with a decision of the Court, acting pursuant to Article 52 of its Rules of Procedure, requested observations from all the Member States of the Organization of American States as well as, through the Secretary General, from all of the organs referred to in Chapter X of the Charter of the OAS.

3. The President of the Court fixed August 15, 1982 as the time-limit for the submission of written observations or other relevant documents.

4. Responses to the Secretary's request were received from the following States: Costa Rica, Dominica, Dominican Republic, Ecuador, St. Vincent and the Grenadines and Uruguay. In addition, the following OAS organs responded: the General Secretariat, the Inter-American Commission on Human Rights, the Inter-American Juridical Committee, the Pan American Institute of Geography and History and the Permanent Council. The majority of the responses included substantive observations on the issues raised in the advisory opinion.

5. Furthermore, the following organizations offered their points of view on the request as amici curiae: the Inter-American Institute on Human Rights, the International Human Rights Law Group, the International League for Human Rights & the Lawyer's Committee for International Human Rights, and the Urban Morgan Institute for Human Rights of the University of Cincinnati College of Law.

6. The Court, meeting in its Sixth Regular Session, set a public hearing for Friday, September 17, 1982 to receive the oral arguments that the Member States and the organs of the OAS might wish to give regarding the request for advisory opinion.

7. In the course of the public hearing, oral arguments were addressed to the Court by the following representatives:

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 members states and the observance of the standards governing General Secretariat operations; and, in certain instances specified in the Charter of the Organization, acts provisionally as Organ of Consultation under the Rio Treaty. The other two Councils, each of which has a Permanent Executive Committee, organize inter-American action in their areas and hold regular meetings once a year. The General Secretariat is the central, permanent organ of the OAS. The headquarters of both the Permanent Council and the General Secretariat is in Washington, D.C.

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

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