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Inter-American Court of Human Rights

Case of Goiburú *et al. v.* Paraguay

Judgment of September 22, 2006
(Merits, Reparations and Costs)

In the *Goiburú et al. case,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges[**]:

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge, and
Diego García-Sayán, Judge.

also present,

Pablo Saavedra Alessandri, Secretary;
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), delivers this judgment.

I
INTRODUCTION OF THE CASE

1. On June 8, 2005, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") lodged before the Court an application against the State of Paraguay (hereinafter "the State" or "Paraguay") originating from petitions Nos. 11,560, 11,665 and 11,667 received by the Secretariat of the Commission on December 6, 1995, and July 31, 1996, respectively. In the application, the Commission requested the Court to declare that

[**] Judge Oliver Jackman advised the Court that, owing to circumstances beyond his control, he would be unable to attend the seventy-second regular session; consequently, he did not take part in the deliberation and signature of this judgment.

the State had incurred in the continuing violation of the rights embodied in Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment) and 4 (Right to Life) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and the brothers Rodolfo and Benjamín Ramírez Villalba. The Commission also requested the Court to declare that the State was responsible for the continuing violation of Article 5 (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the victims' next of kin. In addition, the Commission asked the Court to declare that the State had incurred in the continuing violation of Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Rodolfo and Benjamín Ramírez Villalba, and their next of kin.

2. The application refers to the alleged illegal and arbitrary detention, torture and forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Rodolfo Feliciano and Benjamín de Jesús Ramírez Villalba, allegedly perpetrated by State agents as of 1974 and 1977, and also the partial impunity of these facts, since all those responsible have not been punished. The Commission alleged that the "forced disappearance of [these] persons is a continuing violation […] that is prolonged up until today, because the State has not established the whereabouts of the [alleged] victims or located their remains; moreover, it has not criminally sanctioned all those responsible for the violations, or ensured appropriate reparation to the next of kin." According to the application, Dr. Agustín Goiburú Giménez was a Paraguayan doctor, a member of the Colorado Party and founder of a political party that opposed Stroessner Matiauda. On February 9, 1977, Dr. Agustín Goiburú Giménez was arbitrarily detained in Argentina by agents of the Paraguayan State or by persons acting with their acquiescence; he was then taken to the Police Investigations Department in Asunción, where he was kept incommunicado and tortured, and subsequently disappeared. "The disappearance of Dr. Goiburú has been considered an 'action coordinated by the Paraguayan and Argentine security forces' as part of 'Operation Condor.'" Carlos José Mancuello Bareiro was a Paraguayan citizen, who was studying engineering in La Plata, Argentina. He was detained on November 25, 1974, while going through Paraguayan Customs, when entering the country from Argentina with his wife, Gladis Ester Ríos de Mancuello and his 8-month old daughter. On November 23, 1974, the brothers Benjamín and Rodolfo Ramírez Villalba were detained; the former when he was crossing the Paraguayan border from Argentina, and the latter in Asunción. Mr. Mancuello and the Ramírez Villalba brothers, who were accused of belonging "to a terrorist group that was preparing an attempt on Stroessner's life" allegedly led by Dr. Goiburú, were detained in the Investigations Department, among other Government offices. The alleged victims remained detained for 22 months; during this period they were tortured, kept incommunicado, and subsequently disappeared.

3. The Commission alleged that these facts took place in a context "in which Paraguayan State agents illegally detained, kept incommunicado, tortured, killed and then hid the remains of individuals whose political activities opposed the Stroessner regime."

4. The Commission also submitted to the Court's consideration the alleged prejudice caused by the State to the alleged victims' next of kin, owing to the presumed mental and moral anguish caused by the alleged detention and subsequent disappearance of the alleged victims and the alleged absence of a

complete, impartial and effective investigation into the facts. The Commission asked the Court to order the State to adopt certain measures of reparation described in the application, pursuant to Article 63(1) of the Convention. Lastly, it requested the Court to order the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system for the protection of human rights.

II
JURISDICTION

5. The Court is competent to hear this case, in the terms of Articles 62(3) and 63(1) of the American Convention, because Paraguay has been a State Party to the Convention since August 24, 1989, and accepted the compulsory jurisdiction of the Court on March 26, 1993.

III
PROCEEDINGS BEFORE THE COMMISSION

6. On December 6, 1995, the International Human Rights Law Group, later know as Global Rights Partners for Justice (hereinafter "Global Rights"), and the *Comité de Iglesias Para Ayudas de Emergencia* (hereinafter "CIPAE") (hereinafter "the representatives"), submitted a petition to the Inter-American Commission concerning the alleged illegal and arbitrary detention, torture and forced disappearance of Agustín Goiburú Giménez. This case was processed as No. 11,560.

7. On July 31, 1996, Global Rights and CIPAE submitted a petition to the Inter-American Commission concerning the alleged illegal and arbitrary detention, torture and forced disappearance of Carlos José Mancuello Bareiro. This case was processed as No. 11,665.

8. On July 31, 1996, Global Rights and CIPAE submitted a petition to the Inter-American Commission concerning the alleged illegal and arbitrary detention, torture and forced disappearance of the brothers Rodolfo and Benjamín Ramírez Villalba. This case was processed as No. 11.667.

9. On October 19, 2004, the Commission decided to process cases Nos. 11,560, 11,665 and 11,667 together.

10. On October 19, 2004, during its 121st regular session, the Commission adopted Report No. 75/04 on admissibility and merits, in which it concluded, *inter alia*, that the State had violated the rights embodied in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, owing to the illegal and arbitrary detention, torture and forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and the brothers Rodolfo Feliciano and Benjamín de Jesús Ramírez Villalba as of 1974 and 1977 in Paraguay, as well as to the failure to investigate, prosecute and punish those responsible, and the lack of effective reparation for the next of kin of the victims of these violations. The Commission recommended to the State that it adopt a series of measures to remedy these violations.

11. On December 8, 2004, the Commission sent the Admissibility and Merits Report to the State granting the latter two months to provide information on the measures adopted to comply with its recommendations. On the same date, in accordance with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that it had adopted the report and that it had been forwarded to the State, and inquired about their position with regard to the eventual submission of the case to the Inter-American Court. On February 8, 2005, the State requested an extension to provide information on the measures adopted to comply with the Commission's recommendations. The extension was granted until February 23, 2005, and Paraguay presented a report on February 24, that year. On March 4, 2005, the State requested a three-month extension of the time limit established in Article 51(1) of the Convention, "accepting expressly and irrevocably that the granting of this extension suspend[ed the said] time limit […] for the submission of the case to the Inter-American Court and manifesting that the State expressly waived filing the objection concerning the suspension of [that] time limit." This extension was granted by the Commission as of that day and until June 4, 2005, so that "the State [would have] additional time to comply with the recommendations made by the Commission in its Report No. 75/04."

12. On June 7, 2005, having heard the opinion of the petitioners, the Inter-American Commission decided to submit this case to the Court's jurisdiction, "based on the State's failure to comply with the recommendations" contained in Report No. 75/04.

IV
PROCEEDINGS BEFORE THE COURT

13. On June 8, 2005, the Inter-American Commission lodged the application before the Court (*supra* para. 1), attaching documentary evidence and offering testimonial and expert evidence. The Commission appointed José Zalaquett, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Víctor Madrigal Borloz, Ignacio Álvarez and Manuela Cuvi Rodríguez as legal advisers.

14. On August 22, 2005, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it, together with the attachments, to the State informing the latter of the time limits for answering the application and appointing its representatives in the proceedings. On the same date, the Secretariat advised the State that, pursuant to the provisions of Articles 18 of the Court's Rules of Procedure and 10 of its Statute, it had the right to appoint a judge *ad hoc* to take part in the consideration of the case within 30 days of notification of the application. The State did not make this appointment.

15. On August 22, 2005, also, the Secretariat, in accordance with the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, notified the application to the representatives, *Global Rights* and CIPAE, and advised them that they had two months to present their brief with requests, arguments and evidence (hereinafter "requests and arguments brief"). The representatives did not submit this brief.

16. On September 21, 2005, the State appointed Oscar Martínez as Agent and Francisco Bareiro as Deputy Agent in the case. On December 6, that year, the State appointed Jorge Bogarin González as Agent, replacing Oscar Martínez.

17. On December 22, 2005, the State submitted its brief answering the application (hereinafter "answer to the application"), attaching documentary evidence. In this brief, Paraguay acquiesced to and partially acknowledged international responsibility for some of the violations alleged by the Commission (*infra* paras. 39 to 54).

18. On May 5, 2006, the President issued an order advising that all the members of the Inter-American Court had assessed the principal briefs in the instant case and decided that, in the circumstances, it was not necessary to convene a public hearing. Also, he ordered that the testimonies of Gladis Meilinger de Sannemann, Elva Elisa Benítez Feliu de Goiburú, Ana Armninda Bareiro de Mancuello, Rogelio Agustín Goiburú Benítez, Ricardo Lugo Rodríguez and Julio Darío Ramírez Villalba, as well as the expert opinions of Alfredo Boccia Paz and Antonio Valenzuela Pecci, all proposed by the Commission, should be submitted by statements made before notary public (affidavits), to be forwarded to the Court by May 19, 2006, at the latest. According to the third operative paragraph of this order, the parties were granted a non-extendible period until June 5, 2006, to submit any observations on these testimonies they deemed pertinent. Furthermore, he called upon the State to forward to the Secretariat of the Court, by May 19, 2006, at the latest, as helpful evidence, complete authenticated copies of the domestic administrative and judicial measures taken in relation to the alleged forced disappearance of the alleged victims, to the extent that complete and legible copies of the documentation requested had not yet been provided to the case file. Lastly, in this order, the President informed the parties that they had a non-extendible period until June 5, 2006, to submit their final written arguments on merits and reparations and costs, with which the parties should present any observations they deemed pertinent on the terms and scope of the State's acquiescence and acknowledgement of international responsibility.

19. On May 19, 2006, with regard to the request to forward helpful evidence made by the President of the Court in the above order (*supra* para. 18), the State declared that "the requested documentation had already been forwarded and consisted of the attachments submitted by the Inter-American Commission […] with its application." It added that "other proceedings relating to the case [had] been provided with the answer to the application." On May 22, 2006, on the instructions of the President, the Secretariat reiterated to the State the request that it forward the requested documentation as soon as possible and clarified that this referred to the documentation that had not been provided by the Inter-American Commission or the State in their respective application brief and answer to the application. On the instructions of the President, the Secretariat repeated this request on July 7, 17 and 24 and August 1, 2006. Although the State did not submit any further documentation, on September 8, 2006, it repeated what it had affirmed in its communication of May 19 (*infra* para. 60).

20. On May 22, 2006, on the instructions of the President of the Court and pursuant to Article 45(2) of the Rules of Procedure, the Secretariat requested the Inter-American Commission to forward, by June 1, 2006, at the latest, several documents referred to in the application, which it had not offered or provided as evidence among the attachments to the application; namely the following books: *Es mi informe. Los archivos secretos de la policía de Stroessner*; *Testimonio contra el Olvido, Reseña de la Infamia y el Terror;* and *En los sótanos de los generales: Los documentos ocultos de la Operación Cóndor*. On July 5, 2006, after an extension had been granted, the Commission forwarded the requested documents.

21. On May 26, 2006, the Inter-American Commission submitted the testimonial statements made before notary public (affidavits) requested in the first operative paragraph of the order of the President of the Court of May 5, 2006 (*supra* para. 18). The Inter-American Commission also presented the testimonial statements made by Gladis Ester Ríos and Ana Elizabeth Mancuello Bareiro and asked that they be incorporated into the body of evidence in the case (*infra* paras. 56 to 59).

22. On June 2 and 5, 2006, the representatives, the Commission and the State, respectively, submitted their briefs with final written arguments. In their brief, the representatives endorsed, in general, the arguments made by the Commission concerning the violation of Articles 4, 5, 7, 8 and 25 of the Convention, to the detriment of the alleged victims, as well as most of the Commission's arguments concerning reparations.

23. On July 17 and 24, August 1, 9 and 24, and September 8, 2006, on the instructions of the President of the Court and based on Article 45 of the Court's Rules of Procedure, the Secretariat requested the parties to submit various types of information and documentation to be considered as helpful evidence:

(a) It asked the State to provide information on the actual status and results of the pending or closed extradition procedure(s), relating to the investigations and criminal proceedings instituted as a result of the facts of this case, and also copies of any documents it possessed regarding measures taken by the authorities of Paraguay or any other country in this regard. On August 8, 2006, the State presented some information and several decisions issued by Paraguayan judicial authorities, as well as other measures taken within the framework of the criminal proceedings opened in the cases of Agustín Goiburú Giménez and Carlos José Mancuello Bareiro, which had already been included in the Court's case file. The State did not submit information on the actual status and results of the pending or closed extradition procedures(s), relating to the criminal proceedings opened in the case of the Ramírez Villalba brothers, or copies of the documents it possessed regarding measures taken by the authorities of any other country in this regard (*infra* para. 60);

(b) It asked the Commission and the representatives for pertinent documentation proving the existence or the decease, if applicable, and the relationship of several people who were supposedly members of the alleged victims' families. Some of this documentation was forwarded by the Commission on July 31, and August 4, 8 and 14, 2006 (*infra* paras. 24 and 28 to 38);

(c) It asked the representatives, the Commission and the State for information on the definition of the crime of forced disappearance of persons, and also for a copy of the Penal Code and the Procedural Code applied during the criminal proceedings. Both the Commission and the State forwarded information in this regard on July 31, August 3 and September 14, 2006; and

(d) It asked the State, the Commission and the representatives for information about which of the individuals who had been prosecuted and/or convicted in the three proceedings opened in relation to the

facts of the instant case had been imprisoned and/or was in prison and, in the latter case, if they were being held in custody pending trial or because they have been convicted during the said proceedings. The parties presented information in this regard on August 14, 2006. The State had submitted some information on August 8, 2006.

24. On August 14 and 17, 2006, the Commission and the representatives, respectively, forwarded the sworn statements of María Magdalena Galeano and Rosa Mujica Giménez, alleged next of kin of Benjamín Ramírez and Augustín Goiburú, respectively. On the instructions of the President, the Secretariat informed the State and the representatives that if they had any comments on these statements they should forward them by August 28, 2006, at the latest. The parties did not submit any comments (*infra* paras. 56 to 59).

V
PRIOR CONSIDERATIONS

25. In its application, the Inter-American Commission listed the four alleged victims of the facts of this case and twelve of their next of kin: Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba, Benjamín Ramírez Villalba, Elva Elisa Benítez Feliú de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Herminio Arnoldo Ramírez Villalba and Julio Darío Ramírez Villalba. In its Admissibility and Merits Report, the Inter-American Commission had mentioned the four alleged victims, but did not name their next of kin, merely referring to them in general. Also, in its application, the Commission advised the Court that the petitioners had forwarded information on the nephews and nieces of the Ramírez Villalba brothers, children of Julio Darío Ramírez Villalba: Mirtha Hayde Ramírez de Morinigo, Ana María Ramírez de Mellone, Julio César Ramírez Vásquez, Rubén Darío Ramírez Vásquez and Héctor Daniel, all of them Ramírez Vásquez. In this regard, it requested that "they be considered beneficiaries, if it is proved that they are injured parties," without specifying who this referred to.

26. In its final arguments, based on the sworn statements made by the alleged victims' next of kin, the Commission included eleven persons who were also next of kin and consequently alleged victims and possible beneficiaries of reparations, who had not been included in the original list presented in the application. In this regard, it stated that "it has been proved before the Court that additional persons to those […] mentioned and with a similar relationship were alive at the time of the disappearance of the [alleged] victims and have, in turn, been [alleged] victims of the violations that have been established." It also reiterated its request regarding the children of Julio Darío Ramírez Villalba (*supra* para. 25).

27. In their final arguments brief, the representatives indicated that the alleged victims were the four individuals and their twelve next of kin that the Commission had mentioned in its application. In addition, it asked the Court to order the State to take "measures to find María Magdalena Galeano (former companion of Benjamín Ramírez Villalba), compensate her and provide her with medical and psychological care." Furthermore, regarding determination of the beneficiaries of the compensation

requested for pecuniary and non-pecuniary damage, they stated that "all the next of kin who are legally entitled should be granted compensation."

28. Finally, as helpful evidence requested by the Court, the representatives and the Commission submitted documents on the existence of María Magdalena Galeano, Rosa Mujica Giménez, Sotera Ramírez Villalba, Hermino Arnaldo Ramírez Villalba, Adolfina Eugenia Ramírez de Espinoza, Mario Artemio Ramírez Villalba and Lucrecia Francisca Ramírez (Mr. Borba's widow) or on their relationship to the alleged victims.

*
* *

29. The Court's case law regarding the determination of alleged victims has been extensive and adapted to the circumstances of each case. The alleged victims should be indicated in the application and in the Commission's report under Article 50 of the Convention. Consequently, according to Article 33(1) of the Court's Rules of Procedure, it corresponds to the Commission and not the Court to identify the alleged victims in a case before the Court precisely and at the appropriate procedural opportunity.[1] However, if this is not done, the Court has, at times, considered as victims individuals who were not alleged as such in the application, provided that the right to defense of the parties has been respected and the alleged victims have some connection to the facts described in the application and the evidence provided to the Court.[2]

30. In addition to the persons specifically named in the application, the Court will use the following criteria to define who else will be considered alleged victims and their next of kin in this case: (a) the procedural opportunity at which they were identified; (b) the State's acknowledgement of responsibility; (c) the respective evidence, and (d) the characteristics of this case.

31. Regarding the nephews and nieces of the Ramírez Villalba brothers, children of Julio Darío Ramírez Villalba (*supra* para. 25), the Court observes that the request in their favor was presented by the Commission when it submitted the application and reiterated in its final written arguments; accordingly, they will be considered alleged victims in the corresponding sections.

32. The Court has also noted that the Inter-American Commission included in its final written arguments eleven persons, alleged next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and Rodolfo and Benjamín Ramírez Villalba, to be considered as alleged victims and beneficiaries, who were not referred to in the application brief.

33. In this situation, the Court has had to make a laborious examination of the evidence provided by the Commission in order to extract the elements required to make a precise identification of the alleged victims, and to request helpful evidence, and it has determined that there are two situations. On the one hand, with regard to some of the alleged next of kin of Messrs. Mancuello and Ramírez Villalba, the Court

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[1] *Cf. Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 98.

[2] *Cf. Case of the Ituango Massacres, supra* note 1, para. 91; *Case of Acevedo Jaramillo et al.*. Judgment of February 7, 2006. Series C No. 144, para. 227; and *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 183.

observes that, although the Commission did not include them in the list of next of kin presented in the application, it did include with the attachments to the application identity cards, birth certificates and/or powers of attorney of some of these persons, namely: Mario Mancuello, Hugo Alberto Mancuello Bareiro, Ana Elizabeth Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro and Fabriciana Villalba de Ramírez. As indicated (*supra* para. 29), it corresponds to the Commission and not the Court to identify precisely the alleged victims in a case before the Court. Nevertheless, regarding these persons, the Court will consider them alleged victims because the Court was informed of their existence, at least indirectly, in the attachments to the application.

34. On the other hand, from the statements made before public notary by the next of kin of the alleged victims (*infra* para. 56), and also from the helpful evidence requested *(supra* para. 23(b)), the existence of other next of kin of the alleged victims emerges and the possibility that they were affected by the facts of this case; namely: María Magdalena Galeano Rotela, Rosa Mujica Giménez, Lucrecia Ramírez de Borba, Mario Artemio Ramírez Villalba and Eugenia Adolfina Ramírez de Espinoza. In this regard, it is pertinent to assess the terms of the State's acknowledgement of international responsibility (*infra* para. 141), as well as its assertion when acknowledging the facts relating to the merits of the case, to the effect that "under no circumstances will it contest the statements of the petitioners concerning the cases that are the subject of this submission, which are based on the testimony of the victims or, if applicable, of the next of kin of the disappeared, which merit full credibility."

35. Also, with regard to María Magdalena Galeano Rotela, according to the statement of Julio Darío Ramírez Villalba, his brother Benjamín had a companion of this name, who was detained with him. According to information provided by the Commission, in response to the request for helpful evidence, this persons is included in the Inter-American Commission's 1977 Report on the situation of human rights in Paraguay, which contains a list of detained persons prepared from sources within the Paraguayan Ministry of the Interior, as well as from a list of "political detainees kept under Article 79 of the Constitution," communicated to the Commission by the State in a brief of August 9, 1977. In addition, according to the book *Testimonio contra el Olvido,* publication of which was authorized by the Paraguayan Supreme Court of Justice and which the Commission provided as evidence at the Court's request, Mrs. Galeano was detained from November 25, 1974 – the same day as Benjamín Ramírez Villalba was detained (*infra* para. 61(44) and 61(46)) – until March 2, 1978. Lastly, the Commission provided, although after the procedural opportunity had passed, a sworn statement she had made describing her relationship with this alleged victim and the detention conditions to which she was subjected together with him.

36. Regarding Rosa Mujica Giménez, it emerges from the testimony of Elva Elisa de Goiburú and from a birth certificate provided by the Commission as helpful evidence, that she is a sister of Dr. Agustín Goiburú Giménez. The Commission also provided, although after the procedural opportunity had passed, a sworn statement she had made declaring that she had been detained because she was Dr. Goiburú's sister.

37. In addition, it emerges from the statement of Julio Darío Ramírez Villalba and from death certificates provided as helpful evidence, that Lucrecia Ramírez de Borba,

Mario Artemio Ramírez Villalba and Eugenia Adolfina Ramírez de Espinoza were siblings of Rodolfo and Benjamín Ramírez Villalba.

38. Consequently, the Court considers that the existence of María Magdalena Galeano Rotela, Rosa Mujica Giménez, Lucrecia Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza and Mario Artemio Ramírez Villalba has been proved, as well as their respective connections or relationship with Messrs. Goiburú and Ramírez Villalba; they will therefore be considered alleged victims in the corresponding sections.

VI
PARTIAL ACQUIESCENCE

39. In the instant case, the State acknowledged its international responsibility before both the Commission and the Court; consequently, the terms and scope of this acknowledgement must be defined.

40. During the processing of the case before the Inter-American Commission, the State acquiesced "to the factual findings regarding merits," as well as to "the claims of the petitioner concerning the violation, to the detriment of the [alleged] victim[s], illegally and arbitrarily detained and disappeared during Alfredo Stroessner's regime (1954-1989)," of Articles 4, 5 and 7 of the Convention. In addition, it "acquiesced partially to the [alleged] violation of the rights to a fair trial and to judicial protection […] in relation to the grave judicial delay." Accordingly, when lodging the application before the Court, the Commission considered that the State ha[d] confessed to the facts" to which this case refers and that "this confession should be given full effect during the proceedings before the Court."

41. In its brief answering the application and in almost identical terms in its final arguments, Paraguay stated the following:

> The Court is competent to hear this case. The State of Paraguay ratified the American Convention on August 24, 1989, and accepted the compulsory jurisdiction of the Court on March 26, 1993. […]
>
> The Court is also competent to hear this case owing to the provisions of Article XIII of the Inter-American Convention on Forced Disappearance of Persons, ratified by the State on November 26, 1996. According to Article III of this instrument, the offense of forced disappearance 'shall be deemed continuous or permanent as long as the fate or whereabouts of the victims has not been determined.' […]
>
> Considering the status of the case and pursuant to Article 53(2) of the Rules of Procedure of the Inter-American Court […][the State's Agent communicates] the Paraguayan State's intention to acquiesce in this brief answering the application in question, taking the necessary measures to achieve the most advantageous results for the Paraguayan State. […]
>
> First, it should be emphasized that the Paraguayan State, pursuant to the provisions of the Rules of Procedure of the Inter-American Commission […], has demonstrated its absolute willingness and has made a considerable effort to achieve a friendly settlement with the other parties, which includes, agreeing on reparations with the next of kin of the victim." […] In this regard, […] "Rolando Agustín Goiburú Benítez, the victim's son, was appointed Paraguayan Vice Consul in Buenos Aires, by Executive Decree No. 3,397 of May 27, 1994. On July 25, 1997, he was promoted to Consul in Buenos Aires and continued in this post until February 7, 2001, when he was appointed to the Ministry of Foreign Affairs as an Adviser. […]

The State acknowledges that, in the past, specifically during the regime of Alfredo Stroessner (1954-1989), grave human rights violations were perpetrated that must be investigated, punished and repaired adequately by the State. However, it is important to stress that, as of 1989, with the fall of General Stroessner and the re-establishment of democracy, the Paraguayan State has constantly advanced towards the effective respect for and guarantee of human rights in Paraguay. One of these measures, of great importance in the instant case, was the judicial reform, which, naturally, was slow, owing to its complexity. […]

It is evident that, during the 1954-1989 regime, the State did not observe the first obligation referred to in the Court's case law, which is that of "respect for the rights and freedoms" embodied in the Convention. Regarding the second obligation, "that of ensuring" the free and full exercise of the rights recognized in the Convention, the State presents the following arguments to attenuate its responsibility. The Court's case law with regard to this obligation indicates that it implies the obligation of the States Parties to organize the government and, in general, all the structures by which the exercise of public authority is manifested, so that they are capable of ensuring juridically the free and full exercise of human rights.

There is no doubt that [the] obligation to ensure rights was not complied with by the State during the 1954-1989 regime, because instead of organizing the Government so that it was capable of juridically ensuring the free and full exercise of human rights, it was established under a repressive system that systematically violated human rights.

Nevertheless, it is important to mention that, contrary to other countries of the Southern Cone, Paraguay never adopted amnesty laws and recognized the non-applicability of the prescription of grave human rights violations. The State affirms that these are examples of preventive measures designed to preclude the repetition of abuses such as those that occurred during the 1954-1989 dictatorship. […T]he State calls attention to several positive measures adopted following the re-establishment of the rule of law. In this context, Paraguay ratified the American Convention on August 24, 1989, shortly after the return of the civil regime. Thus, the Convention was the first international human rights treaty that became effective in Parliament […].

Regarding the legal reform, the State emphasizes the inclusion of the prohibition of torture and the non-applicability of the prescription of crimes against humanity in the 1992 Constitution, the reform of the Penal Code and the Criminal Procedural Code in 1997 and 1998, respectively, and the promulgation of Act No 2,225 "creating the Truth and Justice Commission" on September 11, 2003.

Lastly, the Paraguayan State is observing its obligation to compensate the victims of violations of the human rights embodied in the American Convention [because], in 1996, it adopted Act No. 836 [*sic*] "which compensates victims of human rights violations during the 1954 to 1989 dictatorship." […]

The State acquiesces to the claims of the petitioner regarding the violation, to the detriment of the victim, Agustín Goiburú, illegally and arbitrarily detained and disappeared during the regime of Alfredo Stroessner (1954-1989), of Article 4, right to life, and Article 5, right to humane treatment, as specified by the petitioner, as well as Article 7, recognized and guaranteed by the American Convention on Human Rights based on the arbitrary and illegal detention of the victim and his forced disappearance which continues to this day.

The State acquiesces to the claims of the petitioner regarding the violation, to the detriment of the victim, Carlos José Mancuello, illegally and arbitrarily detained and disappeared during the regime of General Alfredo Stroessner (1954-1989), of Article 4 [right to life] and Article 5, right to humane treatment, as specified by the petitioner, as well as Article 7, recognized and guaranteed by the American Convention on Human Rights based on the arbitrary and illegal detention of the victim and his forced disappearance which continues to this day.

The State acquiesces to the claims of the petitioner, Julio Darío Ramírez Villalba, regarding the violation, to the detriment of the victims, Rodolfo and Benjamín Ramírez Villalba, illegally and arbitrarily detained and disappeared during the regime of Alfredo Stroessner (1954-1989), of Article 4, right to life, and Article 5, right to humane treatment, as specified by the petitioner, as well as Article 7, recognized and guaranteed

by the American Convention on Human Rights, based on the arbitrary and illegal detention of the victims and their forced disappearance which continues to this day.

Regarding Articles 8 and 25 of the Convention, in relation to the grave judicial delay, which entails the violation of the rights to a fair trial and judicial protection, the State acquiesces partially [in the three cases referred to above].

[Also, in the case of Agustín Goiburú Giménez, i]t admits the existence of a judicial delay in delivering judgment[, which] was the result of the shortcomings of the former penal system under which the proceedings were instituted[. However,] the Paraguayan procedural system does not permit prosecuting someone *in absentia,* [consequently], the case is at a standstill since two of the accused are deceased.

[…I]t is important to point out that, at all times – during this democratic era in the country – the next of kin of the victims of General Stroessner's dictatorship have had access to justice, and no State body or agent has obstructed or interfered with their right to file criminal actions or the corresponding civil suits, and to avail themselves of judicial guarantees and judicial protection. In this regard, the victims' next of kin and their representatives have not been prevented from having access to the ordinary civil jurisdiction to claim compensation for damages, or from access to other mechanisms, such as the Office of the Ombudsman, in order to solicit, independently and autonomously, the judicial actions and corresponding compensation, under Act No. 838/96. […] The victims' next of kin have not used these judicial and administrative recourses to obtain fair compensation and this cannot be attributed to the State.

In the José Mancuello case, the file […] has reached the final instance with previous rulings in first and second instance. […] This shows that Paraguayan justice delivered judgment in two instances and the decision of the final instance – the Supreme Court of Justice – is pending; the judicial decisions will thus be final and executed, thus complying with the obligation to investigate and punish unlawful acts. The State requests the Court to take this into consideration. […]

[In the case of] Rodolfo and Benjamín Ramírez Villalba […], the final judgment in first instance has already been delivered [… and] the proceedings are still open with regard to the accused, Alfredo Stroessner Matiauda, Sabino Augusto Montanaro and Eusebio Torres. The judgment in first instance convicted Pastor Coronel to 25 years' imprisonment and the other co-accused to 12 years' imprisonment which should have been served in 2002. In addition, it declared the civil responsibility of those convicted for the acts committed. […] With regard to Alfredo Stroessner, the beneficiary of political asylum in Brazil, an extradition request has been made and is being processed by the courts of the Federative Republic of Brazil, under A.I. No. 843 of June 5, 2001. Regarding the fugitive from justice, Sabino Augusto Montanaro, he has been granted asylum in Honduras, a country with which Paraguay has not signed an extradition treaty. […]

[…] It is worth pointing out […] that although the Paraguayan State has expressed its total willingness and has made significant efforts to resolve all the cases as appropriately as possible, it has paid special attention to the Goiburú case, in which the Paraguayan State has made the greatest efforts to repair the damage caused to the parties. […] For example, it has called the square located beside the Government Palace "PLAZA DE LOS DESAPARECIDOS," in memory of the victims of forced disappearances during the dictatorship and other victims of grave human rights violations, and it is here that it has preserved the documents that compose the so-called "TERROR FILES." [… Furthermore,] Congress adopted the law creating the Paraguayan Truth and Justice Commission on September 11, 2003. […]

42. In its final arguments, the Commission stated, *inter alia*, that:

(a) The State had acknowledged that the obligation to respect the rights recognized in the Convention was not complied with during the 1954-1989 regime; nevertheless, it had presented arguments intended to attenuate its responsibility with regard to its obligation to safeguard these rights,;

(b) It appreciates the State's acknowledgement of responsibility. This corresponds to the acknowledgement previously made before the Commission, "which has effects in the proceedings before the Court." In other words, the State did not contradict the facts before the Commission or before the Court and accepted the violation of Articles 4, 5 and 7 of the Convention. But the acquiescence is partial, to the extent that it only accepted the violation of Articles 8 and 25 of the Convention in some aspects of the three cases; hence, the Commission considered that the State is responsible for the partial impunity in these cases;

(c) Regarding reparations, the State acknowledged its obligation to make adequate reparation to the victims of the human rights violations perpetrated during the Stroessner regime, but referred repeatedly to its domestic laws to indicate that the alleged victims could have requested reparations using the procedure established in Act No. 836 (*sic*) of 1996; and

(d) The acquiescence made in this case constitutes a total acceptance of the facts alleged in the application and ends the dispute in this regard. Nevertheless, the Commission asked the Court to include a detailed account of the facts in the judgment, "not only as part of the grounds for the judgment, but also for its effects to repair the damage caused."

43. The representatives did not submit their requests and arguments autonomously. However, in their final arguments, they stated, *inter alia*, that:

(a) The alleged good intentions and efforts of the State "do not exist in reality and its attempt to prove the existence of its efforts to reach a friendly settlement is not credible and lacks any substance and reliability"; and

(b) The State's avowal of most of the facts in this case ends the dispute in this respect However, they considered pertinent that, in its judgment, the Court should declare the truth about the facts and the violations committed against the alleged victims and their next of kin, and also the consequent international responsibility of the State.

44. Article 53(2) of the Rules of Procedure establishes that:

> If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, his next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and costs.

45. Article 55 of the Rules of Procedure stipulates that:

> The Court may, notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

46. The Court, exercising its role of the international judicial protection of human rights, can determine whether an acknowledgement of international responsibility

made by a defendant State offers sufficient grounds, in the terms of the American Convention, to continue or not with the hearing on merits and the determination of reparations and costs. To this end, the Court examines the situation in each specific case.[3]

47. In cases heard previously by the Court, where there has been acquiescence and acknowledgement of international responsibility, the Court has established that:

> […] Article 53[2] of the Rules of Procedure refers to the situation in which the defendant State informs the Court of its acquiescence to the facts and to the claims of the plaintiff and, consequently, accepts its international responsibility for the violation of the Convention, in the terms set out in the application, a situation that would lead to the early termination of the proceedings on merits, as established in Chapter V of the Rules of Procedure. The Court notes that, under the provisions of the Rules of Procedure that entered into force on June 1, 2001, the application brief is composed of the considerations *de facto* and *de jure* and also the petitions relating to the merits of the case and the requests for the corresponding reparations and costs. In this regard, when a State acquiesces to the application, it must indicate clearly whether it acquiesces only to the merits of the case or whether its acquiescence also covers reparations and costs. If the acquiescence only refers to the merits of the case, the Court must assess whether to continue on to the procedural stage for the determination of reparations and costs.
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> […] In light of the evolution of the system for the protection of human rights where, nowadays, the alleged victims or their next of kin may present their requests, arguments and evidence brief autonomously and assert claims that coincide or not with those of the Commission, when an acquiescence occurs, the State must clearly indicate whether it also accepts the claims made by the alleged victims or their next of kin.[4]

i) The State's acknowledgement of the facts

48. The Court observes that the State acknowledged the facts relating to "the arbitrary and illegal detention and torture of the victim[s] and [their] forced disappearance to date. Also, the State did not contradict the facts relating to the domestic criminal proceedings in relation to the cases concerning the alleged victims. In these broad terms, and in the understanding that the application constitutes the factual framework of the proceedings,[5] the Court considers that the dispute has ceased concerning the facts relating to the detention, torture and disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba contained in the application.

ii) The State's acquiescence concerning the legal claims

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[3] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 33; *Case of the "Mapiripán Massacre", supra* note 2, para. 65; and *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 42.

[4] *Cf. Case of the "Mapiripán Massacre"*, *supra* note 2, para. 66; *Case of Molina Theissen*. Judgment of May 4, 2004. Series C No. 106, paras. 41 to 44; and *Case of the Plan de Sánchez Massacre*. Judgment of April 29, 2004. Series C No. 105, paras. 43 to 48.

[5] *Cf. Case of the Pueblo Bello Massacre.* Judgment of January 31, 2006. Series C No. 140, para. 55; *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 59; and *Case of the "Mapiripán Massacre"*, *supra* note 2, para. 59.

49. The Court observes that the dispute has ceased in relation to the State's international responsibility for the violation of the rights embodied in Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, with regard to the facts that have been acknowledged (*supra* para. 48).

50. In addition, the dispute has ceased regarding the State's international responsibility for the violation of the rights embodied in Articles 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, specifically as regards the violation of the principle of reasonable time, which the State itself called a "grave judicial delay." However, the State alleged that other aspects of the criminal proceedings underway or the recourses that the next of kin of the alleged victims could have exercised to claim reparations could not attributed to it. These allegations must be decided by the Court.

iii) The State's acquiescence in relation to the claims concerning reparations

51. The Court observes that, as the Commission has stated, although the State acknowledged its obligation to provide adequate reparation to the victims of the human rights violations perpetrated during the regime of Alfredo Stroessner, in the instant case, the State did not acquiesce to the claims concerning reparations submitted by the Inter-American Commission

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* *

52. The Court considers that the State's acquiescence constitutes a positive contribution to these proceedings and to the application of the principles that inspire the American Convention.[6]

53. Bearing in mind its responsibility to ensure the optimum protection of human rights and given the nature of the instant case, the Court considers that delivering a judgment in which the truth of the facts and all aspects of the merits of the case and the corresponding consequences are determined, is a way of contributing to preserve the historical memory, to make reparation to the victims' next of kin and to help avoid a repetition of similar acts.[7] Without detriment to the effects of the State's partial acquiescence, the Court considers it pertinent to include a chapter on the facts of this case that includes both the facts acknowledged by the State and those that have been proved. The Court also considers it necessary to make some observations on the way in which the violations that were committed occurred in the context and circumstances of the case, as well as on some aspects related to the obligations established in the American Convention and other international instruments; to do this, it will include the respective chapters.

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[6] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, paras. 57 and 61; *Case of Baldeón García.* Judgment of April 6, 2006. Series C No. 157, para. 55; and *Case of Gutiérrez Soler*. Judgment of September 12, 2005. Series C No. 132, para. 59.

[7] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 117; *Case of Baldeón García, supra* note 6, para. 56, and *Case of the "Mapiripán Massacre", supra* note 2, para. 69.

54. In the following chapters, the Court will also examine the elements relating to merits and reparations about which there is still a dispute concerning the State's responsibility. These are:

(a) The facts and the alleged violation of the right to humane treatment to the detriment of the next of kin of the alleged victims, embodied in Article 5 of the Convention;
(b) The alleged violation of Articles 8(1) and 25 of the American Convention, to the detriment of the alleged victims and their next of kin, regarding the allegations that the State has not acknowledged (*supra* paras. 41 and 50); and
(c) The facts relating to the pecuniary and non-pecuniary damage caused to the alleged victims and their next of kin, as a result of the detention, torture and forced disappearance of the former, and also relating to the determination of reparations and costs.

VII
EVIDENCE

55. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, and also on the Court's case law concerning evidence and its assessment,[8] the Court will now examine and assess the documentary probative elements forwarded by the Commission and the State at different procedural opportunities and as helpful evidence requested on the instructions of the President.

A) DOCUMENTARY EVIDENCE

56. The Inter-American Commission forwarded testimonial statements and expert opinions, as required in the President's order of May 5, 2006 (*supra* para. 18). The Commission also forwarded the statements of Gladis Ester Ríos, Ana Elizabeth Mancuello Bareiro and María Magdalena Galeano, and the representatives forwarded the statement of Rosa Mujica Giménez (*supra* paras. 21, 24, 26 to 30 and 34 to 38 and *infra* para. 59). The Court summarizes these statements below.

Witnesses

(a) Rogelio Agustín Goiburú Benítez, son of Dr. Agustín Goiburú

Rogelio Goiburú Benítez declared that, after his father had been expelled from the hospital where he worked, "he had to go into hiding for several months" and, subsequently, went into exile in Posadas, Argentina. He stated that Dr. Goiburú and his family "were constantly being harassed."

