

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

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 of Human Rights, the International Human Rights Law Group, the International League for Human Rights and the Lawyers 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:

For Peru:

Bernardo Roca Rey, Agent and Ambassador in Costa Rica

For Costa Rica:

Carlos José Gutiérrez, Agent and Minister of Justice, and Manuel Freer Jiménez, Adviser

For the Inter-American Commission on Human Rights:

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 can not 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 clarify further the meaning of Article 64.

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 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 decision" (C. Dunshee de Abranches, "La Corte Interamericana de Derechos Humanos," in **La Convención Americana de 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 suppress 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 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 (OEA/Ser.L/V/II.46, doc.23, rev.1, November 17, 1979) at 37-38; the situation of political prisoners in Cuba (OEA/Ser.L/V/II.48, doc.24, December 14, 1979) at 9; the situation of human rights in Argentina (OEA/Ser.L/V/II.49, doc. 19, April 11, 1980) at 24-25; the situation of human rights in Nicaragua (OEA/Ser.L/V/II.53, doc.25, June 30, 1981) at 31; the situation of human rights in Colombia (OEA/Ser.L/V/II.53, doc.22, June 30, 1981) at 56-57; the situation of human rights in Guatemala (OEA/Ser.L/V/II.53, doc.21, rev.2, October 13, 1981) at 16-17; the situation of human rights in Bolivia (OEA/Ser.L/V/II.53, doc.6, rev.2, October 13, 1981) at 20-21; and Case 7481-Acts which occurred in Caracoles (Bolivia), Resolution No. 30/82 (OEA/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 interpretations.

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 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 the 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.

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 E.

THOMAS BUERGENTHAL

CHARLES MOYER;
SECRETARY