He described how his father "denounced and unmasked the tyrannical regime of Alfredo Stroessner, [engaged] in [...] political activities," from the time he arrived in Argentina. His father was a founding member of the Colorado Popular Movement (MOPOCO). He stated that, on one occasion, his father and brother were abducted;

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[8] *Cf. Case of Ximenes Lopes.* Judgment of July 4, 2006. Series C No. 149, para. 42; *Case of the Ituango Massacres, supra* note 1, para. 106; and *Case of Baldeón García*, *supra* note 6, para. 60.

his father was transferred to Asunción and his brother abandoned in Encarnación. He indicated that his father was tortured while captive in Asunción; however, after a year, he was able to escape and return to Argentina. Subsequently, he was disappeared on his way home from work at the San Martín Hospital. As of that time, his family, especially his mother, has been taking steps to find him.

Mr. Goiburú Benítez declared that his father "was the family's mainstay, the protector, the brother, the friend […] the one who laid down the law, the household head, and the one who provided guidance to the household." In addition, he stated that "it is impossible to describe in words the profound anguish, powerlessness, anger and infinite sadness […] of not knowing where [his] father's remains are." He stated that not knowing what happened to Dr. Goiburú has resulted in "feelings of frustration, uncertainty, frequent attacks of anxiety and irritability" in his mother and siblings; they have all suffered from aftereffects and various illnesses "because of the constant worry caused by the daily absence of [their] loved one." The witness stated that he, his siblings and his mother have received psychological treatment for several years.

The witness requested the Court to order the State to compensate them for the violations suffered by their father, in addition to all the physical and psychological damage they continue to suffer. He stated that, when his father disappeared, the family "spent all their savings." He also said that his grandmother helped them while they worked "with minimum wages [and] illegally." He and his siblings had to "give up their education and abandon [their] life projects for many years." He requested reimbursement of his father's loss of earnings from the time of his disappearance to date. He also stated that his family lives in a "situation of permanent financial crisis."

Mr. Goiburú Benítez stated*, inter alia,* that he wanted the Court to help him create a foundation and a health clinic with his father's name, and also a community kitchen for "street children." He also asked that a school should bear his father's name and that his story be published.

He affirmed that "the State [must assume] its responsibility for the crimes against humanity, acknowledge what was done to [his father, his mother, himself and his siblings] and […] clarify" what happened to his father. In addition, it should locate and identify the latter's remains "tak[ing] upon itself the [corresponding] investigation and gathering of information and material." He requested the Court to order the State to oblige those who know what happened to his father to "tell the truth." Lastly, the witness asked the Court that "justice should be done, that comprehensive measures of reparation should be applied, [and] that this type of crime should not be repeated against other human beings."

(b) Elva Elisa Benítez Feliu de Goiburú, wife of Dr. Agustín Goiburú

Mrs. Benítez Feliu de Goiburú stated that her husband "was outspoken about the abuses and arbitrariness of the regime"; consequently, "he was harassed persistently [and] his home was under siege every day." She also declared that "they tried to involve [her] as an alleged terrorist criminal who kept weapons of war in [her] home, by torturing other prisoners." Mrs. Benítez Feliu said that she went with her husband and children to Argentina where her husband worked in politics, setting up MOPOCO. She said that, while in Argentina, she and her family "were the object of direct continual treacherous harassment, through the Paraguayan consul in Posadas"; in November 1969, her husband and son "were abducted by a vessel of the Paraguayan

Navy" and her husband was transferred to Paraguay, from where he escaped months later and took refuge in Chile, before returning to his family in Argentina. Subsequently, they moved to another province, where her husband worked in the San Martín Hospital, which he had just left when he was disappeared.

The witness described the measures taken to find her husband, filing a "report before the Police, then resorting to the courts [… but] the results were unsuccessful […], the Paraguayan authorities never responded to" her. She "was never able to find him."

Mrs. Benítez Feliu de Goiburú declared that her husband "was the *pater familias* and, consequently, the one who supported the family." Following his disappearance, the family used up "all their savings. [Her] children had to abandon their education and their life projects for many years. [Only her] son, Rogelio, could complete his professional studies with an incredible sacrifice, enduring poverty and the lack of essentials." She also stated that her husband was very emotional and sensitive, affectionate, but responsible and with strong opinions about the correct education of his children." The witness stated that Dr. Goiburú's disappearance "has affected [her] physically and emotionally"; to such an extent that she "even lost her memory and the ability to talk." She also indicated that she suffered from "other physical problems that could be attributed to what she had suffered. The witness's children "lost their appetite, abandoned their education [and] had difficulty in relating to their friends." In addition, she stated that she is "in despair because she does not know what happened to [her husband] and his remains." She indicated that this causes them "anguish, despair, traumas, fear, illnesses, total depression."

The witness said she wanted the State to compensate them for the violations and "abuse of power suffered by [her] family and, in particular, [her] husband." She also indicated that she "would like a human rights course [to be introduced] in schools and colleges," and that hospitals bearing her husband's name should be established to provide free medical care. She also "hopes that the expenses will be reimbursed so that [her] seven grandchildren can study."

(c) Julio Darío Ramírez Villalba, brother of Rodolfo and Benjamín Ramírez Villalba

Julio Darío Ramírez Villalba declared that his brothers were "democrats, members of the Colorado party, and that they sympathized with […] MOPOCO." He stated that his brother Benjamín was detained when he was "visit[ing] his companion, Magdalena Galeano, and that his brother Rodolfo was detained in the province of Formosa, in Argentina. He stated that both of them "were tortured in the worst possible way while they were detained in the Investigations Department, with electric cattle prods, and submerged in a small tank until they became unconscious; they were beaten with clubs, kicked and punched, their nails were pulled out with pliers, [and] they suffered all the types of physical and mental abuse that a human being can imagine." He declared that, as stated by other witnesses and former political prisoners, "the '*ley de fuga'* [the escape law] was applied to [his] brothers; in prison argot, this means they were murdered or executed."

The witness stated that "when [he] heard that [his] brothers had disappeared, [he] visited several public institutions, [accompanied by his mother, but] neither [he nor his] family ever received an official response from the Paraguayan authorities about

what happened to [his] brothers, who are still disappeared today." He stated that, when the dictatorship ended, he filed a judicial complaint.

The witness declared that Benjamín "helped with the family's upkeep, and assisted his mother and siblings," and Rodolfo helped with the family's upkeep by selling the crops he raised. Subsequently, he traveled to Argentina "in order to study and work and always sent his contribution to help maintain the family in Paraguay."

Mr. Ramírez Villalba stated that his brothers' disappearance "has affected [them] considerably […] financially, physically and emotionally, owing to [the] lack of affective and financial support." He also indicated that they have "used all [their] limited resources to find [their] disappeared siblings […] and on expenditure for medical] care." He stated that, because his brothers are still disappeared, the family has "not been able to say goodbye to them and bury them." He also declared that his brother, Benjamín, had a companion, María Magdalena Galeano, who "was interned in a psychiatric institute as a result of the torture she received together with [his] brother" and he does not know where she is now.

The witnesses asked that "those responsible for the torture and disappearances should be convicted, that the State […] should use all possible means to find the remains of [his] brothers; that all the siblings and all the next of kin who suffered from the consequences of the disappearance of [his brothers], should be compensated fairly; that the State should acknowledge its responsibility publicly; that free medical and psychological care should be provided to all the victims' next of kin, and that […] the State should find [his brother] Benjamín's companion […] and compensate her."

(d) Ana Arminda Bareiro de Mancuello, mother of Carlos José Mancuello Bareiro

The witness stated that her son "was a democrat and fought for the exercise of human rights in the country; he was against the dictatorial regime." She declared that, in 1974, her son was detained by officials of the Asunción Police Investigations Department together with his wife, Gladis Ester Ríos de Mancuello, who was pregnant at the time of the facts, and their daughter, Claudia Anahí. Mrs. Bareiro de Mancuello stated that on repeated occasions she "dressed as a door-to-door salesperson in order to enter [the place where her son was detained] and obtain information, unsuccessfully, [and that] after two months [… she was able to speak] to the Assistant of the Head of the Investigations Department and asked that [her granddaughter] who was with [her] son and his wife be handed over to [her]." About five months later the authorities accepted to deliver her granddaughter to her. The witness indicated that "it was evident" that her son "was subjected to terrible physical torture and all kinds of abuse," because she saw "the blood that had soaked into the clothes that he sent [her] to wash." Subsequently her son was disappeared.

The witness stated that she filed a criminal complaint based on the facts. She also said that she took steps to find where her son was buried, but all her efforts were in vain and, to date, she "is sure that [her] son was physically eliminated and the State […] has done absolutely nothing to inform [them] where his body is buried." She indicated that she resorted to the Terror Files, where she had found "photographs of [her] son, police files, elements of the interrogations to which he had been subjected."

Mrs. Bareiro de Mancuello stated that her son's absence "destroyed" her and that she has been ill since the day he was detained. Her other children also suffered illnesses and, following the facts, they "were refused work everywhere." Her son's disappearance has affected them all emotionally and physically. She indicated that, for her son's wife "the absence of her husband, added to the violations perpetrated against her, has resulted in tremendous mental problems […]. Her children were affected and continue to be affected, because every day they relive their anguish." She declared that her grandson, Carlos Marcelo, was born in prison where he remained with his mother until they were both released.

Mrs. Bareiro de Mancuello stated that, before her son's disappearance, they lived on her husband's salary and the help they received from their son, Carlos. Following his abduction and disappearance, they stopped receiving the amount the latter contributed and her husband was dismissed from his employment "as a result of the harassment that continued against [her] family, even after losing [her] son." Consequently, neither her daughter-in-law nor she had any income during the first years of her son's detention, and had to live "from the charity of religious organizations;[… they] lacked many necessities for a decent life, in terms of nutrition, health care and other basic elements."

Mrs. Bareiro de Mancuello requested "fair compensation in keeping with the damage" that she, her grandchildren and her children have suffered. She asked the Court to order the State to "provide [them] with decent and integral reparation." She also requested other forms of reparation, guarantees of non-repetition and of satisfaction. Lastly, she stated that she "want[s] […] to find […] the remains of [her] son in order to give them a Christian burial"; that the State should do justice; that it convict those responsible, and that "there should be peace […] and respect for human rights."

(e) Gladis Ester Ríos de Mancuello, wife of Carlos José Mancuello Bareiro

Mrs. Ríos de Mancuello declared that she was detained with her husband and her daughter, Claudia Anahí, and that, at the time, she was pregnant with her son, Carlos Marcelo, who was born in a police station in Paraguay. She was detained for three years.

The witness stated that, after she had been expelled from the country, she went to Argentina where she suffered "many psychological and emotional problems as a result of what she had endured and the psychological torture she was subjected to continually during [her] detention." She indicated that her children "suffered profoundly owing to their experiences[, which caused them and continues to cause them harm, [such as] the breakdown of their parental system, psychological harm […], deprivation of the presence of their father […and] mother." The witness indicated that she had had to pay for medical and psychological treatment for her two children, but that, "nowadays, their income did not allow them to receive the treatment they required for the problems they suffer."

Finally, Mrs. Ríos requested the Court to order the State to provide different types of reparation and guarantees of non-repetition and satisfaction.

(f) Ana Elizabeth Mancuello Bareiro, sister of Carlos José Mancuello Bareiro

The witness stated that her brother was "the person who kept the family together" and that, following his disappearance, they "were never the same. [They] survived, but [they] did not live as [they] had up until then."

She declared that she had been a witness and victim of the "humiliations and physical punishment perpetrated by those responsible for the security agencies" where she went with her mother to seek her brother. She stated that her mother suffers from "various physical ailments […] and that [her] siblings [have] suffered psychological problems that prevent them from living a normal life." The witness also indicated that "while [her] brother was in prison, all the members of [her] nuclear family had to work to […] pay for the basic needs of [her] niece, Claudia Anahí."

Finally, Mrs. Mancuello Bareiro requested other forms of reparation, guarantees of non-repetition and satisfaction.

(g) Gladys Meilinger de Sannemann, former detainee in the Investigations Department

Mrs. Meilinger de Sannemann stated that, while she was detained, she got to know Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, who were in a cell near hers, from where she "could observe the scars they had all over their bodies owing to the torture to which they were subjected." She also said that she "knows that they were brutally tortured [… and that,] from what [she] heard from other detainees, [Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba] were submerged in tanks, baths full of dirty water and excrement from those tortured before them until they passed out." She also stated that she "knew about […] the abduction and forced disappearance of Dr. Agustín Goiburú."

(h) Ricardo Andrés Lugo Rodríguez, former detainee in the Investigations Department

The witness declared that he knew Carlos José Mancuello Bareiro and Rodolfo and Benjamín Ramírez Villalba because they were "deprived of their liberty [with him] and taken to the place where the Investigations Department operated." He stated that "the physical […] and psychological resistance [of the three men] was destroyed by the henchmen of the dictatorship […] following the different kinds of torture to which they were subjected." He also stated "that the Ramírez brothers and Carlos Mancuello were physically abused by Pastor Coronel himself with heavy objects, clubs, and his own "*teyúruguay,*" which cut the skin with every blow because it had a metal point, […] not to mention more than a month of torture in the 'tank', where apart from being submerging in water, they were clubbed on their lower extremities, […] added to which a magneto was used to produce an intense noise in their ears." He declared "that the last time [he saw them] alive […] was on August 13, 1975"; later, he heard "that on the eve of September 21, 1976 […] they were murdered in the Investigations Department".

(i) María Magdalena Galeano Rotela, companion of Benjamín Ramírez Villalba

María Magdalena Galeano Rotela stated that she was Benjamín Ramírez Villalba's companion and that they "lived together […] before the detentions and the search of [their] house occurred." She declared that Benjamín Ramírez Villalba "was detained in the street by heavily armed [men, who immediately took him] handcuffed and at gunpoint to the house where [they] lived." The witness stated that the men "burst into [their] house, took [her] by the hair […] and sat [her] down beside Mr. Villalba [who was in a car. The men] pointed guns at [them]." She stated that, subsequently, they were taken to the Investigations Department, where she heard the cries of Benjamín Ramírez Villalba, who was "being tortured." Mrs. Galeano Rotela also declared that she "heard and saw when […] they tortured [her companion whose] feet were shackled and hands handcuffed." She said that six months after their detention, in the presence of Benjamín Ramírez Villalba, she was subjected "to torture with blows from a saber; they threw icy water at [her …], and threatened to rape [her]." That was the last time she saw her companion.

The witness stated that she "suffered greatly, […she] missed [Benjamín Ramírez Villalba, she], dreamed of him and looked for him, [and] was never able to live with anyone again." She also stated that she is "afraid [and] live[s] alone." She indicated that she suffers from "nightmares, anxiety crises, anguish [and] has difficulty eating." She stated that she "feel[s] powerless and frustrated [and that she] ha[s] been receiving psychological treatment for years."

María Magdalena Galeano Rotela stated that she has not received any information about what happened to her companion from the Paraguayan authorities. She also expressed her wish that "the facts should be investigated and clarified so as to end impunity." In addition, she considered that "the State should be required to make all necessary resources available to investigate and clarify [the facts,] to find […] those who are still disappeared, and to vindicate their memory publicly, especially that of [Benjamín Ramírez Villalba]; also to create a genetic database."

(j) Rosa Mujica Giménez, sister of Agustín Goiburú Giménez

The witness stated that she was detained in December 1970 "as a hostage, because she was Dr. Agustín Goiburú's sister." She indicated that, subsequently, she "was taken to a cell [where she met] her mother, Olegaria Giménez, [who had been] detained and imprisoned." Mrs. Mujica Giménez stated that she was interrogated and tortured until the following day and this continued some days later, "with blows and accusations of being [her] brother's accomplice." She also stated that her torturers "turned on a radio at full volume so that no one could hear [her] cries for help during the terrible ordeal to which [she] was subjected."

Mrs. Mujica Giménez declared that, after she had been transferred to a police station, she realized that she "was pregnant with her daughter Yolanda, […who] was born with the help of fellow prisoners in the cell […] without help from any authority or anyone to assist [her]." She also stated that "everything [she] endured and suffered still causes problems of different kinds with grave effects on [her] physical and mental health and that of [her] daughters Yolanda and Marión Esperanza." These problems include: the psychological problems of herself, her daughters and her grandson, problems with her hearing owing to the blows on her ears, and renal problems, "caused by the blows."

Lastly, the witness stated that "the harassment by the Stroessner regime affected each and every member of [her] brother's family. She asked the Court to ensure that "justice be done; that the remains of [her] brother, Agustín Goiburú, be found, [and] that those responsible for all the crimes perpetrated against them both be convicted." She asked that "fair compensation" should be provided to her brother and "to his whole family," and also to herself and her family. Finally, she asked that the State should offer an official apology "to the victims in this case in particular and [to] the victims of the dictatorial regime in general."

Expert witnesses

a) Alfredo Boccia Paz, specialist in the context of the dictatorship of Alfredo Stroessner

The expert witness stated that, during the dictatorship of Alfredo Stroessner, particularly towards the end of 1975 and in 1976, the State created "a sort of concentration camp of political detainees." He also said that "denunciations, through a […] network of secret informers, prolonged imprisonment without trial, the torture of political prisoners, […] their execution and disappearance were coordinated by the Asunción Police Investigations Department." The victims and their families "were unable to publicize their cases or make complaints abroad. […] There was almost no possibility of having recourse to a judge in the case of illegal imprisonment, because applications for *habeas corpus* were systematically refused with the argument that there was a state of siege."

Referring to "Operation Condor," Mr. Boccia Paz stated that, at the beginning of the 1970s, "the ideological basis of [the dictatorial] regimes [of the Southern Cone countries] was the national security doctrine, […] which allowed them to consider leftist movements as common enemies, whatever their nationality." Consequently, "thousands of citizens of the Southern Cone sought to escape oppression in their own country by taking refuge in bordering countries; [this] placed the potential enemies [of the regimes] beyond the reach of the national security agencies[, so] it became necessary to establish a common defense strategy, [which] required the use of common information codes and confidential files on detainees, as well as the free movement of foreign agents on the territory of neighboring countries."

The expert witness indicated that "the so-called 'Terror Files'" were a significant breakthrough in the fight against impunity, because finding them allowed several of the main perpetrators of the repression to be prosecuted; new proceedings were opened for crimes against humanity; others that had been at a standstill in the courts owing to lack of evidence could be continued, and it was possible to obtain the first final judgment for political assassination in the country's history."

Mr. Boccia Paz stated that "[Dr.] Goiburú was one of the founders of [MOPOCO], a combative faction of the Colorado party [and] had begun to denounce publicly the torture and the murders committed by the regime." To escape the Government's persecution, Dr. Goiburú "was obliged to go into exile in Argentina." Dr. Goiburú was abducted for the first time in that country by "members of the Paraguayan coastguard based in Encarnación […] and transferred to Asunción in a military aircraft." He managed to escape from prison, obtaining asylum in the Chilean Embassy, and then returned to Posadas, Argentina, where, since February 1977, "he has been on the list of disappeared." The expert witness said that "an operation such

as the abduction of Dr. Goiburú on Argentine territory can only be conceived as part of a plan of cooperation between the military dictatorships of the time […] and could only have been carried out with the participation and intelligence information of the oppressors of both countries." He also stated that "the abduction and ensuing disappearance of Dr. Agustín Goiburú is considered a paradigmatic example of Operation Condor."

Regarding the disappearances of Carlos José Mancuello Bareiro and Rodolfo and Benjamín Ramírez Villalba, the expert witness indicated that they were detained, because they were accused of belonging to an "Argentine communist cell indoctrinated in the Universidad de la Plata where some of them were studying." The "Terror Files" showed that they had been imprisoned [and then] transferred to the Asunción Police Investigations Department […where], according [to the] testimony of several prisoners […], they were tortured daily for about six months." He also indicated that, "on September 21, 1976, […] they were executed and their bodies disappeared."

Mr. Boccia Paz indicated that "Since the coup d'état that overthrew General Stroessner, successive Governments have shown no desire […] to try to find the remains of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba […and] their next of kin have not received any type of help or assistance from the State (either legal, medical, psychological, labor or financial); [hence] it can be concluded that the State […] has made insufficient efforts to clarify these disappearances and support [the] next of kin."

b) Antonio Valenzuela Candia, journalist, specialist in the context of Alfredo Stroessner's dictatorship

The expert witness stated that during the dictatorship of Stroessner "the detention of opponents and people who were merely suspected of being such […] became systematic." The use of torture "against common criminals and political activities also became systematic." "The President of the Republic himself" was behind all these violations. The Executive Power, the Ministry of the Interior, the Police Headquarters, the Armed Forces and the Judiciary "were decisive tools for the implementation of the State's policy of terrorism." He also stated that "the emergence of Operation Condor […] had a significant impact on the abduction and disappearance of opponents of the military regimes."

Regarding the "Terror Files", the expert witness indicated that "they permitted the reconstruction […] of emblematic examples of Operation Condor […] that illustrated the action plan of the dictatorships of Chile, Argentina, Uruguay, Paraguay, Bolivia and Brazil and provided the fundamental element for completing several proceedings that had been opened based on disappearances, and opening others in local and international courts against the dictators of the region and their collaborators."

Mr. Valenzuela Candia stated that the disappearances of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, were "closely connected with and a product of the systematic policy of the Stroessner dictatorship to destroy the regime's opponents." He added that "the abduction of [Dr.] Agustín Goiburú […] was […] the result of a joint operation of the security forces of Argentina and Paraguay, as proved reliably by the documentation in the Terror Files." Regarding Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, he stated that "there is sufficient evidence […] of the time they

spent in Argentina and [of the] links [between] the security agencies of the two countries."

The expert witness added that the State, "in 2004, began the process of establishing a Truth and Justice Commission, […] one of the purposes of which is the elucidation of the cases of detained-disappeared and extrajudicial executions, and of victims of severe torture and forced exile." Regarding the cases of Messrs. Goiburú Giménez, Mancuello Bareiro and Ramírez Villalba, he mentioned that the State has not clarified their disappearance or acknowledged its responsibility, "nor has it provided adequate reparation in pecuniary, psychological or social terms." He stated that "one reason for this lack of action is [that] it is evident that the political party that accompanied General Stroessner during his long dictatorship, the Colorado party, is still in power." He also stated that "the Truth and Justice Commission has met with significant obstacles, […] such as […] budget cuts in the funds allocated by the State, which has affected its investigative capacity."

Mr. Valenzuela Candia stated that no progress had been made in relation to the investigation into the facts and the punishment of those responsible. In addition, "the requests for the extradition of the main people responsible, such as former President Stroessner and the former Minister of the Interior, Sabino Augusto Montanaro, have been unsuccessful."

B) Assessment of the Documentary Evidence

57. In this case as in others,[9] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity, which were not contested or opposed, and whose authenticity was not questioned

58. Regarding the documents forwarded as helpful evidence, the Court incorporates them into the body of evidence in this case, in accordance with Article 45(2) of its Rules of Procedure (*supra* paras. 20 and 23).

59. Regarding the statements made by the next of kin of the alleged victims, the Court considers that these statements can help the Court determine the facts of the instant case. However, the Court notes that, as they are alleged victims or their next of kin and have a direct interest in this case, these statements must be assessed together with all the evidence in the case and not in isolation, applying the rules of sound criticism. The statements of the next of kin of the alleged victims are useful with regard to merits and reparations, to the extent that they provide further information on the consequences of the alleged violations perpetrated[10] and, in this case in particular, owing to the declarations of the State regarding the statements of the next of kin of the alleged victims (*supra* para. 34). In the same terms and based on what has been decided above (*supra* paras. 25 to 30 and 34 to 38), the Court incorporates the statements of Gladis Ester Ríos de Mancuello, Ana Elizabeth Mancuello Bareiro, Rosa Mujica Giménez and María Magdalena Galeano Rotela into the body of evidence.

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[9] *Cf. Case of Ximenes Lopes, supra* note 8, para. 48; *Case of the Ituango Massacres, supra* note 1, para. 112, and *Case of Baldeón García, supra* note 6, para. 65.

[10] *Cf. Case of Ximenes Lopes, supra* note 8, para. 52; *Case of the Ituango Massacres, supra* note 1, para. 113, and *Case of Baldeón García, supra* note 6, para. 66.

60. Regarding the documentation and information requested repeatedly from the State as helpful evidence, and which it did not submit (*supra* paras. 19 and 23), the Court recalls that the parties should provide the Court with the evidence it requests. The Commission, the representatives and the State must provide all the probative elements requested, so that the Court has as much evidence as possible to enable it to consider the facts and to justify its decisions.

VIII
PROVEN FACTS

61. Having examined the probative elements in the case file, the statements of the parties, and the State's acknowledgement of international responsibility, the Court finds that the following facts have been proved:

> *Concerning the context of the dictatorship of General Alfredo Stroessner Matiauda*[11]

61(1) General Alfredo Stroessner's dictatorship in Paraguay began with a coup d'état in 1954 and lasted 35 years, until a military coup headed by his son's father-in law, General Andrés Rodríguez. Shortly afterwards, Stroessner fled to Brazil.

61(2) The dictatorship was characterized by a "permanent state of siege," because the Constitution empowered the Executive Power to renew it every 90 days. This state of siege created "a climate of insecurity and fear that clearly impaired respect for human rights."

61(3) During the dictatorship, there was a systematic practice of arbitrary detention, prolonged imprisonment without trial, torture and cruel, inhuman and degrading treatment, death during torture, and the political assassination of individuals who were said to be "subversive" or against the regime.

61(4) Regarding the guarantees of due process for the investigation and sanction of human rights violations during the dictatorship in Paraguay, the courts of justice usually refused to receive and process applications for *habeas corpus* in relation to measures decreed by the Executive Power under the state of siege. The existence of the state of siege for almost 33 years, the impairment of non-derogable rights and the absence of judicial recourses for the individual to confront the President's powers

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[11] Paragraphs 61(1) to 61(4) "concerning the context of the dictatorship of General Alfredo Stroessner Matiauda" correspond to facts that are found to have been proved based on the following documents: the book *Testimonio contra el Olvido; Reseña de la Infamia y el Terror*, Paraguay 1954-1989, Comité de Iglesias para Ayudas de Emergencia & CDyA (Centro de Documentación y Archivo para la Defensa de los Derechos Humanos), material authorized by the Supreme Court of Justice, 1999; the book *Es mi informe*. *Los archivos secretos de la Policía de Stroessner*, Alfredo Boccia, Myrian A. González and Rosa Palau Aguilar, Centro de Documentación y Estudios, Asunción, 1994; Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Paraguay, OEA/Ser.L/V/II.43 doc. 13 corr. 1, January 31, 1978; Annual Report of the Inter-American Commission on Human Rights 1979-1980, OEA/Ser.L/V/II.50, Doc. 13, rev. 1, October 2, 1980, Chapter V, B.3 and Recommendation (a); Annual Report of the Inter-American Commission on Human Rights 1981-1982, OEA/Ser.L/V/II.57, doc. 6, rev. 1, September 20, 1982, Chapter I and Chapter V, Paraguay, 1 and 2; Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Paraguay, OEA/Ser.L/V/II.71 Doc. 19 rev. 1, September 28, 1987, Chapter I, B.3 and Chapter II, and Decision concerning Paraguay within the framework of the procedure set out in Resolution 1503 (XLVIII) of the Economic and Social Council. E/CN.4/2004/127.

meant that this measure was ineffective as a mechanism to deal with exceptional situations. During General Stroessner's dictatorship, judicial guarantees and bodies were ineffective and promoted the generalized impunity of human rights violations.

Concerning "Operation Condor"[12]

61(5) Most of the Southern Cone's dictatorial governments assumed power or were in power during the 1970s,[13] and this permitted the repression of the so-called "subversive elements" at the inter-State level. The ideological basis of all these regimes was the "national security doctrine," which regarded leftist movements and other groups as "common enemies," whatever their nationality. Thousands of citizens of the Southern Cone sought to escape repression in their country of origin, taking refuge in bordering countries. The dictatorships therefore created a common "defense" strategy.

61(6) This was the context of the so-called "Operation Condor," a code name given to the alliance of the security forces and intelligence services of the Southern Cone dictatorships in their repression of and fight against individuals designated "subversive elements." The activities deployed as part of this Operation were coordinated basically by the military personnel of the countries involved. The Operation systematized and improved clandestine coordination between the "security forces and military personnel and intelligence services" of the region, which had been supported by the Central Intelligence Agency (the CIA), among other United States agencies.[14] The system of codes and communications had to be efficient for "Operation Condor" to function, and so that the lists of "most wanted subversives" could be managed easily by the different States.[15]

61(7) Regarding the dynamics of "Operation Condor", documents from the "Terror Files" reveal the different meetings of political, military and intelligence authorities of the countries involved and the way in which the operation was assembled:[16]

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[12] Paragraphs 61(5) to 61(8) "on 'Operation Condor'" correspond to facts that are found to have been proved based on the following documents: the book *Es mi informe. Los archivos secretos de la Policía de Stroessner*, *supra* note 11; the book *Testimonio contra el Olvido; Reseña de la Infamia y el Terror*, *supra* note 11; the book *En los sótanos de los generales. Los documentos ocultos del Operativo Cóndor*, Alfredo Boccia Paz, Miguel H. López, Antonio V. Pecci and Gloria Jiménez Guanes, Ed. Expobook and Servibook, 2002, and sworn statement made by the expert witness Alfredo Boccia Paz on May 25, 2006 (file of statements made before or authenticated by notary public).

[13] Uruguay, 1973; Chile, 1973; Argentina, 1976; Brazil, 1964; Bolivia, 1971; Paraguay, 1954, and Peru, 1968 and 1975.

[14] *Cf.* sworn statement made by the expert witness Alfredo Boccia Paz, *supra* note 12, folios 6313 and 6314.

[15] *Cf.* sworn statement made by the expert witness Alfredo Boccia Paz, *supra* note 12, folio 6316.

[16] This quotation is taken from the book, *Es mi informe*, *supra* note 11, pp. 253 to 276. *Es mi informe* is the first complete study published following the finding of the "Terror Archives," prepared by experts of the Paraguayan *Centro de Documentación y Estudios*. The Center was responsible for classifying and organizing the documents and its work made it possible to establish the *Centro de Documentación y Archivo para la Defensa de los Derechos Humanos*, the official custodian of the "Terror Archives" today. Several extracts from *Es mi informe* mention "filing cabinets" (*archivadores*), which refer to the physical space occupied by the "Terror Archives," from which the respective document is taken.

The document [marked "SECRET" containing the presentation] by the Paraguayan delegation on the agenda for the Seventh Bilateral Intelligence Conference between the Armies of Paraguay and Argentina, […] stated that:

> […] It is clear that the best way to thwart the plans of the subversive groups is an efficient coordination of intelligence activities between the Armies of Paraguay and Argentina […]. Despite the undeniable efficiency of each country's security agencies, the indisputable efforts deployed by these negative forces to expand the scope of their activities, finding no better mechanism to do this than to ally themselves with subversive forces in other countries, crossing national borders and attempting to form what could become a continental movement, are also evident. The links and collaboration between subversive groups from CHILE, PARAGUAY, ARGENTINA, BOLIVIA, BRAZIL, URUGUAY and others have already been fully confirmed by available information. […][17]

When inviting the Federal Security Superintendent to visit Asunción in 1976, Pastor Coronel [Head of the Asunción Police Investigations Department at the time], stated:

> […] Regarding your visit, I consider it would be very useful for our agencies, our countries and our Governments, especially if we take into consideration the similar nature of our commitment to combat the challenges that, in Paraguay and in Argentina, have the same origin and also the common purpose of damaging or destroying the institutions on which each country's national way of live is based.
>
> In this regard, the internationalization of political crime and violence, which are closely related, is no longer a secret, and obliges us to consider internationalizing the means of defense that the Constitution and the law allow us. […][18]

An alleged *Junta Coordinadora Revolucionaria* (JCR) [Revolutionary Coordinating Body] was the entity that united the leftist revolutionary movements of these countries. According to the Paraguayan thesis, JCR was organized in Paris at the end of 1973 and transferred its headquarters to Argentina in February 1974. […] An unsigned document analyzed the possible responses to the association of the leftist guerrilla in this "*Junta*":

> […] 3. CONCLUSIONS
>
> a. We are faced by an irreversible, real and fully functional fact.
>
> b. Guerrilla elements of four countries already integrated; with engaged and committed organizations, and actions in countries with known anti-extremist activism, such as PARAGUAY, where they seek to insert themselves using political grudges and social vulnerability that they cleverly exploit even though the latter have no real basis.
>
> c. Lack of an integrated, unified and programmed system at the highest governmental level that provides sufficient weapons to combat fully the extremist organizations. […]
>
> e. It must be understood that the fight we must undertake today is based on intelligence; in other words, the fight must be waged at all levels of national life (political, economic, religious, intellectual, trade union and psychological) (the

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[17] *Cf.* filing cabinet 1008 of the "Terror Archives", p. 1344, transcribed in *Es mi informe*, *supra* note 11, p. 253.

[18] *Cf.* unclassified document of May 28, 1976, to be found in Cupboard (*Armario*) 1 of the "Terror Archives," transcribed in *Es mi informe*, *supra* note 11, p. 254.

> mass media) with the clear concept that 80% of our success will be based on true and opportune intelligence and only 20% on action (execution).[19]

After making an extended analysis of the guerrilla situation on the continent, the document praises the values of Paraguayan traditionalism and nationalism, with a profusion of expressions relating to the "national essence and being," "supreme values of Paraguayanism," "soul of the autochthonous race" and "concept of mother country and native soil." Lastly, the following 'recommendations" were made:

> 1. Direct exchange of information
> 2. Technical and personal links.
> 3. Program joint meetings to discuss security issues in the areas of YACYRETAAPIPE and CORPUS, particularly with the participation of the company's security elements.
> 4. Exchange of doctrine, organization and instruction.
> 5. Possibility of expanding the bilateral nature of the Intelligence Conferences [...].[20]

The Paraguayan delegation's recommendations did not remain a simple wish list. In the following months – especially during the next two years – the multinational agents of Cóndor carried out surveillance, abductions and executions throughout the southern part of the continent without the borders being an obstacle.

In October 1975, the "FIRST NATIONAL INTELLIGENCE WORKING MEETING" was held in Santiago, Chile, with the participation of representatives of several South American armies.

A working document produced by the Chilean National Intelligence Directorate (DINA), headed by Colonel Manuel Contreras Sepúlveda, was kept in the files. In this document – labeled "SECRET" – the hosts propose to implement the exchange of information by creating a Coordination and Security Agency founded on three basic elements:

> [...] A. Databank
>
> To establish, in one of the countries represented here, a central file of background information on persons, organizations and activities, directly or indirectly related to subversion.
>
> In general, something similar to the INTERPOL databank in Paris, but devoted to subversion. [...]
>
> B. Information Center
>
> [...] for example, the system could be composed of:
>
> 1. Telex transmissions
> 2. Cryptography mechanisms
> 3. Telephones with voice inverters
> 4. Correspondence
>
> This system must be managed, financed and fed by the security services of interested countries, based on a series of regulations.

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[19] *Cf.* filing cabinet 245 of the "Terror Archives", p. 1612, transcribed in *Es mi informe*, *supra* note 11, p. 255.

[20] *Cf.* filing cabinet 1008 of the "Terror Archives", p. 1377, transcribed in *Es mi informe*, *supra* note 11, p. 256.

> C. Working Meeting
>
> In order to evaluate the services provided by the Coordination and Security Agency, deal with specific problems, make personal contacts and coordinate, working meetings must be planned in the countries whose security services will be part of this system.
>
> Bilateral or special working meetings should also be promoted when required by the situation […].[21]

In another [document of the "Terror Files"] it is possible to find the draft of the presentation by [Francisco Alcibíades] Brítez Borges [who was the Asuncion Police Chief at the time]. After describing the "subversive movements" active in the country, the Paraguayan police agent again insists on the advantages of international cooperation:

> […]
> And finally, I would like to call attention to an important conclusion. For the moment, we, the Paraguayans, feel the effects of these movements at the national level. But we are aware that the conspiracy has an international scope. Owing to its traditional anti-communist stance and its strategic geographical position, Paraguay is the current target country. Once Marxism has been established here, our neighbors' flanks are exposed.
> Therefore, close, open and fluid collaboration is called for; this is not one country assisting another, but self-defense shared by all, in the face of the common need to defend our institutions and our way of life.
> For the moment, even though we have to rely on our own forces, we are totally confident. We do not believe that any force is capable of breaking the solid cohesion of 84% of the population who belong to the Colorado Party, backed by the vigilant and well-disciplines Armed Forces of the Nation.[22]

A document originating from the Argentine security forces proposed the following courses of action:

> AGENDA FOR THE MEETING WITH THE PARAGUAYAN G2
> To be held in Asunción on 27 and 28 JUNE/78
> […]
> - Propose and coordinate an information sheet for the identification and registration of individuals suspected of being involved.
> - Coordinate norms for procedures to deal with the appearance of hostile political groups operating in border areas. […]
> - Set a tentative date for the next bilateral meeting in Buenos Aires.
> - Determine the probable evolution of the subversive situation and coordinate counterintelligence measures for the joint action of both armies.[23]

61(8) In a document of September 1976, described as one of the first reports on this operation, the attaché in Buenos Aires of the United States Federal Bureau of Investigation (FBI), Robert Scherrer, sent a cable to the agency's headquarters in Washington D.C., in which he summarized the functioning of the operation:

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[21] *Cf.* filing cabinet 245 of the "Terror Archives", p. 156, transcribed in *Es mi informe*, *supra* note 11, p. 257.

[22] *Cf.* filing cabinet 147 of the "Terror Archives", 1976, 13-page document on the Investigations Department letterhead paper, transcribed in *Es mi informe*, *supra* note 11, pp. 258 and 259.

[23] *Cf.* book D6, p. 1055, undated document without a letterhead, located in the "Terror Archives", transcribed in *Es mi informe*, *supra* note 11, p. 260.

CHILBOM/CONDOR
Classified and extended by (illegible signatures)
Date of review for declassification: 28/09/1996
(The original contains several annotations, stamps and erased lines)
P281030 SKP 76
From Buenos Aires
To Director
Foreign political matters – Argentina
Foreign political matters – Chile

[…]
"Operation Condor" is the code name for the collection, exchange and storage of intelligence data concerning so-called "leftists," communists and Marxists, which was recently established between cooperating intelligence services in South America in order to eliminate Marxist terrorist activities in the area. In addition, "Operation Condor" provides for joint operations against terrorist targets in member countries of "Operation Condor." Chile is the center for "Operation Condor" and in addition to Chile its members include Argentina, Bolivia, Paraguay, and Uruguay. Brazil also has tentatively agreed to supply intelligence input for "Operation Condor." Members of "Operation Condor" showing the most enthusiasm to date have been Argentina, Uruguay and Chile. The latter three countries have engaged in joint operations, primarily in Argentina, against the terrorist target. […]
A third and most secret phase of "Operation Condor" involves the formation of special teams from member countries who are to travel anywhere in the world to non-member countries to carry out sanctions up to assassination against terrorists or supporters of terrorist organizations from "Operation Condor" member countries. For example, should a terrorist or a supporter of a terrorist organization from a member country of "Operation Condor" be located in a European country, a special team from "Operation Condor" would be dispatched to locate and surveil the target. When the location and surveillance operation has terminated, a second team from "Operation Condor" would be dispatched to carry out the actual sanction against the target. Special teams would be issued false documentation from member countries of "Operation Condor" and may be composed exclusively of individuals from one member nation of "Operation Condor" or may be composed [of a] mixed group from various "Operation Condor" member nations.[24]

Concerning the activities of "Operation Condor" in Paraguay[25]

61(9) In the case of Paraguay, the Department of Military Intelligence was responsible for the operational coordination of "Operation Condor," and the person in charge at the time was Colonel Benito Guanes Serrano. The police intelligence services followed up on the directives received from the said Department, and the operational functions were the responsibility of the Head of Police Investigations, Pastor Milciades Coronel. The Investigations Department was the "nerve center of political intelligence." Information was collected by police agents who infiltrated political, social and trade union organizations, student centers, and all types of public or private entities.

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[24] *Cf.* the book *En los sótanos de los generales*, *supra* note 12, p. 173, and sworn statement made by the expert witness Alfredo Boccia Paz, *supra* note 12, folio 6316. The expert witness referred to this report as an unclassified document of the U.S. Department of State.

[25] Paragraphs 61(9) to 61(14) "concerning the activities of 'Operation Condor' in Paraguay" correspond to facts that are found to have been proved based on the following documents: the book *Es mi informe. Los archivos secretos de la Policía de Stroessner*, *supra* note 11; the book *Testimonio contra el Olvido; Reseña de la Infamia y el Terror*, *supra* note 11; sworn statement made by the expert witness Antonio Valenzuela Candia on May 25, 2006 (file of statements made before or authenticated by notary public), and *1987 Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Paraguay*, *supra* note 11, Chapter II, C and Introduction, B.

61(10) Regarding the steps taken to detain an alleged "subversive element," the Head of the Investigations Department, Pastor Milciades Coronel, stated that there were three options: (1) applying the law; (2) physical disappearance, and (3) "*la alternativa aplicada*" [applying the third alternative].

61(11) In the mid-1970s, an extremely brutal repressive process was initiated that lasted three years. Subsequently, in April 1976, the police revealed the existence of an alleged clandestine subversive political and military movement known as the "Military Political Organization" (OPM), operating in Asunción and other parts of the country. As of that time, "the most extensive anti-subversive police operation ever documented was unleashed." Within a few months, thousands of people were deprived of their liberty to "investigate" their links to OPM.

61(12) Regarding the disappearances that took place under "Operation Condor," the police and armed forces of the Southern Cone, united in their "anti-communist crusade," detained citizens of other countries without putting them on trial, subjected them to physical coercion, allowed them be interrogated by police from their own country, and transferred them clandestinely to prisons in their countries of origin or directly "disappeared" them. More than 50 Paraguayans disappeared after being imprisoned in Argentina.

61(13) In the 1970s and 1980s, several methods of disappearance were used in Paraguay:

(a) The victims were detained by individuals in civilian clothing and never seen again;
(b) Individuals were arrested openly; then they were removed from the prisons and penitentiaries and disappeared completely from all the official records of the authorities who had made the arrests. Requests for information about their whereabouts were characterized by silence, surprise or the official denial that the victims had ever been detained; and
(c) Paraguayan citizens disappeared in Argentina during the military dictatorship in that country. In some cases, these were Paraguayans in exile in Argentina. In others, the Paraguayan victims had been expelled from their country by the Paraguayan authorities and then disappeared while they were in Argentina.

61(14) The forced disappearances of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and the brothers Rodolfo and Benjamín Ramírez Villalba have similar characteristics and refer to a single context, in which agents of the Paraguayan State illegally detained, maintained incommunicado, tortured and disappeared individuals whose political activities were opposed to General Stroessner's regime or who were identified as his enemies.

Detention, torture and forced disappearance of Dr. Agustín Goiburú and its effects on his next of kin[26]

61(15) Dr. Agustín Goiburú was a Paraguayan doctor, an emergency department surgeon,[27] born on August 28, 1930, and married to Elva Elisa Benítez, who formed part of the opposition to the dictator Stroessner within the Colorado Party, and also one of the founders,[28] in 1958, of the Colorado Popular Movement ("MOPOCO") a political group that opposed Stroessner. He publicly denounced the torture and cruel and degrading treatment perpetrated against Paraguayan citizens by the regime in his place of work, the "Rigoberto Caballero" Police Hospital.[29] Consequently, he was subjected to a campaign of harassment and had to abandon Paraguay in September 1959, when he decided to go into exile in Argentina. He resided in Posadas, the Argentine town across the border from Encarnación, in the south of Paraguay. According to documents found in the "Terror Files," Dr. Goiburú continued under Paraguayan surveillance while on Argentine territory. He was "one of the best known public enemies of the Stroessner regime until his abduction or disappearance in February 1977."

61(16) Agustín Goiburú Giménez and Elva Elisa Benítez Feliú had three children: Rogelio Agustín Goiburú Benítez, born in Asunción, Paraguay, on March 4, 1956; Rolando Agustín Goiburú Benítez, born in Asunción, Paraguay, on January 8, 1958; and Patricia Jazmín Goiburú Benítez, born in the town of Posadas, Argentina, on October 18, 1967, during his exile.

61(17) Dr. Goiburú Giménez's father and mother died before his disappearance. Rosa Mujica Giménez was his sister.

61(18) In November 1969, Dr. Goiburú was abducted while he was fishing with his 11-year-old son[30] in the Paraná River, Argentina, and was taken from there to Asunción. He remained disappeared for several months, and it was subsequently known that he was detained in different police stations in Asunción. He managed to escape and take refuge in Chile[31] from where he returned to Argentina in December 1970.

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[26] Paragraphs 61(15), and 61(18) to 61(28) on the "Detention, torture and forced disappearance of Dr. Agustín Goiburú and its effects on his next of kin" of this judgment are uncontested facts that this Court finds have been proved based on the State's acknowledgement of responsibility. Some of those facts have been complemented by other probative elements, in which case this is noted in the respective footnotes. Also, paragraphs 61(16), 61(17) and 61(29) concerning the next of kin correspond to facts that are found to have been proved based on the following evidence: official documents (birth, marriage and death certificates), testimonial statements made before notary public by the next of kin and documents provided as helpful evidence.

[27] *Cf.* sworn statement made by Rogelio Agustín Goiburú Benítez on May 22, 2006 (file of affidavits submitted by the Commission, folio 6254).

[28] *Cf.* sworn statement made by Rogelio Agustín Goiburú Benítez, *supra* note 27, folio 6249.

[29] *Cf.* sworn statement made by Rogelio Agustín Goiburú Benítez, *supra* note 27, folio 6246.

[30] *Cf.* sworn statements made by Rogelio Agustín Goiburú Benítez, *supra* note 27, and Elva Elisa Benítez Feliu de Goiburú on May 19, 2006 (file of affidavits submitted by the Commission, folio 6249).

[31] *Cf.* sworn statements made by Rogelio Agustín Goiburú Benítez and Elva Elisa Benítez Feliu de Goiburú, *supra* notes 27 and 30, folios 6248 and 6263 to 6265.

61(19) In December 1974, Dr. Goiburú's family noticed the presence of an unknown individual photographing the house where they lived in Posadas, Argentina. They were able to capture the individual, later identified as Bernardo Cocco, who declared before the Argentine police that the unsuccessful abduction of Dr. Goiburú had been planned by the Head of Paraguayan Police Investigations, Pastor Milciades Coronel.

61(20) At the beginning of 1975, there was another plan to abduct Dr. Goiburú, according to a statement by one of the persons responsible for executing it, allegedly under the command of the Paraguayan General Guanes Serrano. However, this plan was not carried out because those responsible for implementing it demanded a large sum of money.

61(21) Subsequently, Dr. Goiburú decided to move from the border town of Posadas, in Misiones, to the province of Entre Ríos, Argentina, for safety reasons. Nevertheless, he and his family continued to be subjected to surveillance.

61(22) At the beginning of 1977, a new plan was carefully designed to abduct Dr. Goiburú, whose daily activities were the subject of constant surveillance. The person responsible for coordinating the operation stayed at the Hotel Guaraní in Asunción. The Terror Files include a note on paper with the letterhead of this hotel that states:

> Following the abduction attempt a short time ago, GOIBURÚ has taken special family and personal security measures. […] He keeps rifles in his office and also at his home. It is almost impossible to carry out the operation in his home […]
>
> The abduction will be carried out on the road between the Clinic and his home. The possible sites have been noted and everything is arranged for when he returns from his holiday in mid-February. […] A single group of four men will be involved, with two vehicles and appropriate weapons, which are being tested.

61(23) Dr. Agustín Goiburú was abducted on February 9, 1977, when he left the San Martín Hospital, where he had been on duty. Around midday, an olive green Ford Falcon without a license plate ran into Dr. Goiburú's car, which was parked on the corner of the hospital. On hearing the noise, Dr. Goiburú left the hospital to see what damage had been done, and it was then that he was held up with a gun, and made to get into a vehicle. A document originating from Argentine military intelligence reports the operation as follows:

> On 09[…]-Feb-77, unknown persons abducted Dr. AGUST[Í]N GOIBUR[Ú], born in 1930, from the property located at No. 572 Nogoyá Street, in this capital. […] At the time of the facts, he was wearing a white coat, light gray trousers and black lace-up shoes. According to the information obtained, a tall, swarthy man, driving an olive green Ford Falcon car, drove into the victim's car: a Fiat 128 L, which was parked [at] No. 572, Nogoyá Street, while the owner was in a room located at the back of the property situated at this address. When [Dr. Goiburú] arrived at the place where his car was parked, he was held up at gunpoint by the driver of the Ford Falcon, assisted by a tall, pale-skinned man, and with the support of a dark-green pick-up that was being driven against the traffic. The said doctor was made to enter the Ford Falcon and disappeared with an unknown destination. […]

61(24) Dr. Goiburú's wife, Elva Elisa Benítez de Goiburú, heard about her husband's abduction that same morning, from two Entre Ríos provincial agents who gave her the news. Mrs. Benítez de Goiburú started to try and find her husband, but the Argentine authorities refused to acknowledge the abduction officially or that they had detained him. Subsequently, Mrs. Benítez de Goiburú learned that he had been taken to Paraguay.

61(25) The most senior State authorities knew about the actions taken to abduct Dr. Goiburú. This is revealed by various documents, for example:

(a) Secret report No. 62 of October 1975 of the Intelligence Department of the Paraguayan Military Staff requested the location and urgent detention of Dr. Goiburú through the military attaché in the Paraguayan Embassy in Buenos Aires;
(b) A memorandum of December 30, 1975, from the Head of the Investigations Department, Pastor Milciades Coronel, to General Alfredo Stroessner, informing the latter of Dr. Goiburú's activities and habits in Paraná, provided by his informer, Dr. Goiburú's personal bodyguard; and
(c) A document of the Argentine Ministry of the Interior dated February 8, 1977 – one day before Dr. Goiburú's abduction – addressed to the Head of the Investigations Department, Pastor Milciades Coronel, from an Argentine Army Captain advising that the person responsible for locating, following and arresting the "Paraguayan doctor" had received all the necessary resources for his mobilization and transport.

61(26) In Paraguay, Dr. Goiburú was accused publicly of masterminding a plot to kill General Stroessner. However, no formal charges were filed against him, and the Government did not acknowledge that he was in the State's custody.

61(27) According to some reports, following his abduction, Dr. Goiburú was imprisoned in the Entre Ríos Air Force base, in Argentina. From there, he was taken by aircraft to Formosa and handed over to the Paraguayan authorities in Puerto Falcon. No written evidence remains of his alleged presence in the Investigations Department. His name does not appear in the 1977 ledger of "entry and departure of detainees." Nevertheless,[32] there are testimonies stating that Dr. Goiburú was seen alive in Paraguayan prisons. Domingo Rolón Centurión, a former prisoner in the Paraguay Investigations Department, recognized Dr. Goiburú from a photograph and said he had seen him being tortured on those premises. He stated:

> At 10 p.m. on a date that I cannot recall, I saw him in a passageway, lying face up, having been beaten on all parts of his body. Three hours later, I was obliged to enter the torture chamber where I was asked if I knew him, and I said no. He (Goiburú) was unconscious and completely soaked. [T]hey had just immersed him in the water tank […].

61(28) Dr. Goiburú's disappearance is an example of the coordinated actions taken by the Paraguayan and Argentine security forces under "Operation Condor." His disappearance fits the *modus operandi* used to disappear Paraguayans in Argentina during the military dictatorship in that country.

61(29) Elva Elisa Benítez de Goiburú, and her children, Rogelio Agustín, Rolando Agustín and Patricia Jazmín, all Goiburú Benítez, and Rosa Mujica Giménez, Dr. Goiburú Giménez's sister, have suffered intensely owing to the illegal detention and disappearance of Agustín Goiburú Giménez. The facts have affected them physically and psychologically. The family's finances were also affected by the facts of this case, because Agustín Goiburú Giménez's wife and children depended on him.

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[32] *Cf. Es mi informe*, *supra* note 11, p. 320.

Detention, torture and forced disappearance of Carlos José Mancuello Bareiro and the effects on his next of kin[33]

61(30) Carlos José Mancuello Bareiro was a Paraguayan citizen, born on March 19, 1951. He studied electromechanical engineering in La Plata, Argentina, and worked for the company that represented Mercedes Benz in Paraguay. He was married to Gladis Ester Ríos de Mancuello, with whom he had a daughter, born on March 18, 1974, and a son born on August 10, 1975. His parents are Mario Mancuello (who died in 1994) and Ana Arminda Bareiro de Mancuello. His siblings are: Hugo Alberto, Ana Elizabeth, Mario Andrés and Emilio Raúl, all Mancuello Bareiro.

61(31) Carlos José Mancuello Bareiro was detained on November 25, 1974, while going through Paraguayan Customs on his return from Argentina, together with his wife Gladis Ester Ríos de Mancuello and their daughter, Claudia Anahí Mancuello Ríos, who was eight months old at the time.

61(32) Gladis Ester Ríos de Mancullo, who was pregnant, was also detained and imprisoned together with their daughter, Claudia Anahí Mancuello Ríos, who was subsequently handed over to her paternal grandparents. Gladis Ester Ríos de Mancuello remained in prison from November 25, 1974, together with her son, Carlos Marcelo Mancuello Ríos, who was born in prison in 1975,[34] until November 12, 1977, when they were released and expelled from the country until the fall of the dictatorship.

61(33) Mr. Mancuello was accused of belonging "to a terrorist group that was preparing an attempt on Stroessner's life," allegedly led by Dr. Goiburú.

61(34) Carlos José Mancuello Bareiro was kept in a small cell in the Police Investigations Department, together with Benjamín and Rodolfo Ramírez Villalba, Amilcar Oviedo, María Magdalena Galeano, his wife Gladis Ester Ríos de Mancuello, and his father Mario Mancuello.[35] Subsequently, he was transferred to the "*Guardia de Seguridad*" maximum security prison where he was detained in 1975 and, in mid-1975, he returned to the premises of the Investigations Department. From then and until September 1976, his name "appeared on all the Investigations Department's lists of detainees."

61(35) Carlos José Mancuello Bareiro was subjected to intense interrogation and torture, especially during the first months of his illegal detention, the latter included blows, lashes with the so-called "*teyuruguay,*" and also the practice known as

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[33] Paragraphs 61(31) to 61(41) concerning the "detention, torture and forced disappearance of Carlos José Mancuello Bareiro and the effects on his next of kin" of this judgment are uncontested facts that the Court finds have been established based on the State's acknowledgement of responsibility. Some of those facts have been complemented by other probative elements, in which case this is noted in the respective footnotes. Also, paragraphs 61(31) and 61(42) concerning the next of kin correspond to facts that are found to have been proved based on the following evidence: official documents (birth, marriage and death certificates), testimonial statements made before notary public by the next of kin and documents provided as helpful evidence.

[34] *Cf.* statement made before notary public (affidavit) by Gladis Esther Ríos on May 17, 2006 (file of statements made before or authenticated by notary public, folios 6340, 6341 and 6343).

[35] *Cf.* statement made before notary public (affidavit) by Julio Darío Ramírez Villalba on May 18, 2006 (file of statements made before or authenticated by notary public, folio 6275).

"*pileteada*" (consisting in immersion in a tank with water, blood and human excrement,[36] often until the victim drowned).

61(36) Carlos José Mancuello Bareiro remained detained for 22 months. Regarding the tortures to which he was subjected, Jorge Pane Zárate, who was an officer in the Asunción Police Investigations Department at the time of the facts, saw him while he was detained on these premises and confirmed that "he appeared to have suffered unlawful coercion, because […] the so-called *'Constitución y Teyú-yuruguai,"* a short whip of plaited leather, about a meter long … left very visible marks, and he was bruised and swollen."

61(37) Gladys Meilinger de Sannemann, who was detained in the offices of the Investigations Department in 1976, saw Carlos José Mancuello Bareiro and Benjamín and Rodolfo Ramírez Villalba during this period, because she was able to observe them every day in the early morning when they went to the bathroom. The last time she saw them alive was on September 21, 1976, when she was transferred from these premises to the Emboscada prison.

61(38) Mrs. Bareiro de Mancuello, Carlos José Mancuello Bareiro's mother, periodically sent him clothes, food and medicine. She also received his dirty clothes from the police to wash them and return them to him. As of September 21, 1976, Mrs. Bareiro de Mancuello no longer received the clothes of her son, Carlos José Mancuello Bareiro, from the police with the explanation that he was no longer in the Police Investigations Department or that he had escaped from there.

61(39) The logbook of the Investigations Department for 1976 states that, on inspecting the cells on the night of September 21, 1976, it was verified that "four of the detainees had escaped." The Investigations Department's ledger of "Entry and Departure of Detainees" states that Carlos José Mancuello Bareiro had "escaped" and, regarding the brothers Rodolfo and Benjamín Ramírez Villalba and Amílcar Oviedo, the space by their names corresponding to "Departure" was left blank.[37] Also, an official document from the Guards Office of the Investigations Department addressed to the Head of the Investigations Department, Pastor Milciades Coronel, reported the alleged escape of Carlos José Mancuello and Benjamín and Rodolfo Ramírez Villalba. This was subsequently confirmed by the statements of several of the investigation officers present that night, who were called on to testify in the trials opened with regard to the case after 1989.[38]

61(40) However, based on the statements of several former police officers, the No. 1 Criminal Tribunal [*de Liquidación y Sentencia*] came to the following conclusions (*infra* para. 69):

> At approximately 10.30 p.m. [on September 21, 1976] […] the detainees, MANCUELLO, OVIEDO and the brothers RAMIREZ VILLALBA, were ordered to get ready because they were going to be transferred to another place […]; then, they proceeded to transfer the four detainees to a VW Kombi vehicle […] which was waiting outside the building […] without anyone being informed of their destination. Since then and to date, there has

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[36] *Cf.* statement made before notary public (affidavit) by Gladys Meilinger de Sannemann on May 22, 2006 (file of statements made before or authenticated by notary public, folio 6271).

[37] *Cf. Es mi informe*, *supra* note 11, p. 228 and 229.

[38] *Cf. Es mi informe*, *supra* note 11, p. 228 and 229.

> been no news of them, despite the comments made to this Court by the witnesses in the proceedings, who had unofficial information that CARLOS MANCUELLO BAREIRO, AMILCAR OVIEDO and the brothers RAMIREZ VILLALBA had been murdered […].
>
> [O]n that occasion, on the direct orders of PASTOR CORONEL, the alleged escape of the said detainees from the Investigations Department was reported in the logbook […], when, in reality, the events took place principally as indicated above. […] This was a common practice used to cover up the disappearances of detainees who were executed; an act that, among the prisoners, was known as the '*ley de fuga*' [the escape law].

61(41) The disappearance of Carlos José Mancuello Bareiro corresponds to one of the *modus operandi* for forced disappearance used in Paraguay at the time.

61(42) The next of kin of Carlos José Mancuello Bareiro suffered as a result of his illegal detention and forced disappearance. They have also experienced psychological problems related to these facts, and were affected financially, because Carlos José Mancuello Bareiro represented a source of income for the upkeep of the household. The facts of this case have significantly disrupted the dynamics of Carlos José Mancuello Bareiro's family.

Detention, torture and forced disappearance of the brothers Benjamín and Rodolfo Ramírez Villalba and the effects on their next of kin[39]

61(43) Rodolfo Ramírez Villalba was born in Mayor Martínez on June 9, 1940, and his brother, Benjamín Ramírez Villalba, was born in Desmochados on October 15, 1950, both in the Republic of Paraguay. Their mother was Fabriciana Villalba de Ramírez, who died in about 2001. Their deceased siblings were Lucrecia Francisca Ramírez de Borba, who died in 2005; Mario Artemio Ramírez Villalba, who died in 2003; and Eugenia Adolfina Ramírez de Espinoza, who died in 1980. Their siblings who are still alive are: Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Herminio Arnoldo Ramírez Villalba and Julio Darío Ramírez Villalba. In addition, the children of Julio Darío Ramírez Villalba, nieces and nephews of the alleged victims are: Mirtha Haydee Ramírez de Morinigo, Ana María Ramírez de Mellone, Julio César Ramírez Vázquez, Rubén Darío Ramírez Vázquez and Héctor Daniel Ramírez Vázquez.

61(44) The brothers Rodolfo and Benjamín Ramírez Villalba were unmarried. However, the latter had a companion, María Magdalena Galeano, who was detained on the same day as he was and who remained in prison for more than three years.

61(45) Rodolfo Ramírez Villalba worked on a "*chacra*" [small farm] and helped maintain the family, with the sale of the crops he grew. Later, he traveled to Argentina in order to study and work; he obtained employment in an oil drilling company and worked as a technician in the installation of oil wells. Benjamín Ramírez Villalba qualified as a public accountant while he was still living with his

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[39] Paragraphs 61(46) to 61(49) concerning the "detention, torture and forced disappearance of the brothers Benjamín and Rodolfo Ramírez Villalba and the effects on their next of kin" of this judgment are uncontested facts that the Court finds have been established based on the State's acknowledgement of responsibility. Some of these facts have been complemented by other probative elements, in which case this is noted in the respective footnotes. Also, paragraphs 61(43), 61(44), 61(45) and 61(50) concerning the next of kin correspond to facts that are found to have been proved based on the following evidence: official documents (birth, marriage and death certificates), testimonial statements made before notary public by the next of kin and documents provided as helpful evidence.

family in Pilar, Paraguay; he practiced his profession and also collaborated with the family's upkeep.

61(46) On November 25, 1974, the brothers Benjamín and Rodolfo Ramírez Villalba were detained. Benjamín Ramírez Villalba, who lived in Buenos Aires, Argentina, was detained while entering Paraguay, through the town of Fernando de la Mora, on his way to visit his companion, María Magdalena Galeano.[40] Rodolfo Ramírez Villalba was detained in Asunción on the same day.[41] They were both transferred to the Investigations Department where they remained detained.

61(47) The Ramírez Villalba brothers were accused of belonging "to a terrorist group that was preparing an attempt on Stroessner's life," supposedly headed Dr. Goiburú.

61(48) Benjamín and Rodolfo Ramírez Villalba were detained in the Police Investigations Department in a small cell, together with Carlos José Mancuello Bareiro, Gladis Ester Ríos de Mancuello, Amilcar Oviedo, María Magdalena Galeano and Mario Mancuello, father of Carlos José Mancuello Bareiro (*supra* para. 61(34)). Subsequently, they were transferred to the "*Guardia de Seguridad*" maximum security prison where they were confined in 1975 and, in mid-1975, they were returned to the Investigations Department. As of that date and until September 1976, their names "appeared on all the Investigations Department's lists of detainees." Already, in 1977, the State had officially acknowledged the detention of Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba before the Inter-American Commission.

61(49) Benjamín and Rodolfo Ramírez Villalba remained detained for 22 months, during which they were subjected to torture, and they disappeared in similar circumstances to Carlos José Mancuello Bareiro (*supra* paras. 61(35) to 61(40)). Their disappearance also corresponds to one of the *modus operandi* for forced disappearance used in Paraguay at the time.

61(50) The next of kin of the brothers Rodolfo and Benjamín Ramírez Villalba also suffered intense emotional and psychological effects owing to their disappearance. In addition, they have suffered financial difficulties, since the Ramírez Villalba brothers devoted part of their income to help maintain their family.

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[40] *Cf.* statement made before notary public (affidavit) by Julio Darío Ramírez Villalba, *supra* note 35, folio 6275.

[41] *Cf. Es mi informe, supra* note 11, p. 222. According to Julio Darío Ramírez Villalba's statement, Rodolfo Ramírez Villalba was detained in Clorinda, Province of Formosa, Argentina, by Police from the Paraguayan Investigations Department and Argentine Police, and then transferred to that Department. However, according to the State's acknowledgement of responsibility, it is found that it has been proved that the place and method of detaining Rodolfo Ramírez Villalba occurred as described in the Commission's application.

Concerning the criminal proceedings in relation to the case of Agustín Goiburú Giménez[42]

61(51) On May 5, 1989, Elva Elisa Benítez de Goiburú and others filed a criminal complaint before the Office of the Public Prosecutor in first instance for the alleged crimes of abduction, torture and murder suffered by Agustín Goiburú Giménez. They also stated that the persons who could be aware of the facts were: General Alfredo Stroessner, former President of the Republic; Sabino Augusto Montanaro, former Minister of the Interior; Pastor Milciades Coronel, former Head of Asunción Police Investigations; General Francisco Alcibiades Brítez Borges, former Head of the Asunción Police; General Benito Guanes Serrano, former Head of Military Intelligence, and Oscar Gómez, Director of the "Rigoberto Caballero" Police Polyclinic.

61(52) On June 26, 1989, the Third Criminal Court of First Instance decided to conduct a preliminary investigation against Pastor Milciades Coronel and Benito Guanes Serrano. On April 1, 1993, this court decided to expand the investigation; it therefore included as accused: Sabino Augusto Montanaro, Francisco Ortiz Téllez and General Francisco Alcibíades Brítez Borges; ordered the preventive detention of Sabino Augusto Montanaro, Pastor Milciades Coronel and Francisco Alcibíades Brítez Borges, and ordered that statements be taken from Sabino Augusto Montanaro, Pastor Milciades Coronel, Francisco Ortiz Téllez and Francisco Alcibíades Brítez Borges.

61(53) At the beginning of 1990, General Rafael Benito J. Guanes Serrano and Francisco Alcibíades Brítez Borges made informative statements by answering a questionnaire sent by the Third Criminal Court of First Instance to their place of detention. In July 1990 and April 1993, Pastor Milciades Coronel and Francisco Ortiz Téllez, respectively, made their informative statements and statements under questioning.

61(54) In 1991, the Fifth Criminal Prosecutor insisted on the need to make progress in the investigation of the case before the Third Judge of First Instance for Criminal Matters.

61(55) On June 28, 1993, after an objection had been raised to the head of the Third Criminal Court of First Instance, the latter ordered the file to be forwarded to the Fourth Criminal Court of First Instance.

61(56) On September 9, 1996, the Fourth Criminal Court of First Instance ordered that the preliminary proceedings should be advanced to regular proceedings in the case of Pastor Milciades Coronel for the alleged crimes against life, physical integrity, health and constitutional guarantees. It also left the preliminary proceedings open with regard to the defendants Sabino Augusto Montanaro and Francisco Ortiz Téllez concerning the same crimes.

61(57) On July 2, 1997, Elva Elisa Benítez de Goiburú appeared before the Fourth Judge of First Instance for Criminal Matters in order to "file a criminal complaint

[42] Paragraphs 61(51) to 61(120) of this judgment, concerning the three criminal proceedings opened in the cases of the victims, refer to facts that the Court finds have been established based on the State's acknowledgement of responsibility and the probative elements in the files of the domestic criminal proceedings, most of which were provided by the Commission as attachments to the application, and also by the State as helpful evidence.

against General Alfredo Stroessner Matiauda, Pastor Milciades Coronel, Sabino Augusto Montanaro, Francisco Ortiz Téllez and Benito Guanes Serrano and those who are found to have been accomplices and accessories after the fact in the crimes against humanity, undoubtedly constituted by the forced disappearance, aggravated homicide, and illegal deprivation of liberty with abuse of authority for political motives" suffered by her husband Agustín Goiburú Giménez. On July 14, 1997, the said Court decided to admit this criminal complaint. On August 13, 1997, this decision was expanded and the Court admitted the criminal complaint against Alfredo Stroessner and Benito Guanes Serrano for the alleged crimes against life, physical integrity, health and constitutional guarantees.

61(58) In August 1998, various judicial procedures were conducted, such as testimonial, confirming, and informative statements.

61(59) On October 23, 1998, the Fourth Criminal Court of First Instance decided "not to continue including the accused Benito Guanes Serrano and Francisco Alcibíades Brítez Borges in the proceedings," because "it was known that they were deceased."

61(60) On November 9, 1998, the said Court of First Instance ordered that the accused fugitives from justice, Sabino Augusto Montanaro and Alfredo Stroessner Matiauda, should be summoned and subpoenaed to present themselves, "to be available to the decisions of the proceedings" against them 15 times in two newspapers. On May 9, 2000, the court decided to put the said admonition into effect and declared the said persons "in contempt of court and willfully disobedient of court orders […] until they presented themselves to go on trial."

61(61) On June 25, 1999, the Fourth Criminal Court of First Instance, considering the complainant's request, decided to order that "testimonies should be taken" for the time established by law.

61(62) On September 21, 2000, the Third Criminal Tribunal [*de Liquidación y Sentencia*] decided to conclude the preliminary proceedings and to bring to trial the case against Francisco Ortiz Téllez for alleged crimes against life, physical integrity, health and constitutional guarantees. On December 22, 2000, the court ordered that evidence should be taken "for the time established by law" in relation to Mr. Ortiz Téllez. The period for gathering evidence ended on November 26, 2001. On February 15 and May 8, 2002, the Attorney General's Office and the defendant Ortiz Tellez's defense counsel respectively presented their briefs with final arguments. On May 29, 2002, the said Court admitted the final arguments brief of Ortiz Téllez and reviewed the proceedings to deliver judgment.

61(63) On March 2, 2002, the Third Criminal Tribunal (*de Liquidación y Sentencia*) declared that the crimes and punishments of Pastor Milciades Coronel and General Francisco Alcibíades Brítez Borges had extinguished, because the court had learned that they were deceased.

61(64) On July 29 and August 26, 2003, the representative of Elva Elisa Benítez de Goiburú requested the court to issue a decision in the proceedings because all the measures requested to provide useful evidence had been taken and the time established for delivering judgment had elapsed some time ago.

Actions taken to obtain a statement from Alfredo Stroessner Matiauda and Sabino Augusto Montanaro and their eventual extradition within the criminal proceedings in the case of Agustín Goiburú

61(65) On July 13, 1989, the Third Criminal Court of First Instance ordered that informative statements should be taken from General Alfredo Stroessner and Sabino Augusto Montanaro, via letters rogatory to the judicial authorities of Brazil and Honduras, because it was known that these persons had been granted political asylum in the said countries respectively.

61(66) On August 1, 1989, this court sent the said letters rogatory to the President of the Supreme Court of Justice for processing and forwarding to the respective judges in the Honduran and Brazilian jurisdictions, requesting the informative statements from the "accused fugitives from justice," Sabino Augusto Montanaro and Alfredo Stroessner, respectively. On November 24, 1989, the said court asked the Ministry of Foreign Affairs to advise it whether the letters rogatory had been processed and, if so, to indicate the date on which they were forwarded, as well as any other relevant information.

61(67) On December 18, 1989, the Ministry of Foreign Affairs stated that on November 20, 1989, it had forwarded the letter rogatory to the Chargé d'Affaires of the Republic of Honduras in Paraguay, and was therefore awaiting news. Also, on December 30, 1989, the Ministry stated that, on December 2, 1989, the letter rogatory had been forwarded through the Paraguayan Embassy in Brazil and was now at the Brazilian Ministry of Foreign Affairs; it was waiting further news.

61(68) In May 1990, December 1997 and November 1998, the Court of First Instance again requested information from the Ministry of Foreign Affairs regarding compliance with the processing of the letters rogatory.

61(69) There is no evidence among the information provided to the file in the instant case of whether the informative statements of General Alfredo Stroessner and Sabino Augusto Montanaro, requested in letters rogatory sent to the Brazilian and Honduran authorities, were made or received by the Paraguayan courts.

61(70) In November and December 1997 and July 1998, Elva Elisa Benítez de Goiburú submitted various request for official letters to be sent by the Ministry of Foreign Affairs requesting information concerning extradition. Also, in November 1998, she asked that an official letter be sent to INTERPOL and to the National Police informing them of the preventive detention decreed against Sabino Augusto Montanaro. She repeated her requests in February 1999.

61(71) On February 26, 1999, the Fourth Criminal Court of First Instance communicated to the National Police Headquarters that it had decided to order the preventive detention of Sabino Augusto Montanaro. On June 24 and August 4, 1999, the Head of the INTERPOL Office in Asunción requested the court*, inter alia,* to send some personal information on Mr. Montanaro, photographs and fingerprints, a summary of the crime of which he was accused, and also a copy of the judicial decision ordering his preventive detention for the purpose of extraditing him. This request was repeated on September 10, 1999.

61(72) On April 12, 1999, Mrs. Benítez de Goiburú asked the Court to issue an official letter to Brazil and Honduras requesting information on the dates when the asylum granted expired.

61(73) On March 9, 2000, Mrs. Benítez de Goiburú requested the First Criminal Tribunal (*de Liquidación y Sentencia*) to declare Alfredo Stroessner and Sabino Augusto Montanaro in contempt of court and to order preventive detention for the purpose of extradition. She also requested that their extradition should be ordered. On November 13, 2000, she asked that preventive detention should be decreed for Alfredo Stroessner and again requested that the court order his extradition and that of Sabino Augusto Montanaro. In July 2000, July 2001 and April 2002, she repeated her request that the respective extraditions should be ordered. In December 2000, she again asked the court to send an official letter to INTERPOL to ensure compliance with the preventive detention ordered.

61(74) On November 20, 2000, the Attorney General's Office advised that prevention detention should be ordered for the accused, Sabino Augusto Montanaro and Alfredo Stroessner, because it was "an essential requirement for the viability of an extradition request, which had to be processed through the corresponding diplomatic channels."

61(75) On December 7, 2000, having declared Alfredo Stroessner and Sabino Augusto Montanaro "in contempt of court" in May that year, the Third Criminal Tribunal (*de Liquidación y Sentencia*) decided to order their preventive detention "for the purpose of their extradition," based on the definition of their procedural conduct; namely, having "effectively and appropriately instigated" the perpetration of crimes; in this case, murder and illegitimate deprivation of liberty. Among the findings on which this decision was based, the Court indicated, *inter alia*, that "State-organized terrorism is a type of crime that has occurred in numerous countries, particularly in Latin America" (*infra* para. 70).

61(76) On February 2, 2001, the Third Criminal Tribunal (*de Liquidación y Sentencia*) requested the Ministry of Foreign Affairs of Paraguay to provide information on the extradition treaties that existed between Paraguay and Honduras and Brazil. It also requested information on the juridical and legal status of Alfredo Stroessner so as to determine the possibility of processing the extradition request.

61(77) On March 2, 2001, the Ministry of Foreign Affairs informed the Third Criminal Tribunal (*de Liquidación y Sentencia*):

> That it had not signed an extradition treaty with Honduras, although, based on the rules of international reciprocity and courtesy, it is possible to process an extradition request in the absence of a signed treaty.
>
> With regard to treaties with the Federative Republic of Brazil, an authenticated copy of the Treaty for the Extradition of Offenders between Paraguay and Brazil, signed by the two countries in 1922, is attached.
>
> Regarding the juridical and legal status of the Paraguayan citizen, Alfredo Stroessner Matiauda, who is in exile in Brazil, this Ministry is aware that he has been granted asylum by the Federative Republic of Brazil.

61(78) On February 12, 2005, the Paraguayan Ministry of Foreign Affairs asked the President of the Supreme Court of Justice of Paraguay to provide information on the extradition requests made in relation to Alfredo Stroessner and Sabino Montanaro.

On March 15, 2005, the actuary of the Supreme Court of Justice informed its President that the General Secretariat had received a request for the extradition of Alfredo Stroessner, issued by the Third Criminal Tribunal (*de Liquidación y Sentencia*) on November 29, 2001.

61(79) The documentation provided to the Inter-American Court does not reveal whether the extradition of Alfredo Stroessner or Sabino Augusto Montanaro was actually requested, in the context of this criminal proceedings.

61(80) At the time this judgment is delivered, the defendants Pastor Milciades Coronel, Francisco Alcibíades Brítez Borges and Benito Guanes Serrano are deceased; consequently, the criminal proceedings have extinguished in their respect. Judgment has not been delivered regarding the defendant, Francisco Ortiz Téllez. Furthermore, the preliminary proceedings continue open in relation to Sabino Augusto Montanaro and Alfredo Stroessner Matiauda, who have been declared "in contempt of court." The former has been granted asylum in Honduras, and it is public knowledge that the defendant, Alfredo Stroessner Matiauda, died on August 16, 2006, in Brasilia, Brazil.

Concerning the criminal proceedings in the case of Carlos José Mancuello Bareiro

61(81) On March 27, 1990, Ana Arminda Bareiro de Mancuello filed a formal complaint for the alleged crimes of abduction, illegal deprivation of liberty, abuse of authority, torture and murder suffered by Carlos José Mancuello Bareiro. Mrs. Bareiro de Mancuello also requested that the preventive detention should be ordered of the defendants, Alfredo Stroessner and Sabino Augusto Montanaro, domiciled in Brasilia, Brazil, and Tegucigalpa, Honduras, respectively; General Francisco Alcibíades Brítez Borges, who was detained in the Central Military Hospital; Pastor Milcíades Coronel, Alberto Buenaventura Cantero, who was a typist and, subsequently, director of the Political and Related Matters Section of the Investigations Department; Lucilo Benítez, who was responsible for the security and escort of the Head of the Investigations Department, Pastor Milciades Coronel; Camilo Almada Morel, who was the presidential security guard for foreign dignitaries; Agustín Belotto Vouga, who was a reserve officer of the Asunción Police, carrying out "external security tasks," and Eusebio Torres. All of them were detained in the Specialized Unit of the Asunción Police, the former "*Guardia de Seguridad*" prison.

61(82) On December 3, 1990, the Fifth Criminal Court of First Instance instituted the preliminary investigation and admitted the criminal complaint. On August 17, 1993, it decided to conclude the preliminary investigation with regard to the defendants Pastor Milciades Coronel, Alberto Buenaventura Cantero, Lucilo Benítez, Camilo Almada Morel and Agustín Belotto Vouga, and to put the case to trial, leaving it open in relation to Eusebio Torres, Alfredo Stroessner, Sabino Augusto Montanaro, Francisco Alcibíades Brítez Borges, Ramón Saldivar, who was the Inspector General of Police Stations, and Salvador Mendoza, who was Director of the Identification Department.

61(83) During December 1990, February, March, May and June 1991, and April and May 1993, testimonial, unsworn, and informative statements were received. In March 1993, an expanded unsworn statement was received. Subsequently, during October, November and December 1997, further testimonial statements were received.

61(84) On February 5, 1993, the Fifth Criminal Court of First Instance ordered the detention of Pastor Milciades Coronel, Alberto Buenaventura Cantero, Lucilo Benítez, Camilo Almada Morel and Agustín Belotto Vouga. And, on March 30, 1993, this court ordered the detention of Ramón Saldívar and Salvador Mendoza.

61(85) On November 2, 1993, and February 22, 1994, the court was informed of the death of General Francisco Alcibíades Brítez Borges and of Officer Ramón Saldívar on September 14, 1993, and June 11, 1992, respectively.

61(86) On June 19, 1995, the said Fifth Criminal Court of First Instance ordered the opening of the case to take evidence for "the time established by law." Subsequently, on December 21, 1995, the judge of this court excused himself from continuing to hear the case. Accordingly, the Sixth Criminal Court of First Instance assumed the hearing of the case. On April 1, 1998, it considered that the period for gathering evidence had long ended, and gave a hearing to the parties to present their respective arguments "in accordance with and within the time established by law."

61(87) At the end of 1998, the complainant and the Attorney General's Office presented their final arguments. The defendants Lucilo Benítez and Alberto Buenaventura Cantero, Agustín Belotto Vouga and Camilo Almada Morel did so on November 23 and December 1, 1998, and July 19, 1999, respectively.

61(88) On April 17, 2000, the First Criminal Tribunal (*de Liquidación y Sentencia*) decided, *inter alia*:

> 1) To classify the illegal conduct of the defendant Pastor Milciades Coronel Almada, under the crimes established in and punished by the provisions of Articles 337, paragraphs 2 and 3 [murder aggravated by treachery and extreme cruelty], in accordance with Articles 3, first paragraph [crimes are punishable not only when they have been perpetrated, but also when they have been frustrated, or when there has been an attempted crime] and 37 [association or conspiracy to commit a crime] of the Penal Code; Articles 341 [injury], paragraph 1 [aggravated], 280 [violence or threats], and 174 [abuse of authority]; and Article 37 [association or conspiracy to commit a crime] of the 1914 Penal Code, and to classify the penalty based on Articles 94 [the masterminds and perpetrators shall suffer integrally the penalties established by this code for the crime committed], and 95 [the penalty for a frustrated crime shall be two-thirds of that corresponding to the completed crime] of the same Code.
>
> 2) To classify the illegal conducts of the defendants Nicolás Lucilo Benítez Santacruz and Camilo Federico Almada Morel, under the crimes established in and punished by the provisions of Articles 337 paragraph 2 [murder aggravated by treachery], 341, paragraph 1 [aggravated injury], 280 [violence or threats] and 174 [abuse of authority] of the said Code, in accordance with Article 37 [association or conspiracy to commit a crime] of the same body of laws.
>
> 3) Not to admit the request for prescription alleged in the proceedings, because it is manifestly inadmissible considering the findings in this decision.
>
> 4) To note that the corresponding recourse before the ordinary jurisdiction is admissible to claim civil responsibility under the provisions of Article 1865 of the Civil Code owing to the crime committed by Francisco Alcibíades Brítez Borges.
>
> 5) To absolve Alberto Buenaventura Cantero Domínguez from guilt and punishment. […] To send an official communication to the National Police (Specialized Unit) ordering his release.

> 6) To absolve Agustín Belotto Vouga from guilt and punishment. […] To send an official communication to the National Police (Specialized Unit) ordering his release.
>
> 7) To sentence Pastor Milciades Coronel […] to seventeen years' imprisonment, which he will have served on February 3, 2008. To send an official communication to the National Police (Specialized Unit) to ensure execution of this sentence.
>
> 8) To sentence Camilo Federico Almada Morel […] to thirteen years and nine months' imprisonment, which he will have served on October 3, 2004. To send an official communication to the National Police to ensure execution of this sentence.
>
> 9) To sentence Nicolás Lucilo Benítez Santacruz […] to thirteen years and nine months' imprisonment, which he will have served on October 3, 2004. To send an official communication to the National Police to ensure execution of this sentence. […]
>
> 11) To declare the civil responsibility of those convicted. […]

61(89) On December 12, 2002, based on the remedies of appeal and annulment filed by Camilo Almada Morel and Lucilo Benítez, and also by Ana Arminda Bareiro de Mancuello, the Second Chamber of the Criminal Court of Appeal, in addition to rejecting the application for annulment, decided, *inter alia*:

> To send an official communication to the Registry Office requesting it to forward the death certificate of Pastor Milciades Coronel to the Court, so that it can file the case in his regard.
>
> To revoke points 5 and 6 of the appealed decision.
>
> To modify judgment No. 2 of April 17, 2000, […] by classifying the conduct of the defendants Alberto Buenaventura Cantero Domínguez and Agustín Belotto Vouga, and situating it within the provisions established in Article 337, paragraphs 2 and 3 [murder aggravated by treachery and extreme cruelty] and Article 174 [abuse of authority] of the Penal Code, and classifying the penalty based on Article 94 [the masterminds and perpetrators shall suffer integrally the penalties established by this code for the crime committed] of the Penal Code, and consequently,
>
> To sentence the defendants Alberto Buenaventura Cantero […] and Agustín Belotto Vouga to fifteen years' imprisonment, based on the arguments described in this decision. To send an official communication to the National Police to ensure execution of this sentence.
>
> To confirm the other points of the appealed decision. […]

61(90) On February 11, 2003, the Second Chamber of the Court of Criminal Appeal granted the remedies of appeal and annulment filed against the judgment of December 12, 2002, and forwarded the case file to the Supreme Court of Justice, which, in 2004, agreed to "review the proceedings in order to deliver judgment."

61(91) At the time this judgment is delivered, with regard to the above criminal proceedings, the defendants Francisco Alcibíades Brítez Borges and Ramón Saldívar, and also the person convicted, Pastor Milciades Coronel, are deceased. Regarding the other four defendants who had been detained and convicted, the judgments convicting them were final as regards Agustín Belotto Vouga and Alberto Buenaventura Cantero; however, there is no evidence of whether they are benefiting from parole. The defense lawyers of Camilo Almada Morel and Lucilo Benítez had filed remedies of appeal and applications for annulment that are pending before the Supreme Court of Justice, which has not delivered judgment. The case is open with regard to Eusebio Torres, Salvador Mendoza, Sabino Augusto Montanaro and Alfredo Stroessner Matiauda, although it is public knowledge that the latter died on August 16, 2006, in Brasilia, Brazil.

Concerning the criminal proceedings opened in the case of the brothers Benjamín and Rodolfo Ramírez Villalba

61(92) On November 8, 1989, Julio Darío Ramírez Villalba filed a criminal complaint for the alleged crimes of abduction, illegal deprivation of liberty, abuse of authority, torture and double homicide, to the detriment of Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba. He also requested that the criminal complaint filed against Sabino Augusto Montanaro, Francisco Albiades Brítez Borges, Pastor Milciades Coronel, Alberto Buenaventura Cantero, Lucilo Benítez, Camilo Almada Morel, Juan Aniceto Martínez, Eusebio Torres and "someone called Belotto," and the other masterminds and perpetrators, accomplices and accessories after the fact be admitted.

61(93) On November 23, 1989, the Fourth Criminal Court of First Instance decided to open the preliminary inquiry to investigate and prove the facts and ordered the continued detention of Francisco Alcibíades Brítez Borges, Pastor Milciades Coronel and Lucilo Benítez, and the detention of Sabino Augusto Montanaro, Alberto Buenaventura Cantero, Camilo Almada Morel, Juan Aniceto Martínez, Eusebio Torres and "someone called Belotto." On March 8, 1990, the court decided the convert the preventive detention (*detención preventiva*) of Pastor Milciades Coronel, Alberto Buenaventura Cantero, Camilo Almada Morel, Juan Aniceto Martínez, Eusebio Torres and Agustín Belotto Vouga "into preventive custody (*prisión preventiva*), and they must continue in prison." On February 7, 1991, it announced the same decision with regard to Francisco Alcibíades Brítez Borges.

61(94) During February, November and December 1990, February, March and May 1992, and May and August 1993, the court received preliminary and testimonial statements.

61(95) In October 1992, the Court instructed that its order for the "defendant fugitive from justice Sabino Augusto Montanaro" to appear before it so that "he would be on hand for the decisions taken during the proceedings against him for the alleged crimes of abduction, torture, illegal deprivation of liberty, double homicide, and abuse of authority" should be published in a newspaper 15 times. In September 1993, it again ordered the publication of the court order.

61(96) On January 15, 1993, the said Fourth Criminal Court of First Instance decided to expand the preliminary proceedings to include Benito Guanes Serrano and Alfredo Stroessner Matiauda for the "alleged crimes of abduction, illegal deprivation of liberty, abuse of authority, torture and double homicide" and ordered their preventive custody.

61(97) After an objection had been raised to the head of the Fourth Criminal Court of First Instance in January 1993, the Fifth Criminal Court of First Instance decided in March that year to include General Benito Guanes Serrano in the preliminary proceedings as one of the accused and ordered his preventive detention. It also included General Alfredo Stroessner in the preliminary proceedings as one of the accused and ordered his preventive detention for the purpose of requesting his extradition (*infra* para. 61(111)).

61(98) On June 25, 1993, the Fifth Criminal Court of First Instance decided to change the preventive detention of Benito Guanes Serrano "into preventive custody, and he should remain in prison." It also issued a writ of attachment on his property.

61(99) On July 28, 1993, having instructed that Alfredo Stroessner Matiauda, "accused of the alleged crimes of homicide and others," be summoned by court order and the accused not having presented himself, the said court declared that he was "in contempt of court and willfully disobedient of court orders."

61(100) On November 12, 1993, the Fifth Criminal Court of First Instance revoked the order of prison against Benito Guanes Serrano and ordered his release.

61(101) In October 1995, the Attorney General's Office requested the Fifth Criminal Court of First Instance to order the preventive detention of Sabino Augusto Montanaro.

61(102) On October 9, 1996, the Court decided that the preliminary proceedings should be concluded and that the case should go to trial.

61(103) On May 19 and June 4, 1998, the complainant and the Attorney General's Office, respectively, submitted their brief with final arguments. During 1998 and 1999, Lucilo Benítez, Alberto Buenaventura Cantero, Juan Aniceto Ramírez, Camilo Almada Morel, Pastor Miliciades Coronel and Agustín Belotto Vouga presented their respective briefs with final arguments.

61(104) On July 2, 1998, the Fourth Criminal Court of First Instance ordered the capture of Eusebio Torres and on March 27, 2002, the Third Criminal Tribunal (*de Liquidación y Sentencia*) declared him "in contempt of court".

61(105) On September 1, 1999, the Fourth Criminal Court of First Instance found, *inter alia,* that "it is easy to conclude that, under the political police regime in force at the time of the facts, […] and taking into account his notorious and well-know position as the "fearsome" head of the Investigations Department at that time, Pastor Milciades Coronel can be classified as an instigator." And it decided, *inter alia*:

> To classify the criminal conduct of the accused, Pastor Milciades Coronel, under Article 30 [instigator] of the Penal Code in force, and of the accused, Alberto Buenaventura Cantero Cañete, Camilo Almada Morel, Nicolás Lucilo Benítez, Agustín Belotto Vouga and Juan Aniceto Martínez, under the provisions of Article 31 [complicity] of the Penal Code in force in accordance with Article 105(2) [the penalty for felonious homicide may be increased up to 25 years] and Article 67 [penalty structure when there are special attenuating circumstances] of the Penal Code in force.
>
> To convict […] Pastor Milciades Coronel […] to 25 (twenty-five) [years'] imprisonment, which he shall serve in his current place of imprisonment until November 22, 2014, the date on which he will have completed his punishment; and also the defendants, Alberto Buenaventura Cantero Cañete, Camilo Almada Morel, Nicolás Lucilo Benítez, Agustín Belotto Vouga and Juan Aniceto Martínez, to 12 (twelve) years and 6 (six) months' imprisonment each, which they shall serve in their current place of imprisonment until May 22, 2002. […]
>
> To declare the civil responsibility of the persons convicted, who are named above, for the acts perpetrated. […]

61(106) On September 20 and December 29, 1999, and on August 9, 2000, Alberto Buenaventura Cantero and Lucilo Benítez, Camilo Almada Morel, Juan Aniceto Martínez, and Pastor Milciades Coronel appealed the judgment and argued for its annulment, respectively. On October 25, 1999, Alberto Buenaventura Cantero desisted expressly from the remedies of appeal and annulment that had been filed and requested release on parole.

61(107) On July 20, 2000, the Criminal Chamber of the Supreme Court of Justice conceded the release on parole of Agustín Belotto Vouga.

61(108) On November 19, 2002, the Second Chamber of the Court of Criminal Appeal "called for the case file to take a decision."

61(109) On June 22, 2004, the First Chamber of the Court of Criminal Appeal accepted the discontinuance of the remedies of appeal filed on September 1, 1999, by the convicted prisoner, Lucilo Benítez, and by the complainant, Julio Darío Ramírez Villalba. It also declared that the criminal proceedings in relation to the convicted prisoner, Pastor Milciades Coronel, had extinguished "because he was deceased."

Actions taken for the extradition of Alfredo Stroessner Matiauda within the criminal proceedings in the case of the brothers Rodolfo and Benjamín Ramírez Villalba

61(110) On January 22, 1993, at the request of the Fourth Criminal Court of First Instance, the Paraguayan Ministry of Foreign Affairs sent it an authenticated copy of the extradition treaty between Paraguay and Brazil and indicated that the juridical and legal procedures with regard to Alfredo Stroessner in Brazil were being processed within the Ministry of Justice of that country, where the background material was kept in a "confidential file." It also advised that "the Brazilian Ministry of Foreign Affairs ha[d] received very little information in this regard, and limited itself to the decision of the Minister of Justice at the time […] granting political asylum to former President Stroessner" as of May 24, 1989. Lastly, it indicated that, according to information provided by the Paraguayan Embassy in Brazil, asylum had been granted for four years, which would expire in 1993.

61(111) On August 4, 1993, the Fourth Criminal Court of First Instance ordered the preventive detention for the purpose of extradition of Alfredo Stroessner, because there was "sufficient evidence of responsibility against the accused, […] since he had been informed in detail of the repressive operations carried out by the police and military forces."

61(112) On February 16, 2001, the complainant requested that, since it was considered that all the requirements needed to achieve the extradition of Alfredo Stroessner had been met, an official communication should be sent to Brazil with a letter rogatory requesting his extradition. This request was repeated on March 6 and May 29, 2001. The Attorney General's Office made the same request on March 23, 2001.

61(113) On March 7, 2001, the Third Criminal Tribunal (*de Liquidación y Sentencia*) asked the Ministry of Foreign Affairs to inform it of the legal situation of the accused, Alfredo Stroessner Matiauda, as regards his status as a political refugee in Brazil.

61(114) On June 5, 2001, the said Third Criminal Court, under Judge Carlos Escobar, decided to request the extradition of Alfredo Stroessner, as follows:

> That, having examined the documentation attached to the proceedings and as a result of the investigations, the Court decided to expand the corresponding preliminary proceedings by A.I. No. 67 of January 15, 1993, to verify the facts relating to abduction, illegal deprivation of liberty, abuse of authority, torture and double homicide attributed to ALFREDO STROESSNER MATIAUDA. It also issued provisional and precautionary

measures consisting in the preventive detention of the accused as well as preventive attachment in order to ensure that the defendant be made available to the court and the success of the procedure. […]

That […] according to A.I No. 2351 of November 1993, by which the Court, based on the current status of the case and the probative elements attached to the proceedings, the procedural assessment pursuant to the rules of the judge's sound criticism, and the provisions of our codes regarding form and content, proceeds to classify the crimes attributed to the accused, ALFREDO STORESSNER MATIAUDA, and finds that they are included in the provisions of arts. 274, 278, 334 and 337 of the previous Penal Code, in accordance with arts. 36(3) and 47 of the same Code; articles that define the illegal acts of ABDUCTION, ILLEGAL DEPRIVATION OF LIBERTY, ABUSE OF AUTHORITY, TORTURE and DOUBLE HOMICIDE, which are of an ordinary and common nature corresponding to the ORDINARY LAW AND JURISDICTION; the possible sanctions for these types of illegal acts defined as crimes in the said articles are in excess of one year's imprisonment and they have not extinguished.

That this Court, aware that the fugitive from justice, ALFREDO STROESSNER MATIAUDA, is on Brazilian territory, in official communication No. 35 addressed to the Ministry of Foreign Affairs on March 7, 2001,…requested the Ministry to inform the Court about the legal situation of the accused fugitive from justice, as regards his status as a political refugee in the Federative Republic of Brazil. […]

That, from the evidence, the guilt is presumed of the defendant, ALFREDO STROESSNER MATIAUDA, as mastermind of the criminal acts that cost the life of the brothers RODOLFO FELICIANO RAMÍREZ VILLALBA and BENJAMÍN DE JESÚS RAMÍREZ VILLALBA on September 21, 1976. The examination of the written communications between the defendants PASTOR MILCIADES CORONEL, BENITO GUANES SERRANO and ALFREDO STROESSNER, the latter as the person giving instructions, is also emphasized.

That, although in the instant case the accused fugitive from Paraguayan justice has not yet been detained in national territory or abroad, the legal mechanism established for this type of situation is EXTRADITION. Therefore it is necessary to examine whether the Paraguayan State, through this Court, is able to request the extradition and fulfill the requirements established in the treaty in force between our countries and the corresponding laws.

That, pursuant to the foregoing, the Court indicates, in particular, that extradition is an act of sovereignty, a pronouncement whereby the respective State, in countries that recognize this mechanism and through the Judiciary, complies with a duty or a moral obligation in order to cooperate with other nations in the task of suppressing crime, in compliance with the provisions of rules any relevant treaties that may have been signed, the provisions of its own laws or the principles of international law. However, such decisions do not include any kind of decision concerning exoneration or conviction because, when extradition is denied or granted, the individual is neither exonerated nor convicted, since extradition is not a punishment.

That, in view of the above, it is a very normal practice among nations to accede to extradition requests, which is what is known as conditional extradition, since it is granted under specific conditions; for example, that a person handed over will not receive the death penalty and will only be tried for the crime for which extradition has been granted. These conditions are frequently established by treaty or law. […]

That an extradition treaty was duly ratified and exchanged by the Governments of Brazil and Paraguay, and has been part of the law of both nations since 1925. Therefore, the said treaty governs on matters relating to extradition. […]

That, the criminal acts of which the defendant, ALFREDO STROESSNER MATIAUDA, is accused are ABDUCTION, ILLEGAL DEPRIVATION OF LIBERTY, ABUSE OF AUTHORITY, TORTURE and DOUBLE HOMICIDE, established and sanctioned by arts. 274, 278, 334 and 337 of the previous Penal Code, in accordance with arts. 36(3) and 47 of the same Code; illegal acts that are of a COMMON and EXTRADITABLE nature, in view of the penalties that would correspond to the accused should he be convicted after compliance with the guarantee of a trial prior to sentencing.

That abduction is condemned in Art. 7 of the Pact of San José, Costa Rica, while Arts. 1 and 3 of the Universal Declaration of Human Rights have proclaimed the liberty and equality of all human beings; ILLEGAL DEPRIVATION OF LIBERTY is mentioned in Arts. 7 to 9 of the 1789 Declaration of the Rights of Man, Arts. 5 and 7 of the Pact of San José, Costa Rica, Arts. 59 to 64 of the Constitution, and Art. 274 of the previous Penal Code, which established a sanction of three to six months' imprisonment; ILLEGAL DETENTION and ABUSE OF AUTHORITY in Art. 278 of the same Code, with the same sanction as that established in Art. 274, in addition to suspension of up to six months; TORTURE is condemned in Art. 5 of the Universal Declaration of Human Rights, Art. 5 of the Pact of San José, Costa Rica, and Art. 65 of the Constitution; in addition, there is an Inter-American Convention against Torture, Act 56/89, Arts. 3 to 5 of which establish the criminal responsibility of the authors of the crime of torture; HOMICIDE in Art. 4 of the Pact of San José, Costa Rica, and Art. 334 of the previous Penal Code, which established a sanction of six to twelve years' imprisonment; AGGRAVATED HOMICIDE in Art. 337 with a penalty of 15 to 25 years' imprisonment. In this regard, Art. 10 of the 1992 extradition treaty states: "extradition or provisional detention shall not be admissible: (1) when the maximum penalty applicable or applied is less than one year, including cases of attempted crimes and complicity; (2) when, for the same act, the individual whose extradition is requested, has been tried or has already been convicted or absolved in the requesting country; when the offense or penalty is before a proceedings or court of special jurisdiction, according to the law of the requesting country; (5) when the offense is of a military or political nature, against religion or publications. Nevertheless, alleging that the crime is for a political purpose or intention shall not prevent extradition if the act is an ordinary crime; however, the political purpose or intention shall not increase the penalty. […]

That, it should be emphasized that the criminal action has not prescribed or extinguished, that the person requested cannot be considered to be free of criminal responsibility, and that the Paraguayan Judiciary is able to grant broad assurances of the guarantees of due process of law to the person requested, allowing him full exercise of the right to defense, conditions which make it viable to request the defendant's extradition. […]

That, consequently, it is concluded that all the essential requirements for the viability of the extradition request have been fulfilled: existence of the extradition treaty, ratified and exchanged between the Republic of Paraguay and the Federative Republic of Brazil; court order for the detention and even for the imprisonment for the purpose of extradition of the accused, STROESSNER MATIAUDA; conduct of the accused classified as a crime, as proved during the proceedings; the illegal acts of which he is accused being of an ordinary nature and not prescribed, since the preliminary proceedings are being processed currently. […]

DECIDE[D]:

TO REQUEST THE EXTRADITION of the defendant fugitive from justice, ALFREDO STROESSNER MATIAUDA, of Paraguayan nationality, born on November 3, 1912, in Encarnación, married, of age, son of HUGO STROESSNER and HERIBERTA MATIAUDA, bearer of identity document No. V082094-T and card No. 0387H8-SPMAF/SR/DF, issued on June 8, 1993, who is the object of a court order for preventive detention and who resides actually in Brasilia, Federative Republic of Brazil. The supporting documents required by the extradition treaty in force between the Republic of Paraguay and the Federative Republic of Brazil are attached so that they may be forwarded to the Federal Supreme Court with competence in the jurisdiction and matter.

TO FORWARD to the Ministry of Foreign Affairs of the Republic of Paraguay the pertinent letter rogatory, through the Supreme Court of Justice, following translation into the official language of the requested country, in order to proceed to send the pertinent documents, by the diplomatic channel, to the Supreme Court of Justice of the Federative Republic of Brazil.

TO REGISTER, notify and transmit a copy to the SUPREME COURT OF JUSTICE.

The same day, this Criminal Court sent the letter rogatory to the Ministry of Foreign Affairs so that it could forward the pertinent documents to the Brazilian Federal Supreme Court of Justice and issued a letter rogatory to the Brazilian Federal

Supreme Court so that it would proceed to execute the extradition, requesting "that it be processed promptly."

61(115) On September 7, 2001, the complainant requested that, in view of the decision of June 5, 2001, the letter rogatory for the extradition of Alfredo Stroessner should be sent, and reiterated this on November 16, 2001. On May 7, 2002, the complainant asked that an official letter be sent to the Paraguayan Ministry of Foreign Affairs requesting information on whether it had sent the letter rogatory on extradition to the Brazilian authorities and, if so, on the status of the respective process in Brazil. This request was repeated on August 30, 2002, in the same terms.

61(116) On November 29, 2001, the said Criminal Court prepared an official communication addressed to the Brazilian Federal Supreme Court, and sent it to the President of the Paraguayan Supreme Court of Justice so that the latter could forward it to the Brazilian authorities, in accordance with the norms of the 1992 Criminal Law Extradition Treaty and the Brazilian Act No. 6815 of August 19, 1980.

61(117) On September 9, 2002, the Third Criminal Court sent an official communication to the Paraguayan Ministry of Foreign Affairs requesting information on whether the letter rogatory concerning the extradition of Alfredo Stroessner requested of Brazil had been sent to the Brazilian Judiciary and, if so, the current status of the extradition procedure.

61(118) On June 22, 2004, the Court of Criminal Appeal in First Instance declared that the remedies of appeal and annulment filed by Stroessner's defense lawyer against the ruling of the Criminal Court rejecting the request to accept his power of attorney as a defense counsel of the accused had been "granted improperly," considering that "a representative of a defendant in contempt of court and willfully disobedient can hardly request judicial measures or avail himself of the benefits granted by the law if the defendant does not comply with the requirement of making himself available to the Court," which "should not have granted the recourses that were filed."

61(119) There is no evidence in the documentation provided to the Court of whether the letters rogatory concerning extradition were really forwarded to the Brazilian authorities or, if so, of the status of these procedures in Brazil. However, in its answer to the application, the State declared that, with regard to "Alfredo Stroessner, beneficiary of political asylum in Brazil, an extradition request is being processed by the courts of the Federative Republic of Brazil."

61(120) At the time this judgment is delivered, six of the defendants have been detained and convicted. Of these, Pastor Milciades Coronel is deceased. The judgment is final with regard to Alberto Buenaventura Cantero, who desisted from the appeal that he had filed and requested parole, and Agustín Belotto Vouga, who had been granted parole. The defense lawyers of Lucilo Benítez, Camilo Almada Morel and Juan Aniceto Martínez presented remedies of appeal and annulment against the judgment convicting them, and these are pending before the First Chamber of the Criminal Court of Appeal, which has not delivered judgment. The preliminary investigation continues open with regard to Alfredo Stroessner Matiauda, declared "in contempt of court and willfully disobedient," Sabino Augusto Montanaro, who was granted asylum in Honduras and whose arrest warrant has not been executed, and Eusebio Torres, declared "in contempt of court." It is public knowledge

that the defendant, Alfredo Stroessner Matiauda, died in Brasilia, Brazil, on August 16, 2006.

Facts subsequent to 1989

61(121) On December 22, 1992, a series of documents were revealed that would subsequently constitute the Documentation Center for the Defense of Human Rights, better known as the "Terror Files"; this is one of the most important and irrefutable sources of evidence of the grave abuses committed during the dictatorship of General Stroessner. The documents provide an overview of the Stroessner regime and contain abundant evidence of human rights violations, including arbitrary detention, torture, extrajudicial executions and disappearances, as well as the repressive international cooperation.[43]

61(122) On June 20, 1992, a new Paraguayan Constitution was promulgated, which derogated the Constitution of August 25, 1967, and its amendment of March 25, 1977.[44]

61(123) On September 12, 1996, the State promulgated Act No. 838/96 "providing compensation for victims of human rights violations during the 1954 to 1989 dictatorship; namely, forced disappearances, extrajudicial or summary executions, torture and arbitrary detention.[45]

61(124) On October 6, 2003, the State adopted Act No. 2225, "creating the Truth and Justice Commission" "to investigate facts that constitute or could constitute human rights violations committed by State or para-State agents from May 1954 until the promulgation of the law," especially: (a) forced disappearance; (b) extrajudicial execution; (c) torture and other severe injuries; (d) exile; and (e) other grave human rights violations.[46]

Representation of the alleged victims' next of kin before the domestic jurisdiction and the Inter-American system for the protection of human rights

61(125) The alleged victims' next of kin have taken many measures before the national authorities to determine the whereabouts of their loved ones, and within the framework of the criminal proceedings. They have been represented by several lawyers, and assisted by the *Comité de Iglesias Para Ayudas de Emergencia* (CIPAE) and by Global Rights in the domestic jurisdiction and before the inter-American system for the protection of human rights.

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[43] *Cf.* sworn statement made by the expert witness Alfredo Boccia Paz, *supra* note 12; *Es mi informe, supra* note 11, pp. 25-30, and the book *Testimonio contra el Olvido; Reseña de la Infamia y el Terror*, *supra* note 11.

[44] *Cf.* Constitution of the Republic of Paraguay.

[45] *Cf.* Act No. 838 "providing compensation for victims of human rights violations during the dictatorship of 1954 to 1989" of September 12, 1996 (file of attachments to the application, attachment 5, folios 6130, 6131 and 6133).

[46] *Cf.* article 3 of Act 2225/03, "creating the Truth and Justice Commission" of October 6, 2003 (file of attachments to the application, attachment 5, folios 6133 and 6136).

IX
THE STATE'S INTERNATIONAL RESPONSIBILITY IN THE CONTEXT OF THE INSTANT CASE

62. This case has unique historic importance: the facts occurred in the context of the systematic practice of arbitrary detention, torture, execution and disappearance perpetrated by the intelligence and security forces of the dictatorship of Alfredo Stroessner, under "Operation Condor," whose characteristics and dynamics have been described in the proven facts (*supra* paras. 61(1) to 61(14)). In other words, the grave acts took place in the context of the flagrant, massive and systematic repression to which the population was subjected on an inter-State scale, because State security agencies were let loose against the people at a transborder level in a coordinated manner by the dictatorial Governments concerned.

63. The Court deems it appropriate to include this chapter because it finds that the context in which the facts took place permeates and conditions the State's international responsibility in relation to its obligation to respect and safeguard the rights embodied in Articles 4, 5, 7, 8 and 25 of the Convention, with regard to both the aspects acknowledged by the State and those that will be determined in the following chapters on merits and reparations.

64. As indicated (*supra* paras. 61(5), 61(6) and 61(9)), during the 1970s, the fact that power in the region was held by a majority of dictatorial regimes, which shared the "national security doctrine" as their ideological basis, allowed the repression of individuals considered to be "subversive elements" to acquire a transborder nature through "Operation Condor." This was the code name given to the "alliance of security forces and intelligence services" of the Southern Cone dictatorships. In Paraguay, the Department of Military Intelligence was responsible for coordinating all matters relating to "Operation Condor" and the Police Investigations Department was in charge of operational functions.

65. In this regard, the national courts of Argentina, Chile and Spain, among others, that have opened criminal cases against those involved in "Operation Condor" have described its activities in similar terms. For example, it has been categorized as an "illegal relationship established between the Governments and intelligence services" of the different countries, distinguished from other mechanisms of political persecution implemented on the continent during the 1970s and 1980s, because of the element of cooperation that existed among them, which allowed them "to develop military and intelligence operations outside their own territorial jurisdiction."[47] In addition, the purpose of this "criminal organization, […] supported by the [State's] institutional structures," was "to achieve a series of political and economic goals that would reaffirm the bases of the conspiracy and terrorize the population."[48] In this regard, "Operation Condor" has been considered "a sort of 'international terror mechanism' [or a] terrorist criminal action, organized and

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[47] *Cf.* Court I of the Federal Chamber, Ruling on Plan Condor of May 23, 2002, Case No. 33714 "Videla, Jorge R. impeachment", Court 7 - Secretariat 14, Buenos Aires, Argentina, Having seen and considering paragraph 11, para. 2.

[48] *Cf.* Central Trial Court No. 5, National Court of Spain, court order expanding the impeachment of A. Pinochet Ugarte and ratifying the preventive detention of the accused, as well as the international arrest warrants dated October 16 and 18, 1998. Preliminary proceedings 19/97-J Separate File III. Chile-Operation Condor, April 30, 1999, Madrid, p. 2.

coordinated inside and outside the country."[49] It has even been said that this "international military and political criminal organization" was directed "against the constitutional order of each member State, because it coordinated actions tending to suppress and/or maintain the suppression – on the territory of each of them – of the representative institutions; and, to this end, it had allowed them to provide reciprocal support to each other for the continuity of the usurping regimes […] maintained by the power exercised by the senior military, civilian and police authorities of the member countries."[50]

66. The Court considers that the preparation and execution of the detention and subsequent torture and disappearance of the victims could not have been perpetrated without the superior orders of the chiefs of police and intelligence and the Head of State himself at the time, or without the collaboration, acquiescence and tolerance revealed by direct actions carried out in a coordinated and interrelated manner by members of the police forces, intelligence services and even diplomatic services of the States concerned. State agents not only failed abysmally to fulfill their obligations to respect and protect the rights of the alleged victims, embodied in Article 1(1) of the American Convention, but used their official position and resources granted by the State to commit the violations. The institutions, mechanisms and powers of a State should function as a guarantee of protection against the criminal activities of its agents. However, it has been verified that the State's power was orchestrated as a means and resource to violate rights that should have been respected and safeguarded, and actions were implemented using the inter-State collaboration described above. In other words, the State became the principal factor in the grave crimes committed, constituting a clear situation of "State terrorism."

67. In Paraguay, this situation has been recognized by the convergence of decisions adopted by the three branches of the State: the Executive, by acknowledging the State's international responsibility in this international jurisdiction and, previously, its Legislature and Judiciary.

68. Thus, on September 12, 1996, the State Legislature promulgated Act No. 838/96 to compensate victims of the human rights violations arising from political or ideological issues that occurred during the dictatorship.[51] Likewise, on October 6, 2003, the State adopted Act No. 2225, "establishing the Truth and Justice Commission" "to investigate facts that constitute or could constitute human rights violations committed by State or para-State agents between May 1954 and until the promulgation of the Act and to recommend the adoption of measures to avoid their

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[49] *Cf.* Central Trial Court No. 5, National Court of Spain, trial of Miguel Angel Cavallo. Preliminary proceedings 19/97. Crime of terrorism and genocide, September 1, 2000, Madrid, pp. 17, 18 and 146.

[50] *Cf.* Arrest warrant for the extradition of the former President of Bolivia Hugo Banzer, Secretariat No. 14, headed by Dr. Oscar Isidro Aguirre attached to the National Court for Federal Criminal and Correctional Affairs No. 7, Argentina, December 26, 2001, Case No. 13.445/1999, "Videla Jorge Rafael *et al.* Illegal Deprivation of Personal Liberty," considerations paragraphs 11 and 10, point 10, subparagraph (h) of para. 3.

[51] Article 2 of Act No. 838 establishes that: "the human rights violations arising from political or ideological questions, that shall be compensated by this Act are as follows: (a) forced disappearance of persons; (b) summary or extrajudicial execution; (c) torture with serious and manifest physical and mental aftereffects; and (d) illegitimate deprivation of liberty without an order from a competent authority or owing to a trial or conviction under Acts No. 294 of October 17, 1955, and No. 209 of September 18, 1970, for more than one year".

repetition, to consolidate the social and democratic rule of law with full exercise of human rights, and to promote a culture of peace, solidarity and concord among Paraguayans."[52] These laws reflect a willingness to investigate and repair certain harmful consequences of what the State acknowledges were grave human rights violations perpetrated systematically and extensively. In this regard, it should be underscored that the State has abstained from enacting amnesty laws and that its 1992 Constitution recognizes the non-applicability of the prescription of crimes against humanity.

69. Furthermore, within the Judiciary, some excerpts from the judgment of April 17, 2000, of the First Criminal Tribunal (*de Liquidación y Sentencia*) delivered in the criminal proceedings opened in relation to the case of Carlos José Mancuello (*supra* para. 61(88)), give an idea of the scope of the participation and responsibility of senior members of the Government at the time in the perpetration of the crimes attributed to some of the accused:

> […] The statements made to this Court by the witnesses in the proceedings, who had received unofficial reports that Carlos Mancuello Bareiro, Amilcar Oviedo and the brothers Ramírez Villalba had been murdered, attributing the order to President Stroessner, and its execution to officials of the Investigations Department.
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> [O]n that occasion, based on a direct order from PASTOR CORONEL, the alleged escape of the said Investigations Department detainees was recorded in the logbook […], when, in reality, the events took place mainly as indicated above. […] This was a common practice, used to conceal the disappearances of detainees who were executed, an action that, among the prisoners, was known as the '*ley de fuga*' [the escape law]'.
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> In this context, the Court considers proved the facts that, on November 25, 1974, Carlos José Mancuello Bareiro was illegally deprived of his liberty, with abuse of authority, by police officials, and then transferred to a police station, specifically the Asunción Police Investigations Department, all of this without any order from a competent judicial authority; once there, he was subjected to physical and psychological torture, subsequently disappearing for an extended period without anyone being able to provide any reliable information on his situation or his whereabouts since September 21, 1976, and having been detained for approximately one year and ten months as a political prisoner in an isolated cell which he shared with Amilcar Oviedo and the brothers Ramírez Villalba, Rodolfo and Benjamín, where they were given "special treatment," handcuffed and shackled during the day, and only free when they could take a bath in the early morning, and at the "sole and exclusive" disposal of the designs of President Alfredo Stroessner and the accused, Pastor Miliciades Coronel. […]
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> *"Alfredo Stroessner came to power in 1954 and, immediately, the following year, got the representatives to draft Act No. 294/55 for the "Defense of democracy," which should be understood as the "Stroessner democracy"; in other words, his model of government, where any attempt "to supplant totally or partially the republican democratic organization of the nation by the communist system or any other totalitarian regime shall be considered a crime" (art.1).*
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> *As can be seen, the faces of the "enemies" of society at that time were others. The Cold War between the West and the Soviet bloc, which emerged after the Second World War, also came to South America through the strategies of the "national security doctrine" that originated in the United States Military Academies (in Panama and Puerto Rico) and, subsidiarily, in the Brazilian "Escola de Guerra" from which (coincidentally) Stroessner had graduated.*

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[52] The Truth Commission would be responsible for investigating, in particular: (a) forced disappearances; (b) extrajudicial executions; (c) torture and other serious injuries; (d) exile, and (e) other grave human rights violations. *Cf.* article 3 of Act 2225/03, "Creating the Truth and Justice Commission" of October 6, 2003 (file of attachments to the application, attachment 5, folios 6133 and 6136).

Years later, Executive Decree Law No. 238/60, reforming Chapter III of the special part of the Penal Code, which entered into force with some modifications introduced by Parliament, greatly increased the penalties for offenses against the State's internal security: rebellion, sedition, mutiny and riot; establishing prison sentences for these offenses.

Thus, the "enemy" was no longer a subversive or a communist, but any political opponent of the Stroessner democracy.

*Finally, in 1970, Act No. 290/70 on the "Defense of public peace and individual liberty" was enacted, legislating, above all, against offenses without victims, involving objective legal status (*personalidad objetiva*), dangerousness, or lifestyle, and other assumptions that, in particular, affected the stability of the hierarchic structure of the State and its institutions.*

These laws form part of the package of penal laws that governed the conduct of the Paraguayans during the 35-year military regime. The State's penal policies determined the differences between: criminal / anti-social / subversive / communist, and this extended also to the criminalization of public liberties, such as freedom of expression, of association, of petition, to strike, of movement, and others, censuring freedom of the press and decriminalizing certain executive activities of governmental agencies that operated with privileged justifications." ("Política de la verdad," José Ignacio González Macchi, in *"Casas de la Violencia,"* p. 38, Asunción, Paraguay, 1996).

The opinions described up to this point do not let this court forget the irrefutable reality of the era of the dictatorial regimes in Latin America, which caused great hardship in our country.

A notorious disregard by the public authorities of non-derogable rights inherent to the human being, through abductions, torture, disappearances and executions, violating to excess an endless number of fundamental human rights that were the subject of international efforts designed to ensure their recognition and defense at the time.

In this regard, in the instant case, it is obvious that the freedom of movement, thought and expression of those who sympathized with different political ideologies from those of the people in power was violated completely. The principles behind these ideologies allegedly threatened the system of representative democratic government based on the rule of law embodied – although only formally – in the Constitutions of 1870 and 1967. While, despite this, the dictatorship operated with harassment, aggression and illegal detentions, and other crimes, dishonoring and trampling on the dignity of the principles promulgated in the "UNIVERSAL DECLARATION OF HUMAN RIGHTS" and the "AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN."

[…]

The common plan of action, in this specific case, consisted in finding out, investigating or obtaining as much information as possible on the "subversive" operations and activities of the members of the Popular Revolutionary Army [ERP]. In this regard, tacitly or expressly, the corresponding police officials were authorized to search homes, detain and interrogate suspects and, when necessary, torture them until they extracted a "confession," and even to eliminate those "subversive elements who would not capitulate." Specifically, with regard to CARLOS JOSÉ MANCUELLO BAREIRO, who allegedly, together with AMILCAR OVIEDO and the brothers RODOLFO and BENJAMIN RAMIREZ VILLALBA, was directly responsible for making an attempt on the life of the President of the Republic, members of the Cabinet and Congress, with the support of ERP through contacts made in the city of La Plata, Argentina, with Dr. Agustín Goiburú, seeking to end the Government in power at the time and take control of the country. The plan consisted in locating, detaining, interrogating, and torturing him, if necessary, and trying to subjugate him.[53]

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[53] *Cf.* judgment of April 17, 2000, delivered by the No. 1 Criminal Tribunal *(de Liquidación and Sentencia)* (file of attachments to the application, attachment 2(1), tome I, folios 112, 113 and 119).

70. Furthermore, the judicial decision of December 7, 2000, which ordered the preventive detention of the accused, Alfredo Stroessner Matiauda and Sabino Augusto Montanaro, for the subsequent purpose of requesting their extradition (*supra* para. 61(75)), indicates:

> […] There is firm evidence of responsibility linking the defendants Alfredo Stroessner Matiauda and Sabino Augusto Montanaro […] to the abduction and disappearance of Dr. Agustín Goiburú. In addition, it should be recalled that, at the time of the facts, there was a dictatorship in Paraguay, as indicated in Act No. 838/96, which states that, when Alfredo Stroessner Matiauda was in power there was real State terrorism where the fundamental rights of the human being were violated. […]
>
> Terrorism organized by the State itself is a form of organized crime that has occurred in numerous countries and, in particular, in Latin America, where the police forces, diplomatic service, Government officials and military officials in Government have coordinated and carried out "cleansing tasks" and "special death flights." This type of criminal organization has even crossed frontiers, with agents in border countries, as occurred in this case, where the Paraguayan Consul, Francisco Ortiz Téllez, appointed by decree signed by the dictator Alfredo Stroessner, acted as a monitoring agent and informer in the border country with and among those who planned and executed countless illegal acts, ranging from murder to abductions and torture. "Operation Condor" was the code name of this international criminal organization.[54]

71. Also, the judicial decision issued on August 4, 1993, by the Fourth Criminal Court of First Instance ordered the preventive detention for the purpose of extradition of Alfredo Stroessner, because "there [was] sufficient evidence of responsibility against the accused […] taking into account the circumstances that he had been informed in detailed about the repressive operations carried out by police and military forces." The court also found:

> […] That the almost complete evidence of the existence of a criminal act that merits imprisonment has been corroborated in the proceedings. […] They document the participation of ESMAGENFA in the alleged repressive operations carried out in the 1970s against political activists and leaders opposed to the Government in power at the time, as well as the reports periodically sent to the then President of the Republic and Commander in Chief of the Armed Forces, describing the operations of pursuit, capture, arrest and detention of individuals, without any judicial order, in offices of the Asunción Police Investigations Department.
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> That, in relation to the sufficient evidence of responsibility arising from the conduct of Alfredo Stroessner Matiauda with regard to the investigation underway in these preliminary criminal proceedings, we should mention that a great deal of evidence has been provided against him, showing the control exercised by the Government over the activities of individuals it considered dangerous. There is information on the strict control of the different activities of these individuals. The accused, Alfredo Stroessner, personally exercised harsh repression and firm control of the opposing trade unions and students in their homes or their places of work, according to memorandums attached to the proceedings. From the proceedings, also, it is evident that the Head of Investigations informed the President of the Republic constantly about all the activities that were considered subversive in all social spheres of the country. During the perpetration of the alleged illegal act investigated in this case – in 1976 – the repressive mechanism is documented and also the absence of the constitutional rights to liberty and freedom of expression for the population in general, and peasant farmers, workers and students, owing to the actions of the Asunción Police through the Investigations Department and the Army, through ESMAGENFA. In this regard, there is sufficient evidence of responsibility against the accused STROESSNER MATIAUDA based on the

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[54] *Cf.* ruling of December 7, 2000, delivered b the No. 3 Criminal Tribunal (de *Liquidación and Sentencia) (*file of attachments to the application, attachment 1(2), tome I, folio 82 and attachment 1(3), tome III, folio 2197).

> fact that he was informed in detail of the repressive operations carried out by the military and police forces. […][55]

72. The Court observes that, during the 1970s, in absolute contradiction to the principal objects and purposes of the organization of the international community established universally in the Charter of the United Nations,[56] and the regional community in the Charter of the Organization of American States[57] and the American Convention itself, the intelligence services of several countries of the Southern Cone of the Americas established a criminal inter-State organization with a complex assemblage, the scope of which is still being revealed today; in other words, there was a systematic practice of "State terrorism" at an inter-State level.

73. This operation also benefited from the general situation of impunity of the grave human rights violations that existed at the time, promoted and tolerated by the absence of judicial guarantees and the ineffectiveness of the judicial institutions to deal with or contain the systematic human rights violations. This is closely related to the obligation to investigate the cases of extrajudicial executions, forced disappearances and other grave human rights violations (*infra* paras. 80 to 85 and 111 to 122).

X
ARTICLES 4, 5 AND 7 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHTS TO LIFE, HUMANE TREATMENT, AND PERSONAL LIBERTY)

The Commission's arguments[58]

74. In relation to Article 5 of the Convention, the Commission alleged that the forced disappearances caused suffering and anguish to the victims' next of kin, in addition to a feeling of insecurity, frustration and powerlessness faced with the failure of the public authorities to investigate the facts. The violation of the physical and moral integrity of the next of kin is a direct consequence of the forced disappearance. The victims' next of kin have suffered owing to the lack of

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[55] *Cf.* judicial decision of August 4, 1993, delivered by the Fifth Criminal Trial Court (file of attachments to the application, attachment 3(3), tome IV, folios 4530 and 4531).

[56] The "peoples of the United Nations resolved […] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small […] to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." (Preamble)

[57] "The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." (Article 1)

[58] Based on the State's acknowledgement, this Court will not set forth the arguments of the Inter-American Commission concerning the violation of Articles 4, 5 and 7 of the Convention, to the detriment of Agustín Goiburú Giménez, Carlos Mancuello Bareiro and Rodolfo and Benjamín Ramírez Villalba, which are described in the chapter "Introduction of the case" and are based on facts that have been acknowledged. For this reason, it will only record the arguments concerning the alleged violation of Article 5 of the Convention, regarding the next of kin of the alleged victims, because the State did not acquiesce to this claim.

information concerning the whereabouts of their loved ones and have taken measures to obtain justice, achieve the punishment of those responsible, and for Paraguayan society to know the truth of what happened. In addition, the Commission advised that the representatives had forwarded information about five nephews and nieces of the Ramírez Villalba brothers, children of Julio Darío Ramírez Villalba, and requested the Court to consider them as beneficiaries should their status as an injured party be proved.

The State's arguments

75. As indicated (*supra* para. 54), the State did not acquiesce to the claims of the Commission in relation to the violation of Article 5 of the Convention, to the detriment of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba.

The Court's findings

76. Article 4(1) of the Convention stipulates that:

> Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

77. Article 5(1) and 5(2) of the Convention establishes:

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
>
> 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated regarding for the inherent dignity of the human person.

78. Article 7 of the Convention stipulates:

> 1. Every person has the right to personal liberty and security.
>
> 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto.
>
> 3. No one shall be subject to arbitrary arrest or imprisonment.
>
> 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
>
> 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
>
> 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

> 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support. […]

79. Without detriment to the preceding findings concerning the State's acquiescence to the violation of Articles 4, 5 and 7 of the Convention, owing to the grave circumstances and the context in which the facts took place (*supra* paras. 46 to 49), the Court finds it pertinent to examine and clarify certain aspects of these violations. Accordingly, the Court will examine: (a) the recognition of the continuing nature of forced disappearance of persons; (b) the State's increased international responsibility because the facts occurred within the framework of "Operation Condor" and due to the failure to comply with the obligation to investigate them effectively; and (c) the alleged violation of the right to humane treatment of the next of kin of the alleged victims.

a) Recognition of the continuing or permanent nature of the forced disappearance of persons

80. As indicated above (*supra* paras. 41, 48 and 49), the State recognized the Court's competence "to hear the instant case," because it had ratified the Convention and accepted the compulsory jurisdiction of the Court. But, over and above the procedural issues and the formal competence of the Court, when acquiescing, the State did not merely consider that the facts were violations of the rights to life, personal liberty and humane treatment, but expressly classified them as forced disappearance of persons of a continuing nature. This is clear from the terms of its acquiescence to the violation of Articles 4, 5 and 7 of the Convention to the detriment of the victims, owing to their "forced disappearance up until this time," as well as the reference made by the State to the Court's competence in this case, "under the provisions of Article XIII of the Inter-American Convention on Forced Disappearance of Persons,"[59] as well as Article III thereof, which establishes that this offense "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined."

81. The Court appreciates the State's good faith in submitting its acquiescence. In addition to helping define its own historical memory, the State contributes thereby to strengthening a perception of the international community and, in particular, the inter-American system, that recognizes the gravity and the continuing or permanent and autonomous nature of the crime of forced disappearance of persons. The need to deal integrally with forced disappearance as a complex form of human rights violation leads the Court to examine Articles 4, 5 and 7 of the Convention, in relation to Article 1(1) thereof, together in this chapter.

82. In this regard, in its constant case law on cases of forced disappearance of persons, the Court has reiterated that this constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the

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[59] This article establishes that "[f]or the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights, and to the Statutes and Rules of Procedure of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, including the provisions on precautionary measures."

disappearance forms part of a systematic pattern or practice applied or tolerated by the State. In brief, it is a crime against humanity involving a gross rejection of the essential principles on which the inter-American system is based.[60] Although the international community adopted the first declaration and the first treaty using the term forced disappearance of persons only recently in 1992 and 1994, respectively, already in the 1970s, the issue as such was examined in international human rights law and was developed within the framework of the United Nations system as of the 1980s.[61] The inter-American regional system had frequently used this term to refer to this series of acts and violations as a crime against humanity.[62] It is even described as such by Article 7(1)(i) of the 1998 Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed against any civilian population.[63] This description of the offense in reference has been reiterated in the text of Articles 5 and 8(1)(b) of the United Nations International Convention for the Protection of All Persons from Forced disappearance, adopted by the recently created United Nations Human Rights Council in June 2006.[64]

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60 *Cf. Case of Gómez Palomino, supra* note 5, para. 92; *Case of the Serrano Cruz Sisters. Preliminary Objections.* Judgment of November 23, 2004. Series C No. 118, para. 100 to 106; *Case of Molina Theissen. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004, Series C No. 108, para. 41, and *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 142.

61 "The establishment of the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, by Resolution 20 (XXXVI) of February 29, 1980, is a clear demonstration of general censure and repudiation of the practice of disappearances, which had already received world attention by the General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the Special Rapporteurs or representatives of the Commission on Human Rights show concern that the practice of disappearances be stopped, that the victims reappear, and that those responsible be punished (*Velásquez Rodríguez case*. Judgment of July 29, 1988. Series C No. 4, para. 151. Likewise, *cf. Godínez Cruz case, supra* note 60, para. 159, and *Fairén Garbi and Solís Corrales case*. Judgment of March 15, 1989. Series C No. 6, para. 146). The following resolutions of the United Nations General Assembly should also be cited: Resolution 3450 (XXX) of December 9, 1975, thirtieth session, on the question of missing persons in Cyprus as result of the armed conflict; Resolution 32/128 of December 16, 1977, thirty-second session, proposing the establishment of a body to investigate the disappearances in Cyprus "impartially, effectively and speedily," and Resolution 33/173 of December 20, 1978, thirty-third session, entitled "Disappeared Persons," in which the General Assembly expressed its deep concern owing to "reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations," as well as its concern about "reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons," and indicating that there was a "danger to the life, liberty and physical security of such persons arising from the persistent failure of these authorities or organizations to acknowledge that such persons are held in custody or otherwise to account for them."

62 *Cf.* Resolution AG/RES. 666 (XIII-0/83) of November 18, 1983, and Resolution AG/RES. 742 (XIV-0/84) of November 17, 1984, of the General Assembly of the Organization of American States. Also, *cf.* Inter-American Commission on Human Rights. Annual Report 1983-1984. Chapter IV, paras. 8, 9 and 12 and Chapter V, I.3, OEA/Ser.L/V/II.63 doc. 10 of September 28, 1984; Annual Report 1986-1987. Chapter V.II, OEA/Ser.L/V/II.71 Doc. 9 rev. 1 of September 22, 1987; Annual Report 1987-1988. Chapter IV, OEA/Ser.L/V/II.74 Doc. 10 rev. 1 of September 16, 1988; Annual Report 1990-1991. Chapter V, OEA/Ser.L/V/II.79, Doc. 12 Rev. 1 of February 22, 1991, and Annual Report 1991. Chapter IV, OEA/Ser.L/V/II.81 Doc. 6 Rev. 1 of February 14, 1992.

63 *Cf.* Rome Statute of the International Criminal Court adopted on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an international criminal court, A/CONF.183/9.

64 *Cf.* United Nations Human Rights Council. International Convention for the Protection of all Persons from Forced disappearance. First session, agenda item 4, A/HRC/1/L.2, June 22, 2006.

83. The need to consider integrally the offense of forced disappearance of an autonomous, continuing or permanent nature, composed of multiple elements with their complex interrelationships, and related criminal acts, can be deduced not only from the its definition in the abovementioned Article III of the Inter-American Convention on Forced Disappearance of Persons, the *travaux préparatoires* for this instrument,[65] its preamble and provisions, but also from Article 17(1) of the 1992 United Nations Declaration on the Protection of all Persons from Forced disappearance, which even adds one further element, related to the obligation to investigate, by indicating that this must be considered "a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts have not been clarified." International case law also reflects this understanding,[66] as do Articles 4 and 8(1)(b) of the abovementioned United Nations international convention on this matter.

84. In brief, the Court finds that, as may be deduced from the preamble to the aforesaid Inter-American Convention,[67] faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*.

85. To sum up, the above findings on the offense of forced disappearance of persons respond to the need to prevent and protect against this type of act. Thus, although classified as violations of the right to life, humane treatment and personal liberty, the fact that this judgment deals with the specifics of the instant case as a series of factors that compose the forced disappearance of victims is in keeping with the continuing or permanent nature of this phenomenon and the need to consider the context in which the violations occurred, examine their effects over time and consider their consequences as a whole.

(b) The State's international responsibility increased because the facts occurred within the framework of "Operation Condor" and due to failure to comply with the obligation to investigate them effectively

86. As established in the section on proven facts (*supra* paras. 61(15) to 61(50)), the surveillance of Dr. Agustín Goiburú and his family continued after he abandoned Paraguay in 1959 and went into exile in Argentina. Several documents discovered in

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65 *Cf.* Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent because it is committed permanently, rather than instantaneously, and it continues while the person remains disappeared" (OEA/CP-CAJP, Report of the President of the Working Group responsible for examine the draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).

66 *Cf. European Court of Human Rights*, *Cyprus v. Turkey*, *judgment of 10 May 2001,* Application No. 25781/94, paras. 136, 150 and 158; United Nations Human Rights Committee, *Ivan Somers v. Hungary*, Communication No. 566/1993, 57th session, CCPR/C/57/D/566/1993 (1996), July 23, 1996, para. 6.3; *E. and A.K. v. Hungary*, Communication No. 520/1992, 50th session, CCPR/C/50/D/520/1992 (1994), May 5 1994, para. 6.4, and *Solorzano v. Venezuela*, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983, March 26, 1986, para. 5.6.

67 Considering that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights. (Inter-American Convention on Forced Disappearance of Persons, preamble).

the "Terror Files" show clearly that the most senior Paraguayan authorities were aware of the actions taken to abduct him. After he had been abducted in Entre Ríos, Argentina, Dr. Goiburú was deprived of his liberty in an Air Force base in that country; from there he was taken by aircraft to Formosa and handed over to the Paraguayan authorities in Puerto Falcón, from where he was delivered to the Investigations Department. The detentions of Carlos José Mancuello Bareiro and Benjamín Ramírez Villalba were carried out by police from the Paraguayan Investigations Department and by Argentine police. Before they were disappeared, the victims were subjected to severe detention conditions, intense interrogation and brutal torture, which included the application of lashes with the so-called "*teyuruguay*" and the procedure known as "*pileteada*" [submersion in a tank of water].

87. The illegal and arbitrary detention or abduction, torture and forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Rodolfo and Benjamín Ramírez Villalba was the result of a police intelligence operation, planned and executed undercover by members of the Paraguayan Police, with the knowledge of and ordered by the most senior authorities of General Stroessner's Government and, at least in the prior phases of the planning of the detentions or abductions, in close collaboration with Argentine authorities. This is consistent with the *modus operandi* of the systematic practice of illegal detentions, torture and forced disappearances verified at the time of the facts within the framework of "Operation Condor" (*supra* paras. 61(3) to 61(14) and 62 to 72).

88. It has also been verified that, at the time, a situation of general impunity of the grave human rights violations reigned (*supra* paras. 61(2) to 61(4) and 73), which conditioned the protection of the rights in question. In this regard, the Court has understood that the general obligation to ensure the human rights embodied in the Convention, contained in Article 1(1) thereof, entails the obligation to investigate cases of violations of the substantive right that must be protected and safeguarded. Thus, in cases of extrajudicial executions, forced disappearances and other grave human rights violations, the Court has considered that the realization of a prompt, serious, impartial and effective investigation *ex officio*, is a fundamental element and a condition for the protection of certain rights that are affected or annulled by these situations, such as the right to personal liberty, humane treatment and life.[68]

89. It was only after 1989, when Stroessner's dictatorial regime fell, that the investigations into the facts of this case started. Nevertheless, the conditions in a country, however difficult, do not release a State Party to the American Convention from its treaty-based obligations.[69] Moreover, forced disappearance involves the disregard of the obligation to organize the State apparatus to safeguard the rights recognized in the Convention and reproduces the conditions of impunity so that this

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[68] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 60, paras. 63-66; *Case of the Ituango Massacres, supra* note 1, paras. 127-131; *Case of the Sawhoyamaxa Indigenous Community* . Judgment of March 29, 2006. Series C No. 146, paras. 150-154, and *Case of the Pueblo Bello Massacre, supra* note 5, paras. 143 to 146.

[69] *Cf. Case of the Ituango Massacres, supra* note 1, para. 300; *Case of the Pueblo Bello Massacre, supra* note 5, para. 238, and *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, para. 170.

type of act is repeated;[70] hence the importance that the State adopt all necessary measures to avoid such acts, investigate and punish those responsible and, also, inform the next of kin about the whereabouts of the disappeared and, if applicable, compensate them.[71]

90. In this case, the lack of an investigation into this type of act constituted a determining factor in the systematic practice of human rights violations and contributed to the impunity of those responsible. Although the assessment of the obligation to protect the rights to life, humane treatment and personal liberty by means of a serious, complete and effective investigation into the facts is made in the next chapter of this judgment in light of the provisions of Articles 8 and 25 of the American Convention, it is relevant to emphasize here aspects of the obligation to safeguard these rights, other than the way in which they should be investigated.

91. As it has been established (*supra* paras. 61(51) to 61(64), 61(81) to 61(90), 61(92) to 61(109)), at the domestic level, the criminal proceedings were conducted and, in some cases, the accused were convicted in first instance, for offenses such as abduction, illegal deprivation of liberty, abuse of authority, association or conspiracy to commit a crime, injuries, coercion or threats and homicide, contained in the 1914 Penal Code or in the Penal Code in force since 1998, when this was more beneficial to the accused. It is true that the criminal offenses of torture or forced disappearance of persons did not exist in Paraguayan law at the time of the facts or when the proceedings were instituted. The 1992 Constitution of the Republic of Paraguay refers to these crimes[72] and the State ratified the Inter-American Convention to Prevent and Punish Torture on March 9, 1990, and the Inter-American Convention on Forced Disappearance of Persons on November 26, 1996. However, it was not until the entry into force in 1998 of the actual Paraguay Penal Code that torture and the disappearance of persons was defined as a crime.[73] While assessing

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[70] *Cf. Case of the "Mapiripán Massacre", supra* note 2, para. 238; *Case of the Gómez Paquiyauri Brothers*, *supra* note 68, para. 130, and *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 156.

[71] *Cf. Case of the Ituango Massacres, supra* note 1, paras. 399 to 401; *Case of the Pueblo Bello Massacre, supra* note 5, paras. 265 to 273, and *Case of Gómez Palomino, supra* note 5, paras. 100, 103 and 104.

[72] The 1992 Constitution of the Republic of Paraguay establishes:

> Concerning torture and other crimes
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> Article 5. No one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Genocide and torture, as well as the forced disappearance of persons, kidnapping and homicide for political reasons are imprescriptible.

[73] The current Paraguayan Penal Code (Act No. 1.160/97), which entered into force in 1998, classifies the crime of forced disappearance of persons in its article 236 (in the chapter on "Punishable acts against the security of the co-existence of persons") and of torture in its article 309 (in the chapter on "Punishable acts against the exercise of public functions"), as follows:

> Article 236.- Forced disappearance
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> 1. Anyone who, for political purposes, executes the punishable acts indicated in articles 105 [willful homicide], 111(3) [aggravated injury], 112 [serious injury], 120 [coercion] and 124(2) [deprivation of liberty] in order to terrorize the population, shall be punished with at least five years' imprisonment.

positively the efforts made by Paraguay to define these conducts as crimes, it should be emphasized that, in these international proceedings, the facts of the case have been categorized as forced disappearance and torture, by both the State and the Court.

92. The disparity in the categorization of the facts at the domestic and international level was reflected in the criminal proceedings.[74] However, the Court recognizes that the illegal and arbitrary detention, torture and forced disappearance of the victims have not remained in total impunity through the application of other categories of crime. Moreover, in relation to the general obligation established in Article 2 of the Convention and the specific obligations contained in the inter-American conventions on the issue mentioned above, the State undertook to define torture and forced disappearance of persons as crimes in a manner that was consistent with the definitions in these instruments. However, the Court considers that, although the definition of the offenses of torture and "forced disappearance" in force in the Paraguay Penal Code would allow certain conducts that constitute acts of this nature to be punished, their analysis reveals that the State has defined them less comprehensively than the applicable international norms. International law establishes a minimum standard with regard to the correct definition of this type of conduct and the minimum elements that this must observe, in the understanding that criminal prosecution is a fundamental way of preventing future human rights violations. In other words, the States may adopt stricter standards in relation to a specific type of offense to expand its criminal prosecution, if they consider that this

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2. The public official who shall hide or fail to provide information on the whereabouts of a person or a corpse shall be punished with up to five years' imprisonment and a fine. This shall apply even when his status as a public official has no legal validity.

Article 309.- Torture

First: Anyone who, with the intention of destroying or seriously damaging the personality of the victim or of a third party, and acting as a public official or in collaboration with a public official:

1. Shall execute a punishable act against:
   (a) Physical integrity, pursuant to articles 110 to 112;
   (b) Liberty, pursuant to articles 120 to 122 and 124,
   (c) Sexual autonomy, pursuant to articles 128, 130 and 131,
   (d) Minors, pursuant to articles 135 and 136,
   (e) The legality of the exercise of public functions, pursuant to articles 307, 308, 310 and 311, or

2. Shall subject the victim to grave mental suffering, shall be punished with at least five years' imprisonment.

Second: The first paragraph shall apply even when the status of the public official:
   1. Has no valid legal basis, or
   2. Has been unduly assumed by the author.

[74] For example, the judgment delivered in first instance in the proceeding opened in the case of Carlos José Mancuello qualifies certain acts as "torture and inhuman and degrading treatment" even though, when determining the appropriate classification of these acts, they were categorized as crimes of injury, coercion and abuse of authority, by applying the most favorable criminal norm owing to the inexistence of the crime of torture. Also, although it mentions the disappearances of the victims, it analyzed the existence of the corpse as evidence of death and this ad an impact on the classification of the crime. This disparity also arises in the content of the extradition request issued by the court of first instance in the proceedings opened in the case of the Ramírez Villalba brothers.

will provide greater or better safeguard of the protected rights, on condition that, when doing so, such standards do not violate other norms that they are obliged to protect. Also, if elements considered non-derogable in the prosecution formula established at the international level are eliminated, or mechanisms are introduced that detract from meaning or effectiveness, this may lead to the impunity of conducts that the States are obliged to prevent, eliminate and punish under international law.

93. Evidently, the object of this judgment is to determine the international responsibility of Paraguay, the defendant State in these proceedings before the Court, for the facts of the instant case, and the Court restricts itself to this purpose. However, it cannot neglect to indicate that the torture and forced disappearance of the alleged victims, the prohibition of which is a non-derogable provision of international law or *jus cogens* (*supra* paras. 84 and 85 and *infra* paras. 128 and 131), was perpetrated with the collaboration of authorities of other States of the continent and partial impunity remains owing to the failure to comply with the obligation to investigate these acts. The gravity of the facts cannot be separated from the context in which they occurred and it is this Court's duty to emphasize this, for the purpose of preserving the historical memory and the imperative need to ensure that such facts are never repeated.

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94. Owing to the above, and in the terms of the State's acquiescence, the Court must declare that the State is responsible for the illegal and arbitrary detention, torture and forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, which constitutes a violation of Articles 4(1), 5(1) and 5(2), and 7 of the Convention, in relation to Article 1(1) thereof, to the detriment of these persons. The State's international responsibility is increased owing to the findings described in the preceding chapter and in section (b) of this chapter.

(c) The alleged violation of the right to humane treatment of the victims' next of kin

95. The State has acknowledged its responsibility for the violation of Article 5 of the American Convention with regard to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba (*supra* para. 49). However, it has not made this acknowledgement with regard to their next of kin, which was alleged by the Commission and by the representatives. Therefore, since the dispute remains in this respect (*supra* para. 54), in this chapter, the Court will determine whether the State is responsible for the alleged violation of the right to humane treatment of the next of kin.

96. The Court has indicated on repeated occasions,[75] that the next of kin of victims of human rights violations may, in turn, become victims. In this regard, the Court has considered because of the additional anguish they have suffered owing to the particular circumstances of the violations perpetrated against their loved ones

[75] *Cf. Case of Ximenes Lopes, supra* note 8, para. 156; *Case of the Ituango Massacres, supra* note 1, para. 289; and *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 119.

and the subsequent acts or omissions of the State authorities in relation to the facts.[76]

97. In the instant case, the Court recalls its case law to the effect that in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.[77]

98. Without detriment to the above, the Court considers it pertinent to examine the situations that, according to their testimony and the proven facts (*supra* paras. 56 and 61), were experienced by some of these next of kin before, during and after the illegal detention and forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and Benjamín and Rodolfo Ramírez Villalba, which could increase the violation of the right to humane treatment.

99. The Court will describe below the situations of the next of kin before the detention and disappearance of the said victims:

(a) Dr. Agustín Goiburú Giménez's family lived with him in exile for several years, owing to the threats, harassment, surveillance and persecution he suffered because of his opposition to the dictatorial regime;

(b) Before the Goiburú Benítez family left Paraguay, the Stroessner Government attempted to implicate Elva Elisa Benítez de Goiburú, Dr. Goiburú's wife, "as an alleged criminal, a terrorist, who kept weapons of war" in her home, "by torturing other prisoners";

(c) When the family went into exile in Argentina, Rogelio and Rolando, the couple's older offspring, were still children. Their youngest child, Patricia Jazmín, was born in exile. Dr. Goiburú's family had to endure constantly moving home, city, and even country on one occasion, owing to the threats they received. In this regard, their oldest son stated: "We were always being harassed. When I was only 10 years' old, we had already moved home 15 times, three times to different cities and seven times to different parts of a city";

(d) In November 1969, Dr. Goiburú's son Rolando, who was 11 years' old at the time, and his father were abducted while they were fishing in the Paraná River in Argentina and taken to Paraguay, at gunpoint. Rolando was imprisoned and "cried and screamed all night." Moreover, he "saw his father tied up and with his head covered." Subsequently, he was released alone in Encarnación. Based on these facts, Elva Elisa Benítez de Goiburú took various measures before international organizations to find her husband's whereabouts. Once she found out

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[76] *Cf. Case of Gómez Palomino, supra* note 5, para. 60; *the Mapiripán Massacre case, supra* note 2, paras. 144 and 146, and *Case of the Serrano Cruz Sisters, supra* note 68, paras. 113 and 114.

[77] *Cf. Case of the Ituango Massacres, supra* note 1, para. 340; *Case of Gómez Palomino, supra* note 5, para. 61, and *Case of the Pueblo Bello Massacre, supra* note 5, para. 143.

where he was, she obtained permission to enter Paraguay to see him, and found him in a deplorable physical condition;

(e) Rosa Mujica Giménez was detained in 1970 because she was Dr. Goiburú's sister. She spent the greater part of her pregnancy in prison and gave birth in a police station. When she was released, she was under house arrest for eight months. Years later, she was again detained for the same reasons; and

(f) The Goiburú Benítez family lived "on permanent alert" and every night one of the family had to remain on guard "because there were constant threats; cars drove past firing guns at the roof of the house; the electricity and telephone services were cut off; people shouted at them using megaphones; reflectors were shone on the house, and they were urged to come out of the house. The persecution and harassment were insupportable, [so Dr. Goiburú and his two sons] decided to hide in the jungle in Misiones [... for] two months." In addition, an attempt was made to abduct Dr. Goiburú's youngest child from the family home in Posadas.

100. The Court considers that the situations endured by the next of kin during the detention and disappearance of Messrs. Goiburú Giménez, Mancuello Bareiro and Ramírez Villalba have been proved:

(a) When Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba were disappeared, it was Elva Elisa Benítez Feliu de Goiburú, Ana Arminda Bareiro de Mancuello and Fabriciana Villalba de Ramírez, and also Julio Darío, Herminio and Mario Ramírez Villalba who began the search for them, and who were constantly refused information on the whereabouts of their loved ones;

(b) Gladis Ester Ríos de Mancuello, Carlos José Mancuello Bareiro's wife, was detained together with her husband and eight-month-old daughter, Claudia Anahí Mancuello Ríos. Moreover, she was pregnant at the time of her detention. She was detained in various places from November 25, 1974, to November 12, 1977. After her detention, "they took away" her baby daughter and it was only later that she discovered that the baby had been handed over to her mother-in-law. Months later, when her mother-in-law brought her daughter to visit her in prison, the baby did not recognize her. While she was detained in the Investigations Department she was not allowed to communicate with her husband, but they were able to exchange glances from time to time. In May 1975, when she was approximately six-months pregnant, she was transferred from the Department and never saw him again. Mrs. Ríos de Mancuello spent most of her second pregnancy in prison and gave birth to her son, Carlos Marcelo Mancuello Ríos, in a police station guarded by police officials. He was raised by his mother in the prison where he was born, in an environment of insecurity and lack of protection, during the first two and a half years of his life, until she was expelled from Paraguay, after she went on hunger strike demanding news of her husband;

(c) When she learned of her son's detention, Carlos José Mancuello Bareiro's mother, Ana Arminda Bareiro de Mancuello went to the Investigations Department and to the Police Headquarters but she was ejected on several occasions. It was only one month later that they told her that her son, her daughter-in-law and her granddaughter were in the prison of the Investigations Department. She asked for her baby grandchild, Claudia Anahí, to be handed over to her and she raised the child for almost three years while her daughter-in-law was in prison. Mrs. Bareiro de Mancuello took all the measures while her son, Carlos, was detained on her own, because her husband, Mario Mancuello, and another of her sons, Hugo Alberto, were also detained. She washed her son Carlos' dirty clothes, and could therefore see the bloodstains resulting from his torture. Months after having been taking food to her son, she received the news that "he had escaped";

(d) Ana Elizabeth, Carlos José Mancuello Bareiro's sister, accompanied her mother in the search for her brother and was subjected to humiliations and physical mistreatment by the various security agents to whom they resorted, "some of them even asked for sexual favors from [her] in exchange for letting [them] see [her] brother, or by promising [her] mother that they would release him";

(e) Carlos José Mancuello Bareiro's younger brother, Emilio Raúl, who was 12 years old at the time of the facts, was responsible for taking food to his brother, Carlos, every day and was subjected to mistreatment and insults; and

(f) María Magdalena Galeano Rotela, Benjamín Ramírez Villalba's companion, was detained with him, and heard and saw when he was tortured while he was shackled and handcuffed. She remained in prison for more than three years.

101. The Court has also verified the situations experienced by the next of kin following the detention and disappearance of the victims:

(a) Dr. Goiburú's wife and children had to remain in exile until the fall of General Stroessner's dictatorship. Carlos José Mancuello Bareiro's wife was expelled from Paraguay; when she left the country she took her two sons who were approximately four years old and two years old with her. She did not return to Paraguay until the dictatorship had fallen;

(b) Following Dr. Goiburú's disappearance, his children had to abandon school and work in different jobs and his wife worked as a seamstress. Of the three children, only Rogelio completed professional studies with "incredible sacrifice, enduring poverty and lacking essentials." The other two children could not do this owing to "financial constraints";

(c) Following his release, Carlos José Mancuello Bareiro's father was obliged to sign in every day from 1975 until the fall of the dictatorship. Also, "no one wanted to give work" either to him or to Carlos José Mancuello Bareiro's siblings;

(d) As indicated above and as will be examined below, in the instant case, there was a *de facto* impossibility of filing recourses in favor of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba at the time of their detention and disappearance (*supra* para. 61(4)). In other cases, the Court has considered this absence of effective recourses to be a source of additional suffering and anguish for the victims and their next of kin.[78] Following the fall of the dictatorship and in the absence of an official investigation, some of the next of kin filed the respective complaints. The delay in the investigations, which were also incomplete and ineffective to punish those responsible for the facts, has exacerbated the next of kin's feeling of powerlessness (*infra* paras. 111 to 133); and

(e) Furthermore, since the four abovementioned victims are still disappeared, the next of kin have not been able to honor their loved ones appropriately. In this regard, the Court recalls that the continued deprivation of the truth concerning the fate of a disappeared person constitutes a form of cruel, inhuman and degrading treatment for the close family.[79]

102. Regarding the nephews and nieces of the Ramírez Villalba brothers, children of Julio Darío Ramírez Villalba; namely, Mirtha Hayde Ramírez de Morinigo, Ana María Ramírez de Mellone, Julio César Ramírez Vásquez, Rubén Darío Ramírez Vásquez and Héctor Daniel Ramírez Vásquez (*supra* paras. 25 and 31), the Court considers that there is insufficient evidence in the file to consider them victims of the violation of Article 5 of the Convention.

103. The facts of this case allow the Court to conclude that the violation of the personal integrity of the victims' next of kin resulting from the forced disappearances has been increased owing to the situations and circumstances examined above, that were experienced by some of them, before, during and after the disappearances. Many of these situations and their effects, which form an integral part of the complex phenomenon of forced disappearance, subsist while some of the factors that have been verified persist. The next of kin suffer continuing physical and psychological effects caused by the said facts, which have also had an impact on their social and labor relations and altered their family dynamics. These continuing situations are eloquently revealed by the words of some of the next of kin of the victims who gave testimony in the proceedings before the Court:

Rogelio Agustín Goiburú Benítez:

> I have been missing [my father] and I have been looking for him and needing him for 29 years, 3 months and 13 days. […] Words cannot describe the profound anguish, powerlessness, anger and infinite sadness that I feel because I do not know where my

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[78] *Cf. Case of the Ituango Massacres, supra* note 1, para. 385; *Case of the Pueblo Bello Massacre, supra* note 5, para. 158, and *Case of the "Mapiripán Massacre", supra* note 2, para. 145.

[79] *Cf. Case of the 19 Tradesmen, supra* note 60, para. 267; *Case of Trujillo Oroza. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 114, and *Case of Bámaca Velásquez.* Judgment of November 25, 2000. Series C No. 70, paras. 160 and 165.

> father's remains lie. […] We cannot say goodbye to him, owing to the uncertainty about his whereabouts. We know he could be anywhere; […] he could appear at any time […].
>
> What happened to my father cannot be described only in the past. He was abducted 29 years ago, but he is disappeared until today; I feel as if he were being abducted and disappeared every day; the present represents anguish and impunity. When will it end?
>
> [My mother, my siblings and I] continue to suffer […] from the anguish caused by the daily disappearance of [our] loved one.[80]

Elva Elisa Benítez de Goiburú:

> It is distressing […] not to see [my husband's] remains, not to be able to bury him according to our beliefs, and with the hope of finding him alive every day; not resigning ourselves to his death.
>
> [My children] lost their appetite, abandoned school, they could not continue, they had difficulties relating to their friends. They grew up with the anguish of having lived through all these events at such an early age, and have had to grow up without knowing the whereabouts of their father, or being able to take leave of him properly. [I am] constantly depressed, I still hear him singing and whistling, as he used to. [...I have lost] the ability to talk[.] One never gets over this; one tries to continue on as best one can.[81]

104. Based on the above, the Court considers that the State violated the right to humane treatment embodied in Article 5(1) of the American Convention, in relation to Article 1(1). thereof, to the detriment of Elva Elisa Benítez Feliú de Goiburú; Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano.

XI
ARTICLES 8(1) AND 25 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHT TO A FAIR TRIAL AND TO JUDICIAL PROTECTION)

The Commission's arguments

105. Regarding the alleged violation of Articles 8 and 25 of the Convention, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba and their next of kin, the Inter-American Commission alleged that:

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[80] *Cf.* testimonial statement made before notary public (affidavit) by Rogelio Agustín Goiburú Benítez, *supra* note 27, folios 6251 and 6252.

[81] *Cf.* testimonial statement made before notary public (affidavit) by Elva Elisa Benítez Feliu de Goiburú, *supra* note 30, folios 6263 to 6265.

(a) More than 27 years have elapsed without the lawsuits having concluded or the next of kin of the said persons knowing, through final judgments that are *res judicata* and encompass all the masterminds, perpetrators and accessories after the fact, what happened to these persons, where their remains are, who was responsible for their forced disappearance, what punishment was imposed, and what reparation is legally due to them. This is a result of the situation of impunity that affects the rights of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba;

(b) The obligation to investigate and punish any act that involves the violation of rights protected by the Convention requires that not only the perpetrators should be punished but also the masterminds and the accessories after the fact;

(c) The State incurred international responsibility when its judicial bodies did not carry out a serious investigation or punish those responsible;

(d) The State has the obligation to advance the domestic proceedings until they reach a conclusion, acting *de oficio* and not based on the initiative of the next of kin. In the instant case, the State has not alleged any convincing reason to justify its delay, because, although a few of the lawsuits have ended with regard to some of those responsible, they continue open regarding other individuals. Moreover, some of those accused originally are now deceased. The State is responsible for the partial impunity in these cases;

(e) Regarding Alfredo Stroessner and Sabino Augusto Montanaro, it was only on December 7, 2000, that orders of preventive detention for the purpose of extradition were issued against them. The delay in issuing the preventive detention orders reveals the State's failure to adopt genuine measures to comply with its international obligations. Even though the judge in the case called upon the Government to request Stroessner's extradition, the State never made that request nor has it provided information on any steps it took to promote this extradition request;

(f) The State has alleged that the appeals filed by the accused have delayed the proceedings, but has not specified the dates and provided details of these appeals. The State has not provided any convincing reason to justify that, more than 27 years after the facts occurred, the investigation and the respective judicial proceedings have not produced any effective results and the extradition of Alfredo Stroessner ordered during the proceedings has not been executed;

(g) The delay in initiating the investigations and the failure to initiate them *de oficio*, as well as the difficulties that the Paraguayan judicial system purportedly faces can be attributed to the State itself, and therefore do not excuse the latter from complying with the obligations it assumed on ratifying the American Convention; and

(h) Regarding the State's allegation that the victims have not used the mechanisms established in the civil jurisdiction and in Act No. 838/96, the Commission understood that this argument does not question the admissibility of the instant case, but rather the right of the next of kin to obtain any reparations the Court may order, and recalled that it had already referred to this allegation in its Report No. 75/04 on admissibility and merits in this case. In addition, it considered that the next of kin would encounter serious difficulties if they attempted to file civil actions in the domestic jurisdiction based on offenses regarding which no final judgment has been delivered determining the corresponding responsibilities. It also underscored that, although the 1992 Paraguayan Constitution established the Ombudsman mechanism and Act No. 838/96 included the procedure before the Ombudsman's Office, it was not until 2001 that someone was appointed to occupy this position.

The representatives' arguments

106. In their final arguments brief, the representatives endorsed the Commission's arguments concerning Articles 8 and 25 of the Convention in relation to Article 1(1) thereof. Regarding the State's allegation that the victims had not used the mechanisms established in the civil jurisdiction and in Act No. 838/96, they considered that "this law only allowed certain victims and their next of kin to accede to a minimal sum," and also that the lawsuits on "presumption of death" and on succession to prove the identity of the heirs, which the next of kin of the disappeared had to file before they could have access to the Ombudsman's Office, could take many years.

The State's arguments

107. Regarding the alleged violation of Articles 8 and 25 of the Convention to the detriment of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Benjamín and Rodolfo Ramírez Villalba, the State partially acknowledged its international responsibility (*supra* paras. 41, 50 and 54) and indicated, *inter alia,* that:

(a) In the case of Agustín Goiburú:

> Although there had been a judicial delay in delivering judgment in the case, this is due to the shortcomings of the former penal system under which the proceedings were opened. They are governed by the rules of the said penal system, and the procedure is characterized by an inquisitorial system, and long complicated written proceedings, that no longer offer guarantees and much less solutions for the population; Paraguay has therefore modified its penal system and set up a transition process between the two systems;
>
> Since the procedural system does not allow prosecution *in absentia* (as in the case of General Alfredo Stroessner and Sabino Augusto Montanaro), and bearing in mind that two of the accused are deceased, the case is at a standstill;

It had acquiesced to the petitioner's claim that the State accelerate the processing of the domestic judicial proceedings in order to bring them to a close, punishing those responsible;

The next of kin have, at all time, had access to justice and to judicial guarantees and judicial protection, and no State agent or body has prevented this. Hence, the fact that they have not used the judicial and administrative recourses cannot be attributed to the State; and

The next of kin of the alleged victims or their representatives have not been prevented from accessing the ordinary civil jurisdiction to claim compensation for damages, or other bodies, such as the Ombudsman's Office, in order to claim the compensation that corresponds to them under Act No. 836/96 (*sic*).

(b) In the case of Carlos José Mancuello Bareiro:

i) Paraguayan justice complied with the obligation to investigate and punish the illegal acts;

ii) It had acquiesced to the petitioner's claim that the State accelerate the processing of the domestic judicial proceedings in order to bring them to a close, punishing those responsible; and

iii) The next of kin of Mr. Mancuello have access to judicial mechanisms to claim compensation for damages in the civil courts and to administrative mechanisms for compensation under Act No. 838/96 through the Ombudsman's Office. The State has not prevented access to these mechanisms and there is no evidence that the next of kin have resorted to them to claim fair reparations, and this cannot be attributed Paraguay.

(c) In the case of Benjamín and Rodolfo Ramírez Villalba:

(i) The case file is in appeal before the First Chamber of the Court of Criminal Appeal, to decide the remedies of appeal and annulment filed by the defense;

(ii) Regarding Alfredo Stroessner, the beneficiary of political asylum in Brazil, an extradition request is being processed by the Brazilian courts since June 5, 2001;

(iii) Sabino Augusto Montanaro was granted asylum in Honduras, a country with which Paraguay has not signed an extradition treaty; and

(iv) The next of kin of the brothers have had domestic recourses available to receive prompt and adequate reparation, through either civil or administrative mechanisms, but they have not used them.

The Court's findings

108. Article 8(1) of the American Convention establishes:

> Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by

> law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

109. Article 25 of the Convention stipulates:

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States Parties undertake:
>
> (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
>
> (b) to develop the possibilities of judicial remedy; and
>
> (c) to ensure that the competent authorities shall enforce such remedies when granted.

110. The Court has affirmed that, under the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be implemented according to the rules of due process of law (Article 8(1)), all within the general obligation of States to ensure to all persons subject to their jurisdiction free and full exercise of the rights established in the Convention (Article 1(1)).[82] In this chapter, the Court will examine, first, the due diligence in conducting the official investigations, as well as additional elements to determine whether the proceedings have been conducted respecting the right to a fair trial and within a reasonable time, and have constituted an effective recourse to ensure the rights of access to justice, investigation of the truth of the facts, and reparation for the next of kin. Second, given the characteristics of the instant case, it is also essential to refer to the mechanism of extradition in cases of grave human rights violations.

(a) Effectiveness of the recourses for conducting the official investigations and to ensure, within a reasonable time, the rights of access to justice, the truth of the facts, and reparation for the next of kin

111. The Court observes that, to determine due diligence in the conduct of the official investigations and the effective observance of the right of access to justice within a reasonable time,[83] it must make its analysis in two stages: first, from the detention of the victims up until 1989 when the dictatorship fell and, following that date, when three criminal proceedings were initiated in relation to the facts of this case.

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[82] *Cf. Case of Ximenes Lopes, supra* note 8, para. 175; *Case of the Ituango Massacres, supra* note 1, para. 287, and *Case of the Pueblo Bello Massacre, supra* note 5, para. 169.

[83] *Cf. Case of the Ituango Massacres, supra* note 1, para. 287; *Case of Baldeón García, supra* note 6, para. 139, and *Case of the "Mapiripán Massacre", supra* note 2, para. 216.

112. First, it is true that almost 32 years have elapsed since the detention of Carlos José Mancuello Bareiro and the brothers Rodolfo and Benjamín Ramírez Villalba and almost 30 years since their disappearance, together with that of Agustín Goiburú Giménez. Even though there is no evidence that applications for *habeas corpus* or any other recourse in favor of the victims were attempted at the time of their illegal detention or abduction and subsequent disappearance, the ineffectiveness of this type of action during the first period has been verified (*supra* para. 61(4)). Consequently it is a fact that, at the time, there was no effective recourse in Paraguay to counter illegal or arbitrary detentions, because one of the characteristics of the governing dictatorship was the exercise of a "permanent state of siege," renewed by the Executive every 90 days (*supra* paras. 61(2) and 61(4)). The courts of justice usually refused to receive and process applications for *habeas corpus* in relation to measures decreed by the Executive under this state of siege, which did not function as a mechanism to deal with exceptional situations, but rather as an instrument at the service of the dictatorship. In other words, the lack of an investigation into the facts was part of the systematic practice of human rights violations and contributed to the impunity of those responsible, so that the judicial protection due to the victims and their next of kin was illusory from the time they were detained and until the end of the dictatorship.

113. During the second period, three criminal proceedings were filed in relation to the facts of the case, and their evolution and results must be examined:

(a) In the case of Dr. Agustín Goiburú Giménez, the proceedings were instituted in 1989 by the complaint filed by his wife, Elba Benítez de Goiburú, against those who, at the time of the facts, were the Head of State, the Minister of the Interior, the Head of Military Intelligence, the Head of the Asunción Police, the Head of the Asunción Police Investigations Department, and the Paraguayan Consul in Posadas, Argentina. While the case was being processed, three of the six accused died; accordingly, the criminal proceedings were declared extinguished in their respect. The accused, Alfredo Stroessner Matiauda and Sabino Augusto Montanaro, had been granted asylum in Brazil and Honduras, respectively, so the court of first instance declared them "in contempt of court and willfully disobedient" of court orders until they presented themselves to go on trial" and ordered preventive detention for the purpose of extradition (*infra* para. 124). No judgment was delivered in these proceedings and the last relevant procedural act was that, on May 29, 2002, the Third Criminal Tribunal (*de Liquidación y Sentencia*) reviewed the proceedings in order to deliver judgment with regard to the defendant, Francisco Ortiz Téllez, but this has not yet been delivered. Given this situation, the State indicated that, since "the Paraguayan procedural system did not allow a trial *in absentia*" with regard to the accused, Alfredo Stroessner Matiauda and Sabino Augusto Montanaro, "and bearing in mind the decease of two of the accused in the case, it was at a standstill." As indicated above, the defendant Stroessner has died recently.

(b) In the case of Carlos José Mancuello Bareiro, the proceedings were instituted in 1990 when his mother, Ana Arminda Bareiro de Mancuello, filed a criminal complaint against those who, at the time of the facts, were the Head of State, the Minister of the Interior, the Head of the Asunción Police, the Head of the Asunción Police

Investigations Department, and five other persons who occupied various positions and ranks in the Asunción Police. While the case were being processed, four of the defendants died, one of whom – the former Head of the Asunción Police Investigations Department – had been convicted in first instance, and another four former officials have been convicted in first or second instance. The convicted men were declared to have incurred civil responsibility. On February 11, 2003, the Second Chamber of the Court of Appeal granted the remedies of appeal and annulment filed by two of the accused and by the complainant against the appeal judgment and agreement and forwarded the case file to the Supreme Court of Justice, where it is pending a final decision. The case is open at the preliminary proceedings stage with regard to three persons.

(c) In the case of the brothers Rodolfo and Benjamín Ramírez Villalba, the proceedings were instituted in 1989 by their brother, Julio Darío Ramírez Villalba, against 11 persons, 10 of whom are the same as those accused in the two preceding cases; the other accused is another former Police official. On September 1, 1999, the Fourth Criminal Court of First Instance convicted five former officials and the former Head of the Asunción Police Investigations Department, who died subsequently. During the proceedings, the detention was ordered of one of the accused, Eusebio Torres, who was a fugitive from justice and he was declared in contempt of court. After having ordered his preventive detention for the purpose of extradition in July 1993, the Fifth Criminal Court of First Instance declared the accused Alfredo Stroessner Matiauda "in contempt of court and willfully disobedient of court orders." Then, in June 2001, it requested his extradition (*infra* para. 126). Actually, the criminal proceedings are before the First Chamber of the Criminal Court to decide three remedies of appeal and annulment that have been filed. The preliminary proceedings continue open with regard to the accused, Alfredo Stroessner Matiauda, Sabino Augusto Montanaro and Eusebio Torres, and the extradition request for the former is being processed before the Brazilian courts; however, he died recently, and Mr. Montanaro has been granted asylum in Honduras.

114. From the above, it is clear that the criminal proceedings are still open 17 years after they were instituted. In this regard, the State accepted the existence of a "serious judicial delay" or "the existence of a judicial delay in delivering judgment" and stated that "it acquiesced partially [regarding] the violation of the rights to a fair trial and judicial protection" in the three cases referred to (*supra* para. 41).

115. Despite the foregoing, Paraguay alleged that this judicial delay "was due to shortcomings of the former penal system under which the proceedings were instituted" and which, as of 1989, with the fall of General Stroessner and the re-establishment of democracy, has been making constant progress to respect and safeguard human rights effectively"; it considered that, this progress includes, "of great importance for the instant case, [...] the reform of the Penal Code and the Criminal Procedural Code in 1997 and 1998, respectively, which it categorized as "naturally slow, owing to their complexity." In accordance with the State's partial acquiescence, the Court has already decided that the dispute has terminated with regard to the violation of the above-mentioned Articles, as regards the duration of

the proceedings (*supra* para. 50). Consequently, the Court finds the State's argument attributing the duration of the proceedings to the fact that they are being processed under the criminal procedural norms of the previous system unacceptable. Furthermore, the State has not shown whether the reforms have been applied or in what way their alleged benefits have been reflected in these criminal proceedings; hence, it is not for the Court to assess the general scope and effects of the penal procedural reforms. The shortcomings of the criminal procedural system applied to the proceedings in this case can also be attributed to the State and do not exempt it from complying with its obligations under the American Convention.

116. It is therefore necessary to examine and determine whether these criminal proceedings have constituted an effective recourse to ensure the rights of access to justice, the truth about the facts, and reparation for the next of kin, or whether another type of recourse has existed for these effects.

117. The preceding chapter indicated the obligation of the States Parties to the American Convention to investigate acts that violate the rights recognized therein (deriving from their obligation to safeguard these rights), and also the required characteristics of the investigations in cases of extrajudicial executions, forced disappearances and other grave human rights violations (*supra* paras. 88 to 94). In addition, it must be repeated that this investigation should be conducted using all available legal means and directed at determining the truth and the pursuit, capture, prosecution and punishment of all the masterminds and perpetrators of the facts, particularly when State agents are or may be involved. During the investigation and judicial proceedings, the victims or their next of kin must have ample opportunity to take part and be heard, both in the elucidation of the facts and the punishment of those responsible, and in the quest for fair compensation, in accordance with domestic law and the American Convention. However, the investigation and the proceedings must have a purpose and be assumed by the State as its inherent legal obligation and not as the result of efforts made by private interests, which depend on the procedural initiative of the victims or their next of kin or on the contribution of probative elements by the latter.[84]

118. The Court observes that, in the instant case, even though criminal proceedings could not be filed until after the fall of the dictatorial regime, the State has not shown any diligence in the official investigations, which, despite the nature of the facts, were not instituted *de oficio*, but rather as a result of complaints filed by the victims' next of kin. In addition, there is no evidence of actions taken either in the context of the criminal proceedings, or using other mechanisms, to determine the whereabouts of the victims or to find their mortal remains.

119. Regarding the effectiveness of these criminal proceedings to determine the truth and pursue, capture, prosecute and punish all the masterminds and perpetrators of the facts, the Court recognizes that they were opened against the most senior members of the dictatorial Government, including the then Head of State, and the most senior officials in the Ministry of the Interior, the Military Intelligence Services, the Asunción Police and its Investigations Department, in addition to several former officers of the Asunción Police who occupied intermediate

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[84] *Cf. Case of the Ituango Massacres, supra* note 1, para. 287-289; *Case of the Pueblo Bello Massacre, supra* note 5, paras. 143 to 146, and *Case of the "Mapiripán Massacre", supra* note 2, paras. 137, 219, 223, 232 and 237.

and lower positions. However, as has been indicated, for different reasons the results of the proceedings have been very limited as regards the five persons who were convicted and, of these, those who have served their sentences, since several of the defendants died during the proceedings. The result of the State's lack of due diligence is that none of the three criminal proceedings has concluded and determined the corresponding criminal responsibilities. The absence of two of the principal accused, the former dictator, Alfredo Stroessner Matiauda, and the former Minister of the Interior, Sabino Augusto Montanaro, granted asylum in Brazil and Honduras, respectively, and declared "in contempt of court," added to the failure to implement an extradition request for the former go a long way to determining the impunity of the facts. Owing to its relevance, this will be examined more thoroughly below (*infra* paras. 123 to 132).

120. Regarding the existence of an effective recourse to repair the consequences of the violations committed, the State argued that "the victims' next of kin have had [full] access to justice, [both to] the ordinary civil jurisdiction to claim compensation for damages, and [to] the Ombudsman's Office to request, independently and autonomously, the judicial actions and corresponding compensation under Act No. 836/96 [(*sic*). Despite this, the next of kin have not used these judicial or administrative recourses, which cannot be attributed to the State." Although this assertion has an impact on reparations, the Court considers it must examine it together with the merits of the case, since the effectiveness of domestic remedies must be assessed integrally, taking into account whether, in the specific case, there were domestic mechanisms that ensured real access to justice to claim reparation for the violation.

121. In other cases, the Court has taken into account the results achieved in administrative or other proceedings conducted at the domestic level, when assessing the effectiveness of the remedies and even when establishing reparations for pecuniary and non-pecuniary damage. Thus, in the *Mapiripán Massacre" case,* the Court considered that the integral reparation of the violation of a right protected by the Convention cannot be reduced to the payment of compensation to the victim's next of kin. Therefore, it took into account some of the results achieved in the administrative-law proceedings filed by the next of kin of the victims in that case, considering that the compensation established by these instances for pecuniary and non-pecuniary damage could be understood to be included within the broadest concepts of reparations for pecuniary and non-pecuniary damage. Consequently, the Court stated that those results could be considered when establishing the pertinent reparations, "provided that what was decided in those proceedings is now *res judicata* and that it is reasonable in the circumstances of the case."[85]

122. The Court considers that the State's responsibility for not having repaired the consequences of the violations in this case is not annulled or diminished by the fact that the victims' next of kin have not attempted to use the civil or administrative mechanisms indicated by the State. The obligation to repair damage is a legal obligation of the State that should not depend exclusively on the procedural activities of the victims. In two of the criminal proceedings that were filed in the civil jurisdiction, the civil responsibility of some of those convicted was declared, although there is no evidence that the civil plaintiffs in the criminal instance have tried to have

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[85] *Cf. Case of the Ituango Massacres, supra* note 1, para. 339; *Case of the Pueblo Bello Massacre, supra* note 5, para. 206, and *Case of the "Mapiripán Massacre", supra* note 2, para. 214.

these judgments enforced using the corresponding channels. It is true that the existence of Act No. 838/96 (*supra* para. 61(123)) can help repair certain consequences of the human rights violations committed against some victims during the dictatorship. However, since the possible effects of this law do not encompass integral reparation of the violations committed, the State cannot allege that the next of kin have not attempted this mechanism so as to claim that it has fulfilled its obligation to make reparation. Consequently, the Court does not need to rule on the scope and characteristics of the civil jurisdiction or the procedure established in the said Act No. 838/96 under the responsibility of the Ombudsman's Office.

(b) Obligations derived from international law on extradition in cases of grave human rights violations

123. Although the State's responsibility has been declared, it is necessary to take into account Paraguay's arguments with regard to its obligation to investigate the facts, and to identify and punish those responsible. Regarding the proceedings opened in the case of Agustín Goiburú Giménez, the State indicated that "the Paraguayan procedural system d[id] not allow the trial *in absentia* [of the accused, Alfredo Stroessner Matiauda and Sabino Augusto Montanaro, so that] taking into account [also] the death of two of the accused in the case, it is at a standstill." In relation to the criminal proceedings in the case of the brothers Rodolfo and Benjamín Ramírez Villalba, the State indicated that "the preliminary proceedings continue open with regard to the accused, Alfredo Stroessner Matiauda, Sabino Augusto Montanaro and Eusebio Torres; [that] an extradition request is being processed before the Brazilian courts […] [in the case of Mr. Stroessner and that Mr.] Montanaro […] has been granted asylum in Honduras, a country with which Paraguay has not signed an extradition treaty."

124. In the case of Dr. Agustín Goiburú Giménez, even though, in 1989, initial attempts were made by the court in charge of the investigation, through letters rogatory sent via the Paraguayan Ministry of Foreign Affairs, for the accused to make "informative statements" before Brazilian and Honduran judicial authorities, these measures never produced any concrete results (*supra* paras. 61(65) to 61(69)). Following the repeated requests of the complainant, in 1997, 1998 and 1999, the Court requested the Ministry of Foreign Affairs to provide information on the results of the letters rogatory, but there is no evidence of any result in this respect. In 1999, the Fourth Criminal Court of First Instance advised the Head of the National Police Headquarters in Asunción that it had decided to order the preventive detention of Sabino Augusto Montanaro, which gave rise to subsequent communications with INTERPOL, but without any concrete results. Following several petitions by the complainant, Elva Benítez de Goiburú, and the fact that, in May 2000, the Third Criminal Tribunal (*de Liquidación y Sentencia)* had declared "that the defendants were in contempt of court and willfully disobedient of court orders," in December 2000 that court "ordered the preventive detention for the purpose of extradition" of the accused; in other words, 11 years after the proceedings had commenced. Despite this order, there is no evidence in the documentation provided to the Court that the extradition of Alfredo Stroessner or Sabino Augusto Montanaro was effectively requested in the context of these criminal proceedings. With regard to Alfredo Stroessner Matiauda, the Court cannot disregard the well-known fact that he died on August 16, 2006, in Brasilia, Brazil, the country where he resided following the end of the dictatorship in Paraguay. Regarding Sabino Augusto Montanaro, even though the State had informed the Court that "he had been granted asylum in Honduras, a country with which Paraguay has not signed an extradition treaty," and

the ordering of an extradition request and its processing was pending, the Ministry of Foreign Affairs informed the abovementioned court on March 2, 2001, that, albeit "it had not signed any extradition treaties with Honduras, […] based on the rules of international reciprocity and courtesy, it is possible to process an extradition request in the absence of signed treaties" (*supra* paras. 61(71) to 61(73)).

125. No extradition procedures were instituted during the criminal proceedings opened in the case of Carlos José Mancuello.

126. Regarding the case of the Ramírez Villalba brothers, following some communications between the Fourth Criminal Court of First Instance and the Ministry of Foreign Affairs, the Fifth Criminal Court of First Instance ordered the preventive detention for the purpose of extradition of the accused Alfredo Stroessner Matiauda on August 4, 1993. As of that date, there is no evidence of any other measures until, on June 5, 2001, the Court decided "to request the extradition of the defendant Alfredo Stroessner" through the Supreme Court of Justice and the Ministry of Foreign Affairs. The documentation provided to this Court does not show whether the letters rogatory relating to extradition were effectively forwarded to the Brazilian authorities or, if so, the actual status of the procedure in Brazil. Paraguay did not forward any further information in this respect, despite having been asked to provide it as helpful evidence. Nevertheless, in its answer to the application, the State indicated that, regarding "Alfredo Stroessner, beneficiary of political asylum in Brazil, an extradition request is being processed before the courts of the Federative Republic of Brazil." Regarding Sabino Augusto Montanaro, there is no evidence that the order of detention issued against him has been executed, or that his extradition has actually been requested of Honduras by the Paraguayan judicial authorities in the context of these criminal proceedings.

127. This means that, in addition to the lack of reasons explaining the delay of the judicial authorities in issuing orders of preventive detention for the purpose of extradition, or in requesting the extradition itself, the absence of these persons from the State that aspires to prosecute them, owing to the failure to execute their extradition, constitutes a serious obstacle for the effectiveness of the proceedings and goes a long way towards determining the impunity of the facts (*supra* para. 119). On the one hand, there is the declaration of contempt of court and order of preventive detention of the accused, Sabino Augusto Montanaro, which was not accompanied by an extradition request formulated by the Paraguayan judicial authorities before the Republic of Honduras. On the other hand, there is no evidence that a request for the extradition of Alfredo Stroessner was effectively presented to the Federative Republic of Brazil or has been advanced by subsequent actions of Paraguay's diplomatic or judicial authorities. The two defendants have been granted political asylum in these countries. At the time this judgment is delivered, the information provided to the case file does not reveal actions of the Paraguayan judicial authorities designed to formulate other extradition requests; furthermore, there is no evidence of whether there are or have been investigations or criminal proceedings opened against these persons in Honduras or Brazil.

128. As indicated above (*supra* para. 93), the facts of this case have violated non-derogable provisions of international law (*jus cogens*), in particular the prohibition of torture and forced disappearance of persons. These offenses are included among the conducts deemed to harm essential values and rights of the international community and entail the activation of national and international measures, instruments and mechanisms to ensure their effective prosecution and the sanction of the authors, so

as to prevent them and avoid them remaining unpunished. Consequently, faced with the gravity of certain offenses, the norms of international customary and treaty-based law establish the obligation to prosecute those responsible. This acquires particular relevance in cases such as this, because the facts occurred in a context of the systematic violation of human rights – both offenses constituting crimes against humanity – and this gives rise to the States' obligation to ensure that such conduct is criminally prosecuted and the perpetrators punished.

129. Having established the broad scope of the international obligations *erga omnes* against the impunity of grave human rights violations, the Court reiterates that, in the terms of Article 1(1) of the American Convention, the States are obliged to investigate human rights violations and prosecute and punish those responsible.

130. The full exercise of justice in this type of case imposed on Paraguay the compulsory obligation to have requested the extradition of the accused promptly and with due diligence. Consequently, according to the general obligation of guarantee established in Article 1(1) of the American Convention, Paraguay should adopt the necessary measures, of a diplomatic and judicial nature, to prosecute and punish all those responsible for the violations committed, which includes furthering the corresponding extradition requests by all possible means. The inexistence of extradition treaties does not constitute a motive or justification for failing to institute a request of this type.

131. Consequent with the foregoing, given the nature and gravity of the facts, particularly since they occurred in a context of systematic human rights violations, the need to eliminate impunity establishes an obligation for the international community to ensure inter-State cooperation to this end. Impunity will not be eliminated unless it is accompanied by the determination of the general responsibility (of the State) and the specific criminal responsibility (of its agents or of individuals), which are complementary. Access to justice is a peremptory norm of international law and, as such, gives rise to obligations *erga omnes* for the States to adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so.

132. Hence, extradition is an important instrument to this end. The Court therefore deems it pertinent to declare that the States Parties to the Convention should collaborate with each other to eliminate the impunity of the violations committed in this case, by the prosecution and, if applicable, the punishment of those responsible. Furthermore, based on these principles, a State cannot grant direct or indirect protection to those accused of crimes against human rights by the undue application of legal mechanisms that jeopardize the pertinent international obligations. Consequently, the mechanisms of collective guarantee established in the American Convention, together with the regional[86] and universal[87] international obligations on

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[86] *Cf.* Charter of the Organization of American States, Preamble and article 3(e); Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Persons; and Resolution No. 1/03 of the Inter-American Commission on Human Rights on Trial for International Crimes.

this issue, bind the States of the region to collaborate in good faith in this respect, either by conceding extradition or prosecuting those responsible for the facts of this case on their territory.

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* *

133. It has been shown that, even though these criminal proceedings were instituted to clarify the facts, they have not been effective to prosecute and, if applicable, punish those responsible, as indicated above. Although some individuals have been convicted in first and second instance, the proceedings have not concluded; thus, the State has not punished all those criminally responsible for the illegal acts that are the subject of the application. In the context of impunity that has been verified, the judicial recourses have not been effective and time plays an important role in eliminating all traces of the crime, rendering the judicial protection embodied in Articles 8(1) and 25 of the American Convention illusory. The Court considers, therefore, that the State is responsible for the violation of the rights embodied in these articles, in relation to Article 1(1) of this Convention, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, as well as of their next of kin; namely, Elva Elisa Benítez Feliú de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano.

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87 *Cf.* Charter of the United Nations signed on June 26, 1945, Preamble and Article 1(3); Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (iii) of December 10, 1948; the United Nations International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI) of December 16, 1966; Geneva Conventions of August 12, 1949, and their Protocols; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; General Assembly Resolution 2391 (XXIII) of November 26, 1968; Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly Resolution 260 A (III) of December 9, 1948; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly Resolution 39/46 of December 10, 1984; Declaration on the Protection of All Persons from Forced disappearances, G.A. Res. 47/133, 47 U.N. GAOR Supp. (no. 49) at 207, U.N. Doc. A/47/49 (1992), article 14; United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C. Res. 1989/65, U.N. Doc. E/1989/89 para. 18 (May 24, 1989); United Nations Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, G.A. Res. 3074, U.N. Doc. A/9030 (1973); Resolution on the Question of the Punishment of War Criminals and of Persons who have Committed Crimes against Humanity, G.A. Res. 2840, U.N. Doc. A/Res/2840 (1971); draft Code of Crimes against the Peace and Security of Mankind of the International Law Commission, 1996; International Convention for the Protection of All Persons from Forced disappearance, United Nations Human Rights Council, first session, agenda item 4, A/HRC/1/L.2, June 22, 2006; Declaration on Territorial Asylum, adopted by the United Nations General Assembly, Resolution 2312 (XXII) of December 14, 1967, and United Nations Convention relating to the Status of Refugees, 189 U.N.T.S. 150, adopted on July 28, 1951, by the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (United Nations) convened by the General Assembly in its Resolution 429 (V), of December 14, 1950.

XII
REPARATIONS
(Application of Article 63(1) of the American Convention)

The Commission's arguments

134. Regarding the beneficiaries, the Commission:

(a) Stated it its application that, given the nature of this case, the beneficiaries of the reparations ordered by the Court as a result of the human rights violations perpetrated by the State in this case are: Dr. Agustín Goiburú Giménez, his wife, his two sons and his daughter; Carlos José Mancuello Bareiro, his mother, his wife, his daughter and his son; the brothers Rodolfo and Benjamín Ramírez Villalba, two sisters and two brothers;

(b) Alleged, in its final written arguments, that 11 additional persons to those mentioned in the application were "victims of the violations established";

(c) Informed the Court that the petitioners had forwarded information about five nieces and nephews of the Ramírez Villalba brothers, children of Julio Darío Ramírez Villalba. In this respect, it requested that the Court consider them beneficiaries, should it accept that they are injured parties.

135. Regarding pecuniary and non-pecuniary damage, the Commission:

(a) Requested the Court to order the State to repair the pecuniary and non-pecuniary damage caused to the victims and their next of kin;

(b) Asked the Court to established, based on the equity principle, the amount of the compensation corresponding to indirect damage and loss of earnings. In this regard, it requested the Court to take into account that the next of kin suffered multiple consequences, including the loss of their sons, fathers, husbands or brothers, as applicable, and, in many cases, these individuals supported the household financially. Also, it stated that, as a result of the facts, the next of kin had suffered significant and critical pecuniary losses, because they stopped receiving the usual and necessary income for their subsistence and incurred expenses relating to discovering the whereabouts of their family members and obtaining justice;

(c) Stated that the victims' next of kin have received no compensation from the State, so that their right to reparation as a result of the international illegal act subsists integrally and it corresponds to the Inter-American Court rather than the national courts to establish this, based on the principle of equity;

(d) Stated that it does not consider that the salary received by Dr. Agustín Goiburú's son for his work in the Paraguayan Ministry of Foreign Affairs can be considered part of the reparation that must be paid by the State to Agustín Goiburú's next of kin;

(e) Requested the Court to establish, in equity, the amount of the compensation for non-pecuniary damage based on the nature of the case and on the suffering of the victims' next of kin as a consequence, *inter alia*, of the lack of a thorough investigation into the facts and the resulting punishment of those responsible. The testimonies of the victims' next of kin allow the Court to appreciate the magnitude of the harm suffered;

(f) Considered that applying the presumption of non-pecuniary damage was in order with regard to children, spouses or companions, parents and siblings;

(g) Stated that an essential measure of satisfaction is to conclude a serious, complete and effective investigation to determine the identity of the masterminds and perpetrators of the detention and subsequent forced disappearance of the alleged victims;

(h) Requested that the next of kin of the alleged victims should have full access and capacity to act at all stages and in all instances of these investigations, pursuant to domestic law and the provisions of the American Convention. Also, the State should ensure effective compliance with the decisions adopted by the domestic courts in compliance with this obligation. The result of the proceedings should be published so that Paraguayan society can know the truth;

(i) Alleged that the State should adopt the necessary measures to locate and return the remains of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, which have still not been found, so that their next of kin can conclude their mourning for the disappearance of their loved ones;

(j) Requested that the State publicly acknowledge its international responsibility by organizing a public act, in the presence of its most senior authorities, in relation to the facts of this case and to make reparation to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba; and

(k) Bearing in mind the requests of the victims' next of kin formulated in their testimonial statements, it considered that the State should*, inter alia*:

> Offer an official apology to the victims in the case, in particular, and to the victims of the dictatorial regime, in general;
>
> Introduce the subject of human rights into the curricula of schools and colleges, and establish in the school curriculum a time dedicated to the victims' story, in particular, and to the dictatorship, in general;
>
> Establish a date on the school calendar to commemorate the victims;
>
> Declare February 3 a national holiday, as the date on which the dictatorship ended;

Establish control and monitoring mechanisms and guarantees of compliance with the decisions of the Inter-American Court;

Erect a monument in homage to the disappeared under the regime in the square in front of Congress;

Provide free medical and psychological care to all the victims' next of kin;

Implement the investigation, and the gathering of information and material to locate and identify the remains of Dr. Goiburú. Also, order the necessary actions to find the remains of Carlos José Mancuello Bareiro, deliver them to his next of kin and clarify how he died. The State should also become involved in and use all means within its power to find the remains of Rodolfo and Benjamín Mancuello Bareiro;

Order the necessary procedures to achieve the extradition of Alfredo Stroessner so that he can be tried and serve the sentence deriving from the proceedings, or order the necessary procedures so that Brazil, if it does not grant extradition, submits the case to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and criminal action, in accordance with its national law, as established in Article VI of the Inter-American Convention on Forced Disappearance of Persons;

Arrange that, by law, the Civil Code recognizes the concept of "absent owing to forced disappearance" for individuals who were deprived of their liberty and were then disappeared from 1954 to 1989;

Create a foundation and, also, a medical clinic with the name of Dr. Goiburú that provides free care to the victims of the dictatorship and their next of kin;

Create a community kitchen for street children in Asunción in the street named after Dr. Goiburú;

Name a high school "Dr. Goiburú" and another one "Carlos José Mancuello";

Publish in a newspaper with widespread circulation the complete story of Dr. Goiburú with the corresponding apologies to his family, the community and the medical profession;

Hasten the criminal proceedings against those involved in the facts relating to Carlos José Mancuello Bareiro; verify execution of sentences, and facilitate procedures and financing for monitoring the cases;

Design and implement basic health care programs with the name of Carlos José Mancuello;

Name one of the main avenues after Carlos Mancuello; and

Find and provide compensation to María Magdalena Galeano, the companion of Benjamín Ramírez Villalba.

The representatives' arguments

136. In their final written arguments, the representatives endorsed most of the arguments regarding reparations submitted by the Commission in its application. They also mentioned several of the requests contained in the statements made

before notary public by the next of kin. In this regard, they requested the Court to take into account all the measures of satisfaction and non-repetition that the victims' next of kin had requested in their testimonies. Lastly, they stated that, in relation to the beneficiaries, in addition to the persons mentioned by the Commission in its application, "all the next of kin should also be compensated if the circumstances warrant it."

137. The representatives also requested the Court to order the State to reimburse the expenses and costs in which the victims' next of kin and their representatives incurred at the domestic level. In that regard, they indicated that both the *Comité de Iglesias para Ayudas de Emergencias* and Global Rights had incurred expenses for more than 16 years.

The State's arguments

138. The State indicated that it had made significant efforts to make reparation to the victims of grave human rights violations during the dictatorship or, when applicable, their next of kin, in particular within the framework of the friendly settlement procedure or, in general, through non-pecuniary reparation. It had also named the square on one side of the Government Palace the "*Plaza de los Desaparecidos*" and created the Center of Documentation and Files for the Defense of Human Rights, where the "Terror Files" are kept. Finally, it mentioned that, on October 6, 2003, Act 2225 was adopted, "creating the Truth and Justice Commission" (*supra* para. 41).

The Court's findings

139. In light of the State's acknowledgement of international responsibility (*supra* para. 41 to 51), and in accordance with the findings on merits described in the preceding chapters, the Court declares that the State is responsible for the violation of Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba (*supra* para. 94). In addition, the State violated the rights embodied in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the aforementioned and their next of kin (*supra* paras. 133).

140. It is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately.[88] The Court has based its decision in this regard on Article 63(1) of the American Convention, which establishes that:

> 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.

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[88] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 115; *Case of Ximenes Lopes, supra* note 8, para. 208, and *Case of Baldeón García, supra* note 6, para. 174.

141. Article 63(1) of the American Convention reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility. Thus, when an unlawful act occurs that can be attributed to a State, this gives rise immediately to its international responsibility, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused.[89] The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, which is regulated by international law.[90]

142. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and it must establish the payment of compensation for the damage caused.[91] It is also necessary to add the measures of a positive nature that the State must adopt to ensure the non-repetition of harmful acts such as those that occurred in this case.[92]

143. Reparations consist of measures tending to eliminate the effects of the violations that have been committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage that as been caused. Reparations should not make the victims or their successors either richer or poorer and they should be proportionate to the violations declared in the judgment.[93]

144. In light of these criteria and the circumstances of the instant case, the Court will proceed to examine the claims submitted by the Commission and by the representatives regarding reparations, so as to order measures designed to repair the damage in this case.

A) BENEFICIARIES

145. The Court will proceed to determine who should be considered an "injured party" in the terms of Article 63(1) of the American Convention and, consequently, merit the reparations established by the Court. In the first place, the Court finds that Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, are the "injured party," as victims of the violations established

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[89] *Cf.. Case of Ximenes Lopes, supra* note 8, para. 209; *Case of the Ituango Massacres, supra* note 1, para. 346, and *Case of Baldeón García, supra* note 6, para. 175.

[90] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 117; *Case of Ximenes Lopes, supra* note 8, para. 209, and *Case of the Ituango Massacres, supra* note 1, para. 347.

[91] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 117; *Case of Ximenes Lopes, supra* note 8, para. 209, and *Case of the Ituango Massacres, supra* note 1, para. 347.

[92] *Cf. Case of Baldeón García, supra* note 6, para. 176; *Case of López Álvarez, supra* note 6, para. 182; *Blanco Romero et al. case*. Judgment of November 28, 2005. Series C No. 138, para. 69; and *Case of García Asto and Ramírez Rojas, supra* note 69, para. 248.

[93] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 118; *Case of Ximenes Lopes, supra* note 8, para. 210, and *Case of the Ituango Massacres, supra* note 1, para. 348.

against them (*supra* paras. 139), they will therefore be beneficiaries of the reparations established by the Court for pecuniary and non-pecuniary damage.

146. The Court also considers that the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba are the "injured party," as victims themselves of the violation of the rights embodied in Articles 5(1), 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof (*supra* paras. 139).

147. The victims' next of kin will be beneficiaries of the reparations that the Court establishes for pecuniary and/or non-pecuniary damage, as victims of the violations of the Convention that have been declared, and also of those reparations that the Court establishes in their capacity as successors of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba. Consequently, in addition to the four victims mentioned above, the following persons will be considered "injured party":

(a) The next of kin of Dr. Agustín Goiburú Giménez: Elva Elisa Benítez Feliu de Goiburú (wife); Rogelio Agustín, Rolando Agustín and Patricia Jazmín, all Goiburú Benítez (sons and daughter), and Rosa Mujica Giménez (sister);

(b) The next of kin of Carlos José Mancuello Bareiro: Gladis Ester Ríos de Mancuello (wife); Claudia Anahí and Carlos Marcelo, both Mancuello Ríos (daughter and son); Ana Arminda Bareiro de Mancuello (mother); Mario Mancuello (father); Ana Elizabeth, Hugo Alberto, Mario Andrés and Emilio Raúl, all Mancuello Bareiro (siblings); and

(c) The next of kin of Benjamín and Rodolfo Ramírez Villalba: Fabriciana Villalba de Ramírez (mother); Lucrecia Francisca Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora, Mario Artemio, Herminio Arnoldo and Julio Darío, all Ramírez Villalba (siblings) and María Magdalena Galeano (former companion of Benjamín Ramírez Villalba).

148. The compensation for pecuniary and non-pecuniary damage corresponding to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, will be distributed among their next of kin as follows:[94]

(a) Fifty per cent (50%) of the compensation will be shared in equal parts between the children of the victim and fifty per cent (50%) of the compensation will be delivered to the person who was the wife or companion of the victim at the time he was deprived of life or disappeared;

(b) In the case of victims who did not have either children, or a wife or companion, the compensation will be distributed as follows: fifty per cent (50%) will be given to their parents. If one of the parents has died, the part corresponding to him or her will increase the part

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[94] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 122; *Case of Ximenes Lopes, supra* note 8, para. 218, and *Case of Baldeón García, supra* note 6, para. 182.

corresponding to the other. The remaining fifty per cent (50%) will be shared in equal parts between the victim's siblings; and

(c) Should their be no next of kin in any of the categories defined in the preceding paragraphs, the amount that would have corresponded to the next of kin in any category shall increase proportionately the part corresponding to the other next of kin.

149. In the case of the victims' next of kin, beneficiaries of the compensation established in this judgment, who are deceased or who die before they receive the respective compensation, the distribution criteria for the compensation indicated in the preceding paragraph will apply.

B) PECUNIARY DAMAGE

150. In this section, the Court will refer to pecuniary damage, which supposes the loss or detriment to the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal connection with the facts of the case *sub judice;* to this end, the Court establishes an amount that seeks to compensate the pecuniary consequences of the violations that have been declared in this judgment,[95] bearing in mind the State's acquiescence, the circumstances of the case, the evidence provided, the Court's case law, and the arguments of the parties.

151. In the instant case, it has been proved that Agustín Goiburú was 46 years old at the time of his disappearance, he was a surgeon in the emergency department and supported his family, composed of his wife and three children, financially (*supra* paras. 61(15) to 61(17) and 61(29)).

152. It has also been proved that Carlos José Mancuello Bareiro was 25 years of age at the time of his disappearance; he was employed by the company that represented Mercedes Benz in Paraguay and he was studying electromechanical engineering. He supported his family, composed at the time of his detention of his wife and daughter, financially. He also provided financial support to his parents and siblings (*supra* paras. 61(28) and 61(40)).

153. It has been proved that Benjamín Ramírez Villalba was 26 years of age at the time of his disappearance; he was a public accountant; he helped his family financially and had a companion, María Magdalena Galeano (*supra* paras. 61(43) and 61(45)).

154. Rodolfo Ramírez Villalba was 36 years of age at the time of his disappearance; he worked on a "*chacra*" [small farm] and subsequently in an oil drilling company as a technician in the installation of oil wells. Like his brother, he helped his family financially (*supra* para. 61(43) and 61(44)).

155. The Court observes that, in the case file, there are no appropriate vouchers to determine with precision the income received by Agustín Goiburú Giménez, Carlos

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[95] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 126; *Case of Ximenes Lopes, supra* note 8, para. 220, *and Case of the Ituango Massacres, supra* note 1, para. 370.

José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba at the time of the facts. However, taking into account the activities the victims performed as a means of subsistence, and also the circumstances and characteristics of this case, the Court establishes, based on the equity principle, the following amounts for loss of earnings: US$100,000.00 (one hundred thousand United States dollars) in favor of Agustín Goiburú; US$50,000.00 (fifty thousand United States dollars) in favor of Carlos José Mancuello Bareiro; US$50,000.00 (fifty thousand United States dollars) in favor of Benjamín Ramírez Villalba, and US$35,000.00 (thirty-five thousand United States dollars) in favor of Rodolfo Ramírez Villalba. These amounts must be delivered in accordance with paragraph 148 of this judgment.

C) NON-PECUNIARY DAMAGE

156. Non-pecuniary damage can include the suffering and hardship caused to the direct victim and his next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to allocate a precise monetary equivalent for non-pecuniary damage, it can only be compensated, in order to provide comprehensive reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court determines by the reasonable exercise of judicial discretion and based on the principle of equity; and also by acts or projects with public recognition or repercussion, which have the effect of acknowledging the dignity of the victims, and avoiding the repetition of the human rights violations.[96] The first aspect of the reparation of non-pecuniary damage will be examined in this section and the second in section D) of this chapter.

157. As the Court has indicated in other cases,[97] the non-pecuniary damage inflicted on Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba is evident, because it is inherent in human nature that all those subjected to arbitrary detention, incommunicado, torture and forced disappearance experienced intense suffering, anguish, terror, and feelings of powerlessness and insecurity; hence, this damage does not have to be proved.

158. As has been established, before being disappeared, Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba were illegally deprived of their liberty and subjected to torture while they were detained. In this regard, Dr. Goiburú experienced persecution by the dictatorship of General Stroessner for several years, and this caused him to live in exile. Even before his final detention and subsequent disappearance, he had been the object of severe harassment and, even abduction. After he had been detained, Dr. Goiburú was transferred from Argentina to Paraguay where he remained detained and subjected to tortures, such as the "*pileteada*" [immersion in a tank of water]. Carlos José Mancuello Bareiro and Benjamín and Rodolfo Ramírez Villalba were detained for 22 months during which they were subjected to tortures, including the "*teyurugay*" and the "*pileteada.*" The next of kin of these persons have suffered harm as a result of

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[96] *Cf.. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 130; *Case of Ximenes Lopes, supra* note 8, para. 227, and *Case of the Ituango Massacres, supra* note 1, para. 383.

[97] *Cf. Case of the Ituango Massacres, supra* note 1, para. 384; *Case of the Pueblo Bello Massacre, supra* note 5, para. 255, and *Case of the "Mapiripán Massacre", supra* note 2, para. 283.

their forced disappearance, owing to the lack of support from the State authorities in the effective search for the disappeared; the stigmatism of being seen as the next of kin of "subversives," and the fear to begin searching for their family members. Since Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba are still disappeared, the next of kin have not been able to honor their loved ones appropriately. The absence of a complete and effective investigation into the facts and the impunity constitute a source of additional suffering and anguish for the next of kin. Also, some of the next of kin have had to live in exile as a result of the facts. All the above, in addition to affecting their mental integrity, has had an impact on their social and labor relations and altered the dynamics of their families (*supra* paras. 95 to 104).

159. Regarding the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, the Court repeats that the suffering caused to the victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim."[98] The Court has also considered that the suffering or death – in this case, the forced disappearance – of a person causes non-pecuniary damage to his daughters, sons, wife or companion, mother, father, and sisters and brothers, which does not have to be proved.[99] Furthermore, other circumstances have been proved that have increased the violation of the right to humane treatment of the next of kin of the victims, before and after their detention and disappearance.

160. International case law has established repeatedly that the judgment constitutes *per se* a form of reparation.[100] Nevertheless, owing to the gravity of the facts of the instant case and the situation of impunity, the intensity of the suffering caused to the victims, the alterations in their living conditions, and the other consequences of a non-pecuniary nature, the Court deems it necessary to order the payment of compensation for non-pecuniary damage, based on the equity principle,[101] which must be delivered as stipulated in paragraphs 147 to 149 of this judgment, and according to the following parameters:

> (a) For Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, the Court establishes the amount of US$50,000.00 (fifty thousand United States dollars) each;
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> (b) For the immediate family of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, who are also victims, the Court considers that the corresponding damage must be compensated by the payment to them of the amounts indicated below:

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98 *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 132(b); *Case of the Pueblo Bello Massacre, supra* note 5, para. 257, and *Case of the Serrano Cruz Sisters*, *supra* note 68, para. 159.

99 *Cf. Case of the Ituango Massacres, supra* note 1, para. 386; *Case of the Pueblo Bello Massacre, supra* note 5, para. 257, and *Case of the 19 Tradesmen, supra* note 60, para. 229.

100 *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 131; *Case of the Ituango Massacres, supra* note 1, para. 387, and *Case of Baldeón García, supra* note 6, para. 189.

101 *Cf. Case of the Ituango Massacres, supra* note 1, para. 390; *Case of the Pueblo Bello Massacre, supra* note para. 258, and *Blanco Romero et al. case, supra* note 92, para. 87.

(i) US$25,000.00 (twenty-five thousand United States dollars) in the case of the mother, father, wife or permanent companion, and each daughter and son of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba;

(ii) US$10,000.00 (ten thousand United States dollars) for each sister or brother of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba;

(iii) The amount mentioned in paragraph (i) shall be increased by the payment of US$5,000.00 (five thousand United States dollars) for Patricia Jazmín Goiburú Benítez, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos and Emilio Raúl Mancuello Bareiro, who were minors at the time of the forced disappearance of their fathers and brother, respectively, since the said sufferings were increased by their situation as minors and the lack of protection to which the State subjected them;

(iv) The amount mentioned in paragraph (i) and (ii) shall be increased by the payment of $3,000.00 (three thousand United States dollars) for Ana Arminda Bareiro de Mancuello and Elva Elisa Benítez de Goiburú, and also for Julio Darío Ramírez Villalba, who have advanced the criminal proceedings and had to contend with the irregularities in the proceedings concerning their next of kin;

(v) The amount mentioned in paragraph (i) shall be increased by the payment of $10,000 (ten thousand United States dollars) for Gladis Esther Ríos de Mancuello, who was detained together with her husband and remained in prison for almost three years; her months-old daughter was taken from her and for a time she was not told who the baby had been given to; she spent most of her pregnancy in prison and raised her baby in prison for more than two years. Lastly, the Court takes into consideration that, following her expulsion from Paraguay, Mrs. Ríos de Mancuello lived outside her country until the dictatorship fell;

(vi) The amount mentioned in paragraph (i) shall be increased by the payment of $8,000.00 (eight thousand United States dollars) for María Magdalena Galeano, who was detained on the same day as her companion and remained in prison for more than three years;

(vii) The amount mentioned in paragraph (ii) shall be increased by the payment of $8,000.00 (eight thousand United States dollars) for Rosa Mujica Giménez who was detained because she was Dr. Goiburú's sister. In addition, she gave birth in a police station. After she had been released, she was subjected to house arrest and, two years later, she was again detained for two months; and

(viii) The amount mentioned in paragraph (i) shall be increased by the payment of $3,000.00 (three thousand United States dollars) for Carlos Marcelo Mancuello Ríos, who was born in a police station while

his mother was deprived of her liberty and accompanied her in prison for the first two and a half years of his life, until they were released and expelled from Paraguay, after she had gone on hunger strike demanding news of her husband. He went into exile with his mother.

161. Based on the above, the Court establishes, in fairness, the amounts for compensation for non-pecuniary damage caused by the violations declared in this case in favor of the persons disappeared and also of their next of kin, as follows:

Agustín Goiburú Giménez		US $ 50,000.00
Elva Elisa Benítez Feliu de Goiburú	Wife	US $ 28,000.00
Rogelio Agustín Goiburú Benítez	Son	US $ 25,000.00
Rolando Agustín Goiburú Benítez	Son	US $ 25,000.00
Patricia Jazmín Goiburú Benítez	Daughter	US $ 30,000.00
Rosa Mujica Giménez	Sister	US $ 18,000.00
Carlos José Mancuello Bareiro		US $ 50,000.00
Gladis Ester Ríos de Mancuello	Wife	US $ 35,000.00
Claudia Anahí Mancuello Ríos	Daughter	US $ 30,000.00
Carlos Marcelo Mancuello Ríos	Son	US $ 33,000.00
Ana Arminda Bareiro de Mancuello	Mother	US $ 28,000.00
Mario Mancuello	Father	US $ 25,000.00
Hugo Alberto Mancuello Bareiro	Brother	US $ 10,000.00
Ana Elizabeth Mancuello Bareiro	Sister	US $ 10,000.00
Mario Andrés Mancuello Bareiro	Brother	US $ 10,000.00
Emilio Raúl Mancuello Bareiro	Brother	US $ 15,000.00
Rodolfo Ramírez Villalba		US $ 50,000.00
Benjamín Ramírez Villalba		US $ 50,000.00
Fabriciana Villalba de Ramírez	Mother	US $ 25,000.00
Lucrecia Francisca Ramírez de Borba	Sister	US $ 10,000.00
Eugenia Adolfina Ramírez de Espinoza	Sister	US $ 10,000.00
Sotera Ramírez de Arce	Sister	US $ 10,000.00
Sara Diodora Ramírez Villalba	Sister	US $ 10,000.00
Mario Artemio Ramírez Villalba	Brother	US $ 10,000.00
Herminio Arnoldo Ramírez Villalba	Brother	US $ 10,000.00
Julio Darío Ramírez Villalba	Brother	US $ 13,000.00
María Magdalena Galeano	Benjamín's companion	US $ 33,000.00

162. The compensation determined in the preceding paragraph in favor of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba must be delivered in accordance with paragraph 148 of this judgment. The compensation determined in the above table must be delivered directly to each beneficiary. If any of them has died or dies before receiving the respective compensation, the amount that would have corresponded to that person shall be distributed in accordance with the applicable national law.[102]

D) OTHER FORMS OF REPARATION
(Measures of satisfaction and guarantees of non-repetition)

[102] *Cf. Case of Ximenes Lopes, supra* note 8, para. 240; *Case of Baldeón García, supra* note 6, para. 192, and *Case of López Álvarez, supra* note 75, para. 203.

163. In this section, the Court will determine those measures of satisfaction that seek to repair non-pecuniary damage, which does not have a pecuniary scope, and will also order measures of a public scope or repercussion (*supra* para. 156).

(a) Obligation to investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and punish those responsible

164. The State is obliged to combat the situation of impunity that reigns in this case by all possible means, because impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin,[103] who have the right to know the truth about the facts.[104] When this right to the truth is recognized and exercised in a specific situation, it constitutes an important measure of reparation, and is a reasonable expectation of the victims that the State must satisfy.[105]

165. The Court also recalls that the victims' next of kin have the right, and the States the obligation, to ensure that what happened to the victims is investigated effectively by the State authorities, proceedings are filed against those allegedly responsible for the illegal acts and, if applicable, pertinent penalties are imposed on them.[106] Consequently, the State must take the necessary measures forthwith to activate and conclude effectively, within a reasonable time, the investigation to determine the identity of the masterminds and perpetrators of the acts committed to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba; and must complete the criminal proceedings that have been instituted. To this end, it must remove all the *de facto* and *de jure* obstacles that maintain impunity and use all available means to expedite the investigation and the respective proceedings and thus avoid a repetition of such serious acts as those examined in the instant case. The State must provide the Court with information on the measures adopted in this respect every six months and, in particular about the results. Furthermore, these results must be publicized by the State so that Paraguayan society may know the truth about the facts of this case.

166. In particular, as indicated above (*supra* paras. 123 to 132), in the terms of the general obligation to ensure rights established in Article 1(1) of the American Convention, Paraguay should adopt all the necessary diplomatic and judicial measures to prosecute and punish all those responsible for the violations committed, furthering the extradition requests that are admissible under domestic law or the pertinent international law by all possible means. Also, to ensure the effectiveness of the collective guarantee mechanisms established in the Convention, and as has been declared, Paraguay and the other States Parties to the Convention should collaborate with each other to eliminate the impunity of the violations committed in this case by the prosecution and punishment of those responsible, and should collaborate with

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[103] *Cf. Case of the Ituango Massacres, supra* note 1, para. 399; *Case of Baldeón García, supra* note 6, para. 195, and *Case of the Pueblo Bello Massacre, supra* note 5, para. 266.

[104] *Cf. Case of Ximenes Lopes, supra* note 8, para. 245; *Case of the Pueblo Bello Massacre, supra* note 5, para. 266, and *Case of Gómez Palomino, supra* note 5, para. 76.

[105] *Cf. Case of the Pueblo Bello Massacre, supra* note 5, para. 266; *Blanco Romero et al. case, supra* note 92, para. 95, and *Case of the "Mapiripán Massacre", supra* note 2, para. 297.

[106] *Cf. Case of Ximenes Lopes, supra* note 8, para. 246; *Case of Baldeón García, supra* note 6, para. 197, and *Case of the Pueblo Bello Massacre, supra* note 5, para. 219.

each other in good faith, either through the extradition of those responsible or by prosecuting them on their own territory.

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167. Regarding the representatives' request that the State should enact a law that includes in the Civil Code the concept of "absent owing to forced disappearance" for the persons who were deprived of their liberty and then disappeared from 1954 to 1989, the Court considers that this request has not been sufficiently justified either in the arguments on merits or in those on reparations; therefore, it does not have sufficient elements to rule on it.

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168. The representatives have asked the Court to order the State "to carry out the necessary penal and procedural reforms in Paraguay to permit prosecution *in absentia*," because, currently, "this appears to be one of the problems that has prevented filing criminal proceedings against Stroessner and Montanaro." In this regard, the Court observes that there is no clear consensus, in either the legal doctrine or the national laws of the States in the region concerning the regulation of this procedural constraint. In addition, there have been cases in which convictions *in absentia* or "in contempt of court" have not been executed, because the arrest warrants issued against those convicted have not been implemented; this then becomes a factor of impunity and benefits the latter, owing to the action of the justice system that convicts them but fails to execute the sentence.[107] Accordingly, the Court will not rule in this regard.

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169. The Court deems that the adoption of Act 2225 "creating the Truth and Justice Commission" "to investigate acts that constitute or could constitute human rights violations committed by State or para-State agents from May 1954 until the promulgation of this Act," is an element of reparation In this regard, the Court considers that the work of this Commission could contribute to seeking the truth about a period in Paraguay's history; it therefore constitutes a very important effort by the State. In this regard, the Court urges the State to continue encouraging the development of its work.

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170. The Court assesses positively the creation of the Center of Documentation and Files for the Defense of Human Rights, known as the "Terror Files," which has contributed to the search for the historic truth not only of Paraguay, but of the entire region. The preservation, classification and systematization of these documents

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[107] *Cf. Case of the Ituango Massacres, supra* note 1, para. 293 and 312; *Case of the Pueblo Bello Massacre, supra* note 5, paras. 187 and 211, and *Case of the "Mapiripán Massacre", supra* note 2, para. 240.

constitutes an important effort for establishing and acknowledging the historic truth of the events that occurred in the Southern Cone during several decades.

(b) Search for Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba and burial of their remains

171. The right of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba to know where their mortal remains are[108] is a measure of reparation and, therefore, an expectation that the State should satisfy to the victims' next of kin.[109] Thus, the Court has indicated that the mortal remains of a person should be treated regarding, owing to their significance for their next of kin.[110]

172. The Court considers it essential that, for the effects of reparation, the State should proceed immediately to seek and find the mortal remains of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba. If it finds their remains, the State must return them to their next of kin as soon as possible, once it has proved the relationship through DNA testing. In addition the State must cover the expenses of their burial in agreement with their next of kin.

(c) Public act to acknowledge responsibility and make reparation

173. To ensure that Paraguay's acquiescence and the measures ordered by the Court have full effect as regards reparation and the preservation of the memory of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, and in reparation to their next of kin, and also to serve as a guarantee of non-repetition, the Court considers that the State should organize a public act acknowledging its responsibility for the forced disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba, and make a public apology to their next of kin. This act should be carried out in the presence of the next of kin of the said persons and with the participation of senior State authorities. The act should be held within six months of notification of this judgment.

174. Regarding the request for the creation of a public square, the Court observes that the State has already designated a public place as the "*Plaza de los Desaparecidos*," which constitutes an important comprehensive public recognition of those whose forced disappearance occurred during the dictatorship of General Alfredo Stroessner Matiauda.

(d) Publication of the judgment

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[108] *Cf. Case of the Pueblo Bello Massacre, supra* note 5, paras. 270-273; *Case of the 19 Tradesmen, supra* note 60, para. 265, and *Juan Humberto Sánchez case.* Judgment of June 7, 2003. Series C No. 99, para. 187.

[109] *Cf. Case of the 19 Tradesmen, supra* note 60, para. 265; *Juan Humberto Sánchez case, supra* note 109, para. 187, and *El Caracazo case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 122.

[110] *Cf. Case of Baldeón García, supra* note 6, para. 208; *Case of Acevedo Jaramillo et al., supra* note 2, para. 315, and *Case of López Álvarez, supra* note 75, para. 214.

175. As it has ordered in other cases as a measure of satisfaction,[111] the State must publish once, within six months, in the official gazette and in another newspaper with widespread national circulation, paragraphs 39 to 41 and 48 to 54 of the chapter on the partial acquiescence; the proven facts of this judgment, without the corresponding footnotes; the chapter entitled "the State's international responsibility in the context of this case"; the considering paragraphs 80 to 104 and 111 to 113, and the operative paragraphs hereof. These publications should be made within six months of notification of this judgment.

(e) Physical and psychological treatment for the next of kin

176. The Court considers it necessary to order a measure of reparation that seeks to reduce the physical and mental problems of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba. To this end, the Court decides that the State has the obligation to provide, free of charge and through the national health services, the appropriate treatment required by these persons, including medication, after they have given their corresponding consent, as of notification of this judgment and for all the time necessary. The psychological treatment should take into consideration the specific circumstances and needs of each persons, so that it is provided through collective, family or individual treatment, as agreed with each of them and following individual assessment.

(f) Monument in memory of the disappeared victims

177. The State must erect a monument to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba in a central and prominent site in Asunción. This monument should bear a plaque with the names of these victims and should mention the context of the forced disappearances that occurred during "Operation Condor". The monument must be erected within one year of notification of this judgment.

(g) Human rights training

178. Considering that the disappearance of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba was perpetrated by members of the Paraguayan National Police, in violation of peremptory norms of international law, the State must adopt measures to train members of its police forces with regard to the principles and norms for the protection of human rights. To this end, the State must implement, within a reasonable time, permanent programs of human rights training for the Paraguayan police forces, at all levels. The programs should include specific mention of this judgment and the international human rights instruments, specifically those relating to forced disappearance of persons and torture.

i) Adaptation to international law on the offenses of torture and forced disappearance of persons

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[111] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 151; *Case of Ximenes Lopes, supra* note 8, para. 249, and *Case of Baldeón García, supra* note 6, para. 194.

179. As indicated with regard to the nature of the penal definitions of torture and forced disappearance of persons contained in the Paraguayan Penal Code in force (*supra* paras. 91 to 93) and bearing in mind the State's obligations arising from the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and Article 2 of the American Convention, the Court deems it pertinent to order the State, as a guarantee of non-repetition of the facts of the case, to adapt, within a reasonable time, the definition of the offenses of "forced disappearance" and torture contained in articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law.

E) COSTS AND EXPENSES

180. As the Court has indicated previously, costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention, because the activity deployed by the next of kin of the victims or their representatives in order to obtain justice at both the national and the international level entails expenditure that must be compensated when the State's international responsibility is declared in a judgment against it. Regarding their reimbursement, the Court must prudently assess their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, and those generated during the proceedings before the inter-American system, bearing in mind the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity and taking into account the expenses indicated by the parties, provided the *quantum* is reasonable.[112]

181. The Court takes into account that some of the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, and Rodolfo and Benjamín Ramírez Villalba acted through representatives, at both the domestic level and before the Commission and the Court. In the instant case, it has been established that some of the next of kin have testified in the criminal proceedings and have become complainants in these proceedings.

182. It is also necessary to bear in mind that the representatives of the victims' next of kin did not submit their requests, arguments and evidence autonomously, even though they had the opportunity to do so. Consequently, their participation in the proceedings before the Court was limited to some assistance provided to the Commission when taking the sworn statements that had been requested and the submission of final written arguments. Also, although the representatives requested the reimbursement of costs and expenses, they did not submit any documentation to the Court to authenticate these.

183. Based on the above, the Court considers it equitable to order the State to reimburse the amount of US$10,000.00 (ten thousand United States dollars) or the equivalent in Paraguayan currency, to Elva Elisa Benítez de Goiburú, Ana Arminda Bareiro de Mancuello and Julio Darío Ramírez Villalba, who shall deliver the amount of US$8,000.00 (eight thousand United States dollars) or the equivalent in Paraguayan currency, to the *Comité de Iglesias para Ayudas de Emergencias* (CIPAE)

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[112] *Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra* note 3, para. 152; *Case of Ximenes Lopes, supra* note 8, para. 252, and *Case of the Ituango Massacres, supra* note 1, para. 414.

and the amount of US$2,000.00 (two thousand United States dollars) or the equivalent in Paraguayan currency, to *Global Rights*, to compensate the expenditure they incurred before the authorities of the domestic jurisdiction and also that arising during the proceedings before the inter-American system.

F) MEANS OF COMPLIANCE

184. To comply with this judgment, the State must erect a monument in memory of the victims and must pay the compensation for pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses within one year of notification of this judgment (*supra* paras. 155, 160, 161 and 183). With regard to the publication of the judgment, and the public act acknowledging responsibility and in reparation (*supra* paras. 173 and 175), the State shall have six months, from notification of the judgment, to comply with this. Regarding the appropriate treatment for the next of kin of the disappeared victims, this must be provided as of notification of this judgment, and for the necessary time (*supra* para. 176). Also, Paraguay must take forthwith the necessary measures to activate and conclude effectively, within a reasonable time, the investigation to determine the identity of the masterminds and perpetrators of the disappearances of the victims and must complete the criminal proceedings instituted (*supra* paras. 165 and 166). The State must inform the Court, every six months, about the measures adopted in this respect and, particularly about the results (*supra* para. 165). The State must proceed forthwith to seek and locate the remains of the victims and, if it finds them, the State must return them to their next of kin as soon as possible (*supra* paras. 171 and 172). In the case of the other reparations ordered, it must comply with them within a reasonable time (*supra* paras. 178 and 179).

185. The payment of the compensation established in favor or the victims shall be made directly to them. If any of them has died, the payment shall be made in accordance with paragraphs 149 and 162.

186. If, for reasons attributable to the beneficiaries of the compensation, it is not possible for them to receive it within the period indicated in the previous paragraph, the State shall deposit the amounts in favor of the beneficiaries in an account or a deposit certificate in a solvent Paraguayan banking institute in United States dollars and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, it shall revert to the State with the accrued interest

187. The payment to reimburse the costs and expenses arising from the measures taken by the next of kin and their representatives in the domestic and the international proceedings, as applicable, shall be made to Elva Elisa Benítez Feliú de Goiburú, Ana Arminda Bareiro de Mancuello and Julio Darío Ramírez Villalba (*supra* para. 183), who shall make the corresponding payments.

188. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in Paraguayan currency, using the exchange rate between the two currencies in force on the New York, United States of America, market the day prior to payment to make the respective calculation.

189. The amounts allocated in this judgment for compensation and for reimbursement of costs and expenses may not be affected, reduced or conditioned by current or future taxes or charges. Consequently, they must be delivered to the beneficiaries integrally, as established in this judgment.

190. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Paraguay.

191. In accordance with its consistent practice, the Court will exercise the authority inherent in its attributes and derived from Article 65 of the American Convention to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with all its terms. Within one year of notification of the judgment, Paraguay shall provide the Court with a first report on the measures adopted to comply with the judgment.

XIII
OPERATIVE PARAGRAPHS

192. Therefore,

THE COURT,

DECIDES:

Unanimously,

1. To admit the State's acknowledgement of international responsibility for the violation of the rights to personal liberty, humane treatment, and life embodied in Articles 7, 5(1) and 5(2) and 4(1) of the American Convention on Human Rights, in relation to the general obligation to respect and safeguard the rights and freedoms established in Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, in the terms of paragraphs 40, 41, 48 and 49 of this judgment.

2. To admit the State's partial acknowledgement of international responsibility for the violation of the rights to a fair trial and to judicial protection embodied in Articles 8(1) and 25 of the American Convention, in relation to the general obligation to respect and ensure rights established in Article 1(1) thereof, in the terms of paragraphs 40, 41 and 50 of this judgment.

DECLARES:

Unanimously, that:

1. The State violated the right to life, humane treatment, and personal liberty embodied in Articles 4(1), 5(1), 5(2) and 7 of the American Convention on Human Rights, in relation to the general obligation to respect and safeguard the rights and freedoms established in Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, in the terms of paragraphs 62 to 73 and 80 to 94 of this judgment.

2. The State violated the right to humane treatment embodied in Article 5(1) of the American Convention on Human Rights, in relation to the general obligation to respect and safeguard the rights and freedoms established in Article 1(1) thereof, to the detriment of Elva Elisa Benítez Feliu de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Francisca Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano, in the terms of paragraphs 95 to 104 of this judgment.

3. The State violated the right to a fair trial and to judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to the general obligation to respect and safeguard the rights and freedoms established in Article 1(1) thereof, to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba, Benjamín Ramírez Villalba, and also of their next of kin, Elva Elisa Benítez Feliu de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Francisca Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano, in the terms of paragraphs 111 to 133 of this judgment.

4. This judgment constitutes *per se* a form of reparation, in the terms of paragraphs 139 to 144, 156 to 160 and 163 hereof.

AND ORDERS:

Unanimously, that:

5. The State must immediately carry out the necessary procedures to activate and conclude effectively, within a reasonable time, the investigation to determine the masterminds and perpetrators of the acts committed to the detriment of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, and also complete the criminal proceedings that have been filed. In addition, these results should be published by the State within a reasonable time. In this regard, in the terms of paragraphs 123 to 132 and 164 to 166 of the judgment, the State should adopt the necessary measures of a diplomatic or judicial nature to prosecute and punish all those responsible for the violations committed, furthering by all possible means the necessary extradition requests under the pertinent domestic norms or international law. Moreover, Paraguay and the other States Parties to the Convention should collaborate to eliminate the impunity of the violations committed in this case by the prosecution and, if applicable, punishment of those responsible and should collaborate in good faith,

either through the extradition of those responsible for the facts or by prosecuting them on their own territory.

6. The State must proceed immediately to seek and locate Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba and, if their remains are found, it must deliver them to their next kin forthwith and cover the costs of their burial, in the terms of paragraph 172 of the judgment.

7. The State must organize, within six months, a public act acknowledging responsibility and in reparation, in the terms of paragraph 173 of the judgment.

8. The State must publish once, within six months, in the official gazette and in another newspaper with widespread national circulation, paragraphs 39 to 41 and 48 to 54 of the chapter on the partial acquiescence; the proven facts of this judgment, without the corresponding footnotes; the chapter entitled "the State's international responsibility in the context of this case"; the considering paragraphs 80 to 104 and 111 to 113, and the operative paragraphs hereof, in the terms of paragraph 175 hereof.

9. The State must provide all the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba with appropriate treatment including medicines, after they have given their corresponding consent, as of notification of this judgment and for all the time necessary, without any charge and through the national health services, in the terms of paragraph 176 of this judgment.

10. The State must erect, within one year, a monument in memory of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, in the terms of paragraph 177 of this judgment.

11. The State must implement, within a reasonable time, permanent programs of human rights training in the Paraguayan police forces, at all levels, in the terms of paragraph 178 of this judgment.

12. The State must adapt, within a reasonable time, the definition of the crimes of torture and "involuntary" (*forzosa*) disappearance of persons contained in articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law, in the terms of paragraph 179 of this judgment.

13. The State must pay in cash to the next of kin of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, within one year, as compensation for pecuniary damage, the amounts established in paragraph 155 of this judgment, in the terms of paragraphs 147 and 149 hereof.

14. The State must pay in cash to Agustín Goiburú Giménez, Carlos José Mancuello Bareiro, Rodolfo Ramírez Villalba, Benjamín Ramírez Villalba, Elva Elisa Benítez Feliú de Goiburú, Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Ramírez de Borba,

Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba and María Magdalena Galeano, within one year, as compensation for non-pecuniary damage, the amounts established in paragraph 161 of this judgment, in the terms of paragraphs 147 to 149 and 162 hereof.

15. The State must pay in cash, within one year, for costs and expenses incurred in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights, the amount established in paragraph 183 of this judgment, which shall be delivered to Elva Elisa Benítez Feliú de Goiburú, Ana Arminda Bareiro de Mancuello and Julio Darío Ramírez Villalba, in the terms of paragraphs 183 and 187 hereof.

16. It will monitor full compliance with this judgment and will consider the case closed when the State has fully executed the operative paragraphs. Within a year of notification of this judgment, the State must send the Court a report on the measures adopted to comply with it.

Judges Sergio García Ramírez and Antônio Augusto Cançado Trindade informed the Court of their separate opinions, which accompany this judgment.

Done, in San José, Costa Rica, on September 22, 2006, in Spanish and English, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ CONCERNING THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN *GOIBURÚ ET AL. V. PARAGUAY* OF SEPTEMBER 22, 2006

1. I concur with my colleagues' opinion as expressed in the judgment in this case, without detriment to establishing – or reiterating – some concerns relating to certain concepts, whose meaning and scope requires commentary. Evidently, this clarification – in which I respect the opinion of those who have a different point of view – does not alter my concurring participation in the unanimous decision that sustains the Court's ruling on merits and reparations.

2. The concept of the State's "aggravated responsibility" has been used in the judgment I am examining, and this needs to be re-examined. For several years, I have been referring to this element, as can be seen in my *separate opinion* in relation to the judgment delivered by the Inter-American Court in the *Case of Myrna Mack Chang* of November 25, 2003. Evidently, I do not ignore or question the useful burden of reproach that this expression may have when it is used to publicly assess certain facts and encourage their rejection.

3. The expression "aggravated responsibility" suggests that there is a series of responsibilities of different importance or intensity: ranging from slight to grave, and possibly passing through intermediate categories. To the contrary, the reference to "aggravated" responsibilities would have no meaning. Moreover, this turn of phrase should have an equivalence in the descending order of alleged responsibilities: "attenuated responsibility," which has never appeared in the Court's case law.

4. In my opinion, this "aggravated" responsibility does not exist, and neither does "attenuated" responsibility, because simple responsibility (without considerations of intensity or nuance) implies the possibility or need "to respond" for certain acts owing to legal evidence of attribution that links specific conduct to a particular person who must respond for it juridically by the establishment of certain consequences.

5. Obviously, this does not mean that human rights violations lack their "own characteristics" and are always equally grave. It is the responsibility that is uniform – a logical juridical connection between an act, the person responsible and certain consequences – not the facts from which this derives, or the effects that a court attributes to them. In other words, the facts may be described as slight, grave or extremely grave, and the consequences, as ordinary, severe or very severe. To the contrary, responsibility is merely responsibility.

6. I will give some example to clarify what I am endeavoring to say. The violation of the right to humane treatment is extremely grave – owing to the importance of the juridical rights affected and the type of the acts that comprise this violation – when a victim is subjected to torture. The violation of the right to life becomes notoriously and intensely grave when it is the deprivation of the life of a series of individuals who are executed brutally. The violation of the right to liberty, among others, is very grave when it is practiced arbitrarily, prolonged for some time, and becomes forced disappearance in the terms of international law. It can also be maintained that the facts are more serious when the authors are senior State officials, from whom there are higher expectations of guarantee – hence, they are

essential guarantors – from whom exemplary conduct is expected and who are called on to ensure the legitimacy of the acts of all public servants. Violations are also especially grave when they are perpetrated by those specifically responsible for certain obligations of respect and guarantee of human rights, or when they occur in circumstances in which the harmful conduct is extreme and when these circumstances even become part of the facts. All of this increases the "gravity of the facts."

7. The legal system responds rationally and proportionately to the gravity of the acts through the selection of consequences established by law and applied by the courts. It is not admissible to sanction extremely grave facts with very mild measures, as happens by using fraudulent or superficial proceedings, rejected by international criminal tribunals and also by the Inter-American Court of Human Rights within the sphere of its own applicable jurisdiction. It would also not be admissible to adopt more severe measures when the facts are less serious. In both scenarios, this would be incompatible with the principles of necessity, rationality and proportionality that govern the establishment and application of the juridical consequences of illegal acts.

8. In brief, a court may establish that the illegal acts were of a serious nature or that they were aggravated by the conjunction of certain elements or conditions and, therefore, that the corresponding consequences must be more severe. In the integral examination of a case and in the decision adopted, these qualifications – which are not only possible, but also essential – will contribute to the logical juridical definition resulting from the evidence concerning the facts, based on which their consequences are established. This definition refers to the State's responsibility, which is neither grave nor slight, but merely responsibility for certain acts, of greater or lesser gravity that will justify the nature, rigor and scope of the measure adopted.

9. When I referred to this matter in my opinion in the judgment in the *Case of Myrna Mack Chang*, I indicated that, in that case, there was "an objective aggravation of the facts, inasmuch as it is significant, in view of the elements of available information […], that this was not an isolated crime, the product of the design of one individual, but that there was an elaborate plan to deprive the victim of her life owing to her activities […] and that security agents and officials took part in the plan. This apparatus, which had important resources of power, placed itself at the service of actions that implied violation of the victim's most relevant right, the right to life […]." (*Opinion* cit., para. 44)

10. "One notable aspect of the gravity of this case resides in the obstacles created to the due investigation of the facts and the criminal prosecution of those responsible. […] The aggravated seriousness of the facts must certainly be taken into account when making the reproach that a judgment on human rights violations implies, as in the case of this final ruling. It will be necessary to weigh this in the decisions duly adopted by the domestic criminal jurisdiction..." (*id.*, paras. 45 and 46).

11. My reservations concerning the concept of "aggravated responsibility" do not lead me to dissent from the opinion formulated by my colleagues in the unanimously adopted judgment. The reference to an aggravated responsibility of the State, based on the objective gravity of the facts and with a view to the severity of the punishment, does not modify the reason and pertinence of the judgment against the

State. In this case, the words have no impact on the structure of the ruling and the determination of the result.

12. Regardless of the wording, it is evident that there were extremely grave acts; that the State is internationally responsible for these acts, considering the identity of those who perpetrated them, and that it is pertinent to order measures that are adapted to these circumstances. Evidently, the State's acknowledgement of responsibility through acts that can be characterized technically as confession and acquiescence should not be overlooked – and the judgment recognizes this. Moreover, I note that, when presenting the case, the Inter-American Commission used concepts that possess – as I have also maintained in several opinions – their own technical and juridical connotations, and did not merely allude to an acknowledgement of State responsibility.

13. With regard to the last point, I share the opinion expressed in the judgment concerning the juridical, ethical and political value of the acts of acknowledgement, confession and acquiescence. They manifest a healthy attitude for the exercise of human rights that will permit the development of new and better phases – at least, we hope so. I recognize that these acts correspond to decisions of the States themselves, in which the Court cannot and should not intervene; the Court merely receives and examines them for the purposes of its own jurisdiction. But, at the same time, as I have stated on different occasions, I am pleased, that the number of acknowledgements, confessions and acquiescences have increased; by definition, they denote improved access to the truth about the facts, which is of interest to all. Therefore, I have underscored this fact in the reports I make, as President of the Court, to the OAS Committee on Juridical and Political Affairs and General Assembly.

14. I also note that, under the inter-American system for the protection of human rights – and within this, in the proceedings before the Inter-American Court – the acknowledgement made by the State that contributes to establishing the truth and resolving the dispute does not necessarily encapsulate all the truth or settle the dispute completely. Accordingly, it is never an insurmountable obstacle that hides some facts in exchange for revealing others.

15. When the State party has made an acknowledgement or acquiescence, the Court retains the power, which it usually exercises, to continue the proceedings in order to make progress in defining the facts and providing satisfaction to the victims. It hears testimonies and expert opinions, it gathers new evidence, and in the judgment it refers to the proven facts. It never merely declares that the dispute has ceased and closes the case. The State has frequently shown willingness to endow the proceedings on human rights with this move towards the safeguard of human rights that could seem unnecessary in other types of proceedings, but is congruent with the purpose of the inter-American system, which is formed by the States themselves, as guarantors, and the Inter-American Court.

*** * ***

16. The judgment refers to "State terrorism." Another ruling delivered during the session when the Inter-American Court deliberated on the *Case of Goiburú*: the judgment in the *Case of Almonacid Arellano et al.*, alludes to a "State policy" consisting in the generalized repression of opponents. I have no reservations – more exactly, I am in full agreement – with the Court's findings and decisions regarding the violation of rights in both cases and the characteristics of these violations.

However, I have prepared this opinion with regard to the former case, rather than the latter.

17. Without prejudice to the preceding statement, I would like to express my concern owing to the scope of certain concepts – such as those indicated in the preceding paragraph and others – and their possible consequences. This concern responds to the fact that those concepts and other similar ones, particularly the one relating to "State crime" imply, if they are examined literally, attributing conducts to the State, concentrating responsibilities in the State, and categorizing criminal acts as policies that can be attributed to the State, as a result of the conduct of those who occupied senior public posts and had or exercised excessive powers, and also the accumulation of responsibilities in the State itself.

18. Some of these expressions occupy a central position and have been carefully examined in enlightening texts on penal and criminal matters that seek to clarify responsibilities, to reveal the serious crimes hidden by a mountain of "justifications," "denials" and "neutralizations," and to bring the perpetrators out of the shadows. In this regard, the illustrative texts on State crimes by Stanley Cohen and, very recently, the presentation made by Raúl Zaffaroni at the Stockholm Criminology Symposium and at the International Criminal Law Congress in Mexico (2006) should be recalled.

19. Evidently, I do not question the denunciations, whose rationale I share, but I would call attention to the use that could be made of expressions subject to different interpretations, which could lead to a situation where justifications are accepted and the door to impunity could be opened. Hence, I am not referring to an error, but rather to a risk.

20. State terrorism means that the State becomes a terrorist, sowing fear and alarm among the population, and causing anguish that gravely disturbs the peace that should reign in society. State policy implies that the State itself – a complex and diverse entity, that is obviously not a physical person, an individual, and cannot be reduced to a criminal gang – undertakes a plan and executes it through certain conducts that are shaped to fulfill the purpose and strategy designed by the State itself. Likewise, the notion of a State crime, if we abide by the literal meaning of the expression, it based on the assumption that the State commits crimes.

21. The expression "State crime" – and, in its own very similar ambit, the concept of State terrorism and the political trend of the State applicable to this matter – has the significant and plausible connotation that it embodies and exhibits conducts of the most reprehensible nature – teratology of criminality – anchored in discourses that attempt to be persuasive and, at times, have been able to permeate some sectors of the population. Under its wing, millions of human beings have been made victims, for numerous purposes including security, respect for tradition, preservation of cultural values, and social peace. Therefore, I recognize the effectiveness of the fulminating expressions aimed at discovering the characteristics of these criminal events and halting the arguments put forward by their authors.

22. It is evident that the violations, isolated or massive, are committed by State agents or by other individuals whose conduct entails the international responsibility of the State, which is the material party in international human rights proceedings, and which, in this capacity and pursuant to the responsibility that may be attributed to it, can receive the ruling and the sentence delivered by the Court. Human rights

violations, particularly those that affect fundamental juridical rights – life, integrity, liberty – most intensely are included as crimes or offenses in both national and international laws and, in addition to the said State responsibility, give rise to the specific criminal responsibility of the individual.

23. Consequently, I prefer to speak of "crime originating from (*desde*) the State" or "terrorism originating from (*desde*) the State"; in other words, crimes and terrorism that use the power, the means and instruments possessed by those that hold them, to break the law. In the same way, we can examine the expression "State policy," which supposes a consensus, a social and political participation, a generalized or perhaps unanimous acceptance generated by democratic agreements, goals and purposes, and this is not and never has been a characteristic of criminal conspiracies and pacts among power groups, disguised as reasons of State, considerations of the common good, motives of unity and public peace, that would only have a moral meaning in a democratic society.

24. Consequently, when international attribution is invoked in relation to human rights issues (which is different from international criminal justice), reference is made to the State's responsibility and when personal attribution is referred to, criminal or penal responsibility is examined. Even though international responsibility – and some aspects of national responsibility – concern the State, criminal responsibility corresponds to the individual authors or participants in the crime, under the concept of "criminals," offenders" or "wrongdoers," when this is decided in the respective judgment. In summary, it is the individual who commits the crime or offence; and, under certain circumstances, the State responds for him, without prejudice to the direct responsibility of the criminal participant in an offense.

25. Those who attempt to subvert the burden of denunciation and reproach deposited in the expressions "State crime," "State terrorism" and "State policy," which consist in the violation of the rights of the people, try to assign the crime, the terror or the execution of this policy to the account of the State and not of the individual perpetrators, even when, as I have said – and I emphasize this to avoid erroneous interpretations – the force of this expression, used in many cases, helps reveal the use of the State's resources and mechanisms by officials and their subordinates to carry out their criminal activities.

26. This collusion, expressed in unlawful decisions and acts, has resulted in some of the gravest criminal acts every known. Essentially, it implies the official's radical betrayal of the State's purpose and the moral and legal commitments that he should honor and that, to the contrary, he ignores and dishonors. The definition of criminal conducts as "State crimes" has a credible purpose. However, this does not annul the need and convenience of rigorously defining the scope of each expression in function of the attributed responsibilities and the applicable sanctions, precisely to close the door to the constant temptation towards evasion or impunity.

27. It is troubling that those who should respond for extremely serious personal crimes may shield themselves behind the notion of State crime, terrorism or policy precisely to elude their individual responsibility and may attempt to justify or excuse themselves with the argument that they were only obeying criminal strategies that overcame and conditioned their own free will. Arguments exist based on "hierarchic obedience" and it could even be suggested, in a new application of the concept, that "everyone is guilty, except the criminal."

28. Consequently, I consider it preferable be precise and classify each issue appropriately, so that it incorporates its responsibility. This responsibility may be attributed to a large group: from the most senior public officials to the individuals who carry out manifestly criminal orders or their own criminal acts, and they should not take refuge in the argument that the crime is not *their* crime, but rather that of the *State*. No official, however elevated his rank and determinant his authority, can concentrate in himself "the whole State" – irrespective of the historical examples of absolutism – and register his crimes to the latter's account.

29. Indeed, when – as in the *Case of Goiburú* – it is possible to observe the criminal participation of officials of different States, collaborating and pursuing common illegal aims, through previously agreed activities, executed according to a common plan, would it be appropriate to refer to "States' crimes"? This would dilute further still the criminal responsibility or would expand it extraordinarily, until it covered an indeterminate number of individuals who form part of the structure of several States, but who are unrelated to the execution of the criminal activities, and even have no knowledge of them.

30. These observations are in a similar spirit to those included in my separate opinion in the said *Case of Myrna Mack Chang* (para. 34).

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. At last, the heinous "Operation Condor" as been brought to the attention of an international tribunal, the Inter-American Court of Human Rights, to the extent that the instant case of *Goiburú et al. v. Paraguay* falls within its framework, and is a microcosm of it. In this judgment, the Court assessed the State's acquiescence as a "positive contribution to these proceedings" (para. 52), and added that "delivering a judgment in which the truth of the facts and all aspects of the merits of the case and the corresponding consequences are determined, is a way of contributing to preserve the historical memory, to make reparation to the victims' next of kin and to help avoid a repetition of similar acts" (para. 53).

2. Given the historical transcendence of this case, I am obliged to record, in this separate opinion, my reflections on the matter dealt with in the judgment that the Court has just adopted, to justify my position in this respect. In this separate opinion in the *Case of Goiburú et al.*, I will cover the following points: (a) the criminalization of grave human rights violations; (b) the context of State terrorism: '*Operation Condor*'; (c) State crime revisited; (d) international responsibility aggravated by State crime; (e) elements for an approximation to the complementarity between international human rights law and international criminal law; (f) the concealment of State crimes in "Operation Condor"; (g) Condor *redivivus*: history repeats itself; and (h) the expansion of the substantial content of *jus cogens*.

I. The criminalization of grave human rights violations

3. The facts of the *Case of Goiburú et al.* are extremely serious and fall within the framework of "Operation Condor," which characterized an era of the most brutal repression and evil in the entire history of Latin America in general and of the Southern Cone in particular. In this judgment (paras. 40 and 41), the Court recalls that, in its brief answering the application, when acquiescing to "the factual considerations" described therein regarding the merits of the case, the defendant State indicated that it:

> "[…] acknowledged that, in the past, specifically during the regime of Alfredo Stroessner (1954-1989), grave human rights violations were perpetrated that must be investigated, punished and repaired adequately by the State. […] There is no doubt that [the] obligation to ensure rights was not complied with by the State during the 1954-1989 regime, because instead of organizing the Government so that it was capable of legally ensuring the free and full exercise of human rights, it was consolidated under a repressive system which systematically violated human rights.
>
> Nevertheless, it is important to mention that Paraguay, contrary to other countries of the Southern Cone, never adopted amnesty laws and recognized the non-applicability of the prescription of grave human rights violations. The State affirms that these are examples of preventive measures designed to preclude the repetition of abuses such as those that occurred during the 1954-1989 dictatorship."

4. The Court in turn, established as proven facts in this case that:

> "The forced disappearances of Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Rodolfo and Benjamín Ramírez Villalba have similar characteristics and refer to a single context, in which agents of the Paraguayan State illegally detained, maintained incommunicado, tortured and disappeared persons whose political activities were opposed to the regime of General Stroessner or who were identified as his enemies" (para. 61(14)).

These violations were perpetrated systematically and at the *inter-state* level. Thus, as the Court confirmed, "Dr. Goiburú's disappearance is an example of the coordinated actions taken by the Paraguayan and Argentine security forces under "Operation Condor." His disappearance fits within the *modus operandi* used to disappear Paraguayans in Argentina during the military dictatorship in that country" (para. 61(28).

5. On December 22, 1992, numerous documents were revealed that are kept today in the so-called "Terror Files" in Asunción, which is "one of the most important and irrefutable sources of evidence of the grave abuses committed during the dictatorship of General Stroessner. The documents provide an overview of the Stroessner regime and contain abundant evidence of human rights violations, including arbitrary detention, torture, extrajudicial executions and disappearances, as well as the repressive international cooperation" (para. 61(121)). In reality, the facts of the instant case speak for themselves. When determining the State's international responsibility in the context of this case, the Court stated in its judgment that:

> "This case has unique historic importance: the facts occurred in the context of the systematic practice of arbitrary detention, torture, execution and disappearance perpetrated by the intelligence and security forces of the dictatorship of Alfredo Stroessner, under "Operation Condor," whose characteristics and dynamics have been described in the proven facts […]. In other words, the grave acts took place in the context of the flagrant, massive and systematic repression to which the population was subjected on an inter-State scale, because State security agencies were let loose against the people at the transborder level in a coordinated manner by the dictatorial Governments concerned" (para. 62).[1]

6. Following the embodiment of the grave violations in the four 1949 Geneva Conventions on international humanitarian law (and the two 1977 Additional Protocols), the current historic process in international law of *criminalizing* such *grave* violations of human rights and international humanitarian law was gradually initiated – and has intensified in recent years. The facts concerning "Operation Condor" confirm how appropriate it was to establish a hierarchy of both laws and international illegal acts, in order to determine the legal consequences and avoid the repetition of *grave* human rights violations. Just as *jus cogens* prohibitions (cf. *infra*) have been established on the normative level and, above and beyond this, on the level of substantive law, the establishment of a ranking of violations of law (some being particularly serious, and constituting, in my opinion, true State crimes - *infra*) is being sought, in order to determine their legal consequences.

7. Indeed, recent advances in the *criminalization* of *grave* violations of human rights and international humanitarian law[2] have accompanied *pari passu* the

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[1]. The Court then observes that "during the 1970s, the fact that power in the region was held by a majority of dictatorial regimes, which shared the 'doctrine of national security' as their ideological basis allowed the repression of individuals considered to be 'subversive elements' to acquire a transborder nature through "Operation Condor" This was the code name give to the 'alliance of security forces and intelligence services' of the Southern Cone dictatorships" (para. 64).

[2]. *Cf*. G. Abi-Saab, "The Concept of 'International Crimes' and Its Place in Contemporary International Law", in *International Crimes of State - A Critical Analysis of the ILC's Draft Article 19 on State Responsibility* (eds. J.H.H. Weiler, A. Cassese and M. Spinedi), Berlin, W. de Gruyter, 1989, pp. 141-150; B. Graefrath, "International Crimes - A Specific Regime of International Responsibility of States and Its Legal Consequences", in *ibid*., pp. 161-169; P.-M. Dupuy, "Implications of the Institutionalization of International Crimes of States", in *ibid*., pp. 170-185; M. Gounelle, "Quelques remarques sur la notion de 'crime

evolution of contemporary international law; the establishment of an international criminal jurisdiction is seen nowadays as an element that strengthens international law, overcoming basic shortcomings of the past in relation to the inability to prosecute and sanction perpetrators of crimes against humanity.[3] These advances in our times are due to the intensification of the clamor of all humanity – to the universal juridical conscience as the ultimate *material* source of all law – against the atrocities that, in recent decades, have made victims of millions of human beings throughout the world – atrocities that cannot be tolerated and that must be combated with determination.

8. We must turn our attention to the superior universal *values* underlying the whole issue of the recent creation of an international criminal jurisdiction with a permanent seat. The materialization of the international criminal responsibility of the individual (alongside the responsibility of the State), and the current process of criminalization of *grave* violations of human rights and humanitarian law constitute elements of crucial importance to combat impunity and for the treatment that should be accorded to past violations, in order to safeguard human rights.

II. The context of State terrorism: '*Operation Condor*'

9. Despite the gravity of the facts of the instant case, all the details of "Operation Condor" (in the framework of which the *Case of Goiburú et al.* is situated) have not been sufficiently clarified to date (cf. *infra*). Under this Operation, the security forces of the States of the Southern Cone coordinated, at the highest level of command, to detain illegally or arbitrarily, abduct, torture, murder or disappear thousands of persons. Although some details of this Operation remain vague even today, as one report on the matter indicates:

> "[...] There is sufficient and irrefutable evidence that State terrorism was practiced on an international scale. The documentation found and the testimonies of several of the agents involved reveal the complicity of the Paraguayan Government and police with the brutal repression exercised by the dictatorships in Argentina and Chile, as well as those of Brazil and Bolivia. It also shows how General Augusto Pinochet protected the practice of State terrorism within and outside his country. There is evidence that both Pinochet and Stroessner paid special attention to strengthening and coordinating their security services and, on several occasions, they met for this purpose."[4]

10. Indeed, the historic *Final Reports* of both the National Commission for Truth and Reconciliation (of Chile, 1991, the so-called *Rettig Report*) and the National Commission on the Disappearance of Persons (of Argentina, 1984) confirm the existence of the coordinated repression carried out by the secret services of the countries of the Southern Cone that became known as "*Operation Condor.*" The first *Final Report*, of the Commission for Truth and Reconciliation of Chile, documents the

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international' et sur l'évolution de la responsabilité internationale de l'État", in *Mélanges offerts à P. Reuter - Le droit international: unité et diversité*, Paris, Pédone, 1981, pp. 315-326; L.C. Green, "Crimes under the I.L.C. 1991 Draft Code", 24 *Israel Yearbook on Human Rights* (1994) pp. 19-39.

[3]. As was to be expected, the *travaux préparatoires* of the Statute of the permanent International Criminal Court, adopted at the 1998 Rome Conference, in parallel to State responsibility, contributed to the prompt acknowledgement of individual international criminal responsibility within the sphere of the present and future application of the Statute – which represents a major doctrinal advance in the fight against impunity for the most serious international crimes.

[4]. E. Cuya, *op. cit. infra* n. 126, p. 6.

case of "33 Chilean citizens disappeared following their capture by Argentine, Paraguayan or Brazilian agents, and handed over to DINA, in just 1975 and 1976."[5] The *Rettig Report* refers expressly to "Operation Condor":

> "The origins of DINA's foreign structure seem to date back to April or May of 1974. […] From mid-1974 onward, DINA increasingly developed a "foreign capability" which included having operational forces in various countries. […] In order to engage in the same kind of political repression in other countries, DINA took the first steps toward coordinating intelligence services in the Southern Cone, including, besides Chile, the security services or similar groups in Argentina, Uruguay, Paraguay and Brazil. *The group that emerged, which was apparently coordinated by DINA, came to be called "Condor," although some think that name referred not to the group or community itself but rather to a series of coordinated operations they undertook*. DINA also maintained bilateral relations with various foreign intelligence services, including the CIA."[6]

Likewise, the corrected and updated summary of the *Rettig Report* (2nd ed., 1999) refers expressly to the "operational plan called 'Condor,' which included the elimination of political opponents."[7]

11. In its Report *"Nunca Más"* [Never Again] (the first edition of which is dated November 1984), the Argentine National Commission on the Disappearance of Persons states, in relation to the "repressive coordination" in Latin America:

> "The illegal repressive operations undertaken by the Government and the activities of persecution linked to them were not confined by geographical boundaries. The security organizations of neighboring states collaborated with these activities in reciprocal arrangements whereby people were arrested with no regard for legality, in blatant violation of the international treaties and conventions on political asylum and refuge to which our country subscribes. The agents of foreign repressive regimes operated in our country and arrested Uruguayans, Paraguayans, Bolivians and other nationals. Foreigners were clandestinely abducted with impunity and handed over to the authorities of their respective countries. […]
>
> The method used consisted basically of a linking-up of illegal, repressive groups, which acted together as a single force. […]
>
> The events which occurred demonstrated the existence of a typically 'multi-national' repressive apparatus. Under its protection, the foreign forces of repression were integrated into the task groups and became involved in kidnapping, interrogation under torture, assassination."[8]

12. How should we assess this immense distortion of the purposes of the State, when considering the acts carried out under "Operation Condor," which are still not completely known in all their macabre details? In the conceptual universe of law, this distortion was consummated and accentuated, in my opinion, to the extent that those responsible for exercising power (and their doctrinaires) and for legislative activities, deviated from the iusnaturalist principles of the legal system. In this regard, M. García-Pelayo pondered correctly that:

> "The rule of law signifies […] that the State's power is limited by law, but not the possibility of legitimizing any criteria by giving it the form of law […]. Even though

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5. *Ibid*., p. 5.

6. *Cit.* in *Informe Rettig*, tome II, Santiago, Chile, Comisión Nacional de Verdad y Reconciliación, February 1991, pp. 455-457 (emphasis added).

7. *Cit.* in: *Nunca Más en Chile - Síntesis Corregida y Actualizada del Informe Rettig*, 2nd. ed., Santiago, Chile, Comisión Chilena de Derechos Humanos/Fundación Ideas, 1999, p. 63.

8. *Cit.* in: *Nunca Más – Informe de la Comision Nacional sobre la Desaparición de Personas*, 20a. ed., Buenos Aires, EUDEBA, 1995, pp. 265-266.

> legality is a component of the concept of the rule of law, it is also true that this is not identified with just any type of legality, but with a legality that does not harm certain values for and on behalf of which the legal system was constituted […] and which are expressed in norms or principles that the law cannot violate. After all, the rule of law emerges from the essence of iusnaturalism […], precisely with a legality designed to safeguard certain values […], certain rights believed to be natural […]. It was only later that the comprehensive development of legal positivism separated from this underlying connection leading to a full and conscious identification of the law with laws, and of the rule of law with the lawful State […]."[9]

13. Hence the emergence of the authoritarian, repressive and fascist regimes. In the historical perspective of human thought, the Hegelian opposition to iusnaturalism[10] made a significant contribution towards this degradation, with fateful consequences: the "glorification" of the State, transformed into an end in itself, the final depositary of human freedoms, "alpha and omega," justifying the excesses of nationalism with an emphasis on "national security" and fascism (as denounced in Ernst Cassirer's acute and penetrating analysis[11] and in the reflections of Alf Ross[12]), in the context of which grave human rights violations and successive atrocities were committed.

14. But the rebirth of iusnaturalism – which, in reality, never ceased to exist – as of the middle of the twentieth century testified to the impossibility of disregarding the human conscience, the universal juridical conscience – ultimate material source of all law – which today rises up against the indifference and the impunity of those responsible (both States and individuals) for those atrocities and crimes against humanity that have made victims of thousands and thousands of persons in the countries of the Southern Cone of Latin America alone – to which can be added so many other crimes against humanity and acts of genocide perpetrated in recent decades on other continents (Europe, Africa and Asia).

15. This judgment of the Court acknowledges that the proven facts constitute a clear *situation of State terrorism*. The Court also acknowledged the frightening inversion of the purposes of the State that this has implied (constituting, once again, in my opinion, *the somber contraposition of the State and the nation*). In the words of the Court:

> "[…] The institutions, mechanisms and powers of a State should function as a guarantee of protection against the criminal activities of its agents. However, it has been verified that the State's power was orchestrated as a means and resource to violate rights that should have been respected and safeguarded, and actions were implemented using the inter-State collaboration described above. In other words, the State became the principal factor in the grave crimes committed, constituting a clear situation of 'State terrorism.'
>
> In Paraguay, this situation has been recognized by the convergence of decisions adopted by the three branches of the State; the Executive, by acknowledging the State's international responsibility in this international jurisdiction and, previously, its Legislature and Judiciary" (paras. 66 and 67).

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9. M. García-Pelayo, *Las Transformaciones del Estado Contemporáneo*, 2nd ed. (10th reprint), Madrid, Alianza Edit., 1996, pp. 52-53.

10. G. Radbruch, *Filosofía del Derecho*, 4a. ed. rev., vol. I, Coimbra, A. Amado Ed., 1961, p. 77.

11. E. Cassirer, *El Mito del Estado,* 2a. ed., México/Bogotá, Fondo de Cultura Económica, 1996, pp. 311-319.

12. A. Ross, *Sobre el Derecho y la Justicia*, 2a. ed., Buenos Aires, EUDEBA, 1997, pp. 314-315.

16. In this regard, in addition to the systematization of the "Terror Files" (following the revelation of these documents on December 22, 1992), the State promulgated Act No. 838/96, on September 12, 1996, to compensate the victims of the human rights violations that occurred during the period 1954-1989, and adopted Act No. 2225, on October 6, 2003, creating the Truth and Justice Commission (para. 61(121) to 61(123)). A judgment of the First Criminal Tribunal (*de Liquidación y Sentencia)* of April 17, 2000, recognized the "common practice" at the time in question of "conceal[ing] the disappearances of detainees who were executed, an action that among the prisoners was called the '*ley de fuga'* [the escape law]" (para. 69). And, significantly, a ruling of the Third Criminal Tribunal (*de Liquidación y Sentencia*) of December 7, 2000, stated that:

> "Terrorism organized by the State itself is a form of organized crime that has occurred in numerous countries and, in particular, in Latin America, where the police forces, diplomatic service, Government officials and military officials in Government have coordinated and carried out 'cleansing tasks' and 'special death flights.' This type of criminal organization has even crossed frontiers, with agents in border countries. […]" (para. 70).

17. In other words, in the instant case, the defendant State itself has acknowledged – in a commendable spirit of procedural cooperation – its international responsibility for the existence, at the time in question, of a *criminal policy*. And, it has done so, at different times, through statements made by all its powers. Its own Judiciary has expressly characterized State terrorism as a form of organized crime; in other words a *State crime*. The international jurists who continue to deny the existence of State crimes are closing their eyes to historically proven facts, disregarding the terrible suffering of the numerous victims of such crimes and providing a lamentable disservice to the evolution of contemporary international law.

18. State crimes do exist and are much more frequent that could be supposed *prima facie*. In the present *Case of Goiburú et al.*, they were perpetrated on a transborder or inter-State scale. In a previous case heard by this Court, the *Plan de Sánchez Massacre v. Guatemala* (judgment on merits of April 29, 2004), I maintained in my separate opinion that:

> "From this perspective, State crime is a grave violation of peremptory international law (*jus cogens*). State crime becomes even more evident to the extent that it is established by the State's intention (act or omission) or tolerance, acquiescence, negligence or omission in relation to grave violations of human rights and international humanitarian law perpetrated by its agents, even in the name of a State policy" (para. 35).

And, in my separate opinion in *Myrna Mack Chang v. Guatemala* (judgment of November 25, 2003), I indicated that, as subjects of international law, both the State and the individual can be held responsible for the crimes they commit, coexisting the international responsibility of both, with the corresponding legal consequences (para. 26).

19. In the instant case, State crimes have been committed on an inter-State level. The States of the Southern Cone coordinated within the framework of their "counterinsurgency" policy to torture and exterminate certain segments of their populations. What a tragic and historic irony! The State inflicted indescribable suffering – that will take decades to heal – precisely on their most valuable component, their population! As the Court concluded in this regard:

> "[D]uring the 1970s, in absolute contradiction of the principal objects and purposes of the organization of the international community established universally in the Charter of the United Nations, and the regional community in the Charter of the Organization of American States and the American Convention itself, the intelligence services of several countries of the Southern Cone of the Americas established a criminal inter-State organization with a complex assemblage, the scope of which is still being revealed today; in other words, there was a systematic practice of "State terrorism" at an inter-State level" (para. 72).

III. State crime revisited

20. The existence of a true *State crime* – an issue that I have referred to in some of my recent opinions in this Court – is, in my opinion, convincingly proved in the instant case and, furthermore, on an extensive scale by a truly inter-State network (or, to use a current expression, "transnational" or "multinational"). The secret services of the States of the Southern Cone of South America, trained by the United States of America in the grim "School of the Americas" in Panama (Canal Zone),[13] coordinated to exterminate political opponents. The facts concerning "Operation Condor" as it was known – using, in the so-called "struggle against (communist) subversion, a systematic pattern of illegal detentions and abductions, torture and ill-treatment, forced disappearances and murders, planned and executed through a State policy under the lamentable doctrine of "national security" – has gradually become known during the past decade, particularly with the discovery of the so-called "*Terror Files*" in Paraguay (although no equivalent files were kept in the other Southern Cone countries).[14] Nevertheless, not everything that occurred in that subregion during the years of the military dictatorships is known today (cf. *infra*), not even everything that took place within "Operation Condor."

21. It is precisely for this reason (since, as the Court itself has stated, the "scope" of "Operation Condor" "continues to be revealed today" (*supra*)), that it was an error not to convene a public hearing in this case, given the particular gravity and historic transcendence of the context in which the facts occurred. In its new zeal to "produce" judgments in a record time – against which I have constantly and in vain protested within the Court since this new "method" was adopted,"[15] to cater to the "productivity" graphics in its reports, which appear to have been prepared by economists rather than jurists - the Inter-American Court failed to convene (in a hasty decision, as has been its custom recently), the public hearing that was necessary, despite the State's acknowledgement of responsibility, which, in all probability, would have also cooperated procedurally during this hearing.

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[13]. Called by some the "school of assassins," where it is estimated that more than 60,000 Latin American officers were "trained" (over the period 1946-1984) in torture techniques, particularly to extract confessions from political prisoners; M. Almada, "Terrorismo Made in USA en las Américas - Las Estrategias Legales contra la Impunidad en Paraguay" (presentation in Bochum/Germany on October 14, 2005), *in* www.terrorfileonline.org/es, p. 6. and *cf.* A. Boccia Paz, M.H. López, A.V. Pecci and M.G. Giménez, *op. cit. infra* no. (49), pp. 78-79; J. Patrice McSherry, *op. cit. infra* no. (51), pp. 16-17.

[14]. *Cf.,* e.g., E. Cuya, "La 'Operación Cóndor': El Terrorismo de Estado de Alcance Transnacional", 7 *Revista Ko'aga Roñe'eta* (1996) pp. 1-9; K.M. Slack, "Operation Condor and Human Rights: A Report from Paraguay's Archive of Terror", 18 *Human Rights Quarterly* (1996) pp. 492-506.

[15]. Not by consensus, but by the decision of a majority of the judges.

22. I cannot refrain from recording my dissatisfaction on this specific point. As I indicated in my separate opinion in the very recent *Servellón et al. v. Honduras* (judgment of yesterday, September 21, 2006), when this also happened, "the public hearing that did not take place, would certainly have enhanced three aspects of this judgment: (a) it would have enriched the case file and the preparation of the case (particularly, in view of the positive attitude of procedural collaboration assumed by the State); (b) it would have fully applied the adversarial principle as regards the context of this case, and (c) it would have served as satisfaction (as a form of reparation) to the victims' next of kin" (para. 3). The Court deprived itself of additional probative elements that could have enhanced this judgment (particularly its chapter IX on the State's international responsibility in the context of the instant case), and missed a unique opportunity to make new contributions to the clarification of the somber "Operation Condor" in the context of the instant case.

23. Consequently, I consider that chapter IX of this judgment is unsatisfactory because the Court could and should have gathered additional elements with greater care and time. However, it has been proved that the instant case fits within a policy of *State terrorism* that victimized, in the cruelest and most brutal way, thousands of individuals and their next of kin in the countries that established "Operation Condor," which even allowed grave human rights violations to be committed "extraterritorially," in other countries and on other continents. How can the existence of *State crime* be denied in the face of a State policy of extermination?

24. It is solely in the heads of "illuminated" international jurists that State crime does not exist, when they affirm dogmatically that the State cannot commit a crime, period. They continue to ignore episodes such as those of the instant case, which have been historically proved, and other cases of massacres heard and judged by the Inter-American Court (for example, the cases of the massacre of *Barrios Altos*, the *Plan de Sánchez Massacre*, the massacre of the *19 Tradesmen*, the *Mapiripán Massacre*, the massacre of the *Moiwana Community*, the *Pueblo Bello Massacre*, and the *Ituango Massacre*s), and murders planned at the highest levels of State power (for example, the *Barrios Altos*, and *Myrna Mack Chang* cases), where the defendant States have even acknowledged their international responsibility for the facts.

25. Something does not cease to exist merely because someone affirms that it cannot exist. International jurists cannot remain indifferent to the human suffering evident from proven historical facts. While contemporary international legal doctrine insists in denying what has been proved historically – the crimes committed by the State – it will be eluding an extremely serious issue, with its juridical consequences, compromising its own credibility. My dissatisfaction it not restricted to the doctrinal level, as I have indicated above, it also encompasses the procedural level; in other words, the procedure followed by the Court in this case.

IV. International responsibility aggravated by State crime

26. State crime within the framework of "Operation Condor" has been described well in a recent study in that regard, published in several languages:

> "'Operation Condor' [...] represents the worst and final deviation of the rule of law and civilized society. The most senior authorities of several countries agreed to cooperate in State terrorism; in other words, in addition to failing to protect the human rights of their own citizens, they conspired to violate international protection norms: the right of asylum, the protection of refugees, *habeas corpus,* and the carefully elaborated

> procedures for the extradition of those facing charges for crimes committed in one country and arrested in another.
>
> As a secret treaty, Condor elevated crimes against human rights to the highest level of State policy, under the direct control of heads of State and ministers. And, its existence as an official instrument of six nations prevents these regimes from explaining their crimes against human rights as isolated acts of deluded officials or corrupt agents."[16]

27. The list of the numerous victims of the Stroessner regime has been prepared and published by the *Comité de Iglesias para Ayudas de Emergencia* (CIPAE) based on the so-called "Terror Files" and with the symbolic title *Testimonio contra el Olvido*. The introduction to this document presents some important data, including: first, with the emergence of the moral conscience in the history of human thought, there is no way of denying the involvement of society (with the exception of the oppressed and tortured) in the establishment and preservation for so many years of the regime of oppression.[17] Second, the grave human rights violations that occurred during the years of repression (1954-1989) were perpetrated with society's apparent indifference to human suffering.[18]

28. Third, the "permanent repressive State harassment,"[19] of a truly "totalitarian military State,"[20] persisted throughout the extended state of siege (1954-1987), during which "the Executive had discretionary powers to detain, torture, expel, or even disappear persons."[21] And finally, fourth, these grave systematic human rights violations were perpetrated insufflated by the illusion of material "progress" disseminated by the militarism and "understood from the perspective of State totalitarianism."[22] The victims in the case of *Goiburú et al. v. Paraguay* before the Inter-American Court appear in the document *Testimonio contra el Olvido* based on the "Terror Files": it mentions Agustín Goiburú,[23] Carlos José Mancuello,[24] Rodolfo Ramírez Villalba[25] and Benjamín Ramírez Villalba.[26] Numerous other victims had their rights violated by the same repressive regime and this *context of terror*, characteristic of authentic State crime prolonged over time and multiplying defenseless victims, cannot be minimized here.

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16. J. Dinges, *Operación Cóndor - Una Década de Terrorismo Internacional en el Cono Sur*, Santiago, Ed. B Chile, 2004, pp. 39-40; J. Dinges, *Os Anos do Condor - Uma Década de Terrorismo Internacional no Cone Sul*, São Paulo, Cia. das Letras, 2004, pp. 40-41; J. Dinges, *The Condor Years - How Pinochet and His Allies Brought Terrorism to Three Continents*, N.Y./London, The New Press, 2004, pp. 17-18.

17. CIPAE, *Testimonio contra el Olvido - Reseña de la Infamia y el Terror (Paraguay 1954-1989)*, Asunción, Ed. CIPAE, 1999, p. 10.

18. *Ibid*., pp. 12 and 25.

19. *Ibid*., p. 34.

20. *Ibid*., p. 32.

21. *Ibid*., p. 26.

22. *Ibid*., p. 32.

23. *Ibid*., pp. 85 and 340.

24. *Ibid*., p. 392.

25. *Ibid*., pp. 120 and 462.

26. *Ibid*., pp. 120 and 462.

29. In recent years, the Inter-American Court has heard successive cases of massacres and has ruled on them (for example, the cases of the massacre of *Barrios Altos*, the *Plan de Sánchez Massacre*, the massacre of the *19 Tradesmen,* the *Mapiripán Massacre*, the massacre of the *Moiwana Community*, the *Pueblo Bello Massacre*, the *Ituango Massacre*s). It has also decided cases that occurred in the context of systematic human rights violations (for example, the *Barrios Altos* and *Myrna Mack Chang* cases, among others), planned (at the highest hierarchical level) and executed by the State. As I indicated in my opinions in all these cases, they reveal the urgency of promoting a greater approximation or convergence between international human rights law and international criminal law and, in particular, between the work of international human rights courts and international criminal courts.

30. In the abovementioned cases, among others, the Inter-American Court established the *aggravated* international responsibility of the State and its legal consequences in relation to reparations. I have referred to this in detail in my opinions in those cases. In the instant case, we are faced with a situation, in the extremely grave context of "Operation Condor," of State terrorism on an international or, more precisely, an inter-State scale. In my opinion, this constitutes the State's *aggravated* international responsibility for authentic *State crimes*, with all their legal consequences.

31. *Aggravated* international responsibility is also constituted owing to the State's failure to comply with both the obligation to protect and the obligation to investigate the harmful facts, due to its failure to provide effective domestic recourses to prosecute and sanction the perpetrators of the atrocities. It should be recalled that, in its well-formulated application (of June 8, 2005), submitted to the Court in this case, the Commission indicated that:

> "More than 27 years have elapsed without the next of kin of the victims knowing, through final, executed judgments encompassing all the mastermind, perpetrators and accessories after the fact, what occurred to Agustín Goiburú, Carlos José Mancuello, Rodolfo Ramírez Villalba and Benjamín Ramírez Villalba, where there remains are, who was responsible for their forced disappearance, what punishment was imposed, and what reparation corresponds to them from the courts; all this constituting a context of impunity that affects their fundamental rights protected by the Convention." (para. 152).

32. All these aggravating circumstances lead to a greater approximation between the international responsibility of the State and the international criminal responsibility of the individual (perpetrator of the atrocities), as I indicated in my separate opinion (paras. 38-40) in the *Mapiripán Massacre v. Colombia* (judgment of September 17, 2005). The responsibility of the criminal does not exempt the State from its own aggravated responsibility, owing to its criminal policies, because the State, endowed with its own legal status, can be accused, as any other subject of law.[27]

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[27]. *Cf.* A.A. Cançado Trindade, "Complementarity between State Responsibility and Individual Responsibility for Grave Violations of Human Rights: The Crime of State Revisited," in *International Responsibility Today - Essays in Memory of O. Schachter* (ed. M. Ragazzi), Leiden, M. Nijhoff, 2005, pp. 253-269.

33. The current historical process of the *criminalization* of grave violations of human rights and of international humanitarian law, to which I have already referred, came to revitalize the principle of the universal jurisdiction that already has a long record in the sphere of international law and which is to be found in the confluence between international human rights law (the collective guarantee) and international criminal law. Indeed, there are extremely important aspects that have been entirely disregarded by legal doctrine to date and that I have indicated in my opinions in those cases, which, I believe, merit special attention today, and which can promote the approximation or convergence to which I refer. I will refer to them briefly below.

V. Elements for an approximation to the complementarity between international human rights law and international criminal law

34. There are elements that lead to an approximation to the complementarity between international human rights law and international criminal law that have been insufficiently dealt with by legal doctrine to date. In this regard, I wish to identify five elements that I will examine below: (a) the international legal status of the individual; (b) the complementarity between the international responsibility of the State and that of the individual; (c) the conceptualization of crimes against humanity; (d) prevention and guarantee of non-repetition; and (e) reparatory justice in the confluence of international human rights law and international criminal law.

1. The international legal status of the individual

35. The first element for an approximation in the complementarity between international human rights law and international criminal law is, in my opinion, the individual in his legal capacity as both an *active* (international human rights law) and a *passive* (international criminal law) subject of international law; that is, as the possessor of rights and bearer of obligations that arise directly from international law. The condition of the individual as such represents, as I have indicated in numerous writings, the most precious legacy of juridical science as of the middle of the twentieth century.[28]

36. Indeed, the permanent International Criminal Court (ICC) represents an advance in relation to the *ad hoc* International Criminal Tribunals for the Former Yugoslavia and for Rwanda, as regards, in particular, the presence and participation of the victims during the proceedings (Rome Statute, Articles 68 and 75, and Rules of Procedure, rules 16, 89 and 90-93).[29] A Victims and Witnesses Unit has been established within the ICC Registry (Statute, Article 43(6), and Rules of Procedure, rules 16-19).[30] In addition, the creation of a Trust Fund for the benefit of victims was

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[28]. *Cf., inter alia*, A.A. Cançado Trindade, "International Law for Humankind: Towards a New *Jus Gentium* - General Course on Public International Law", *Recueil des Cours de l'Académie de Droit International de la Haye* (2005) caps. IX-X (to be published); A.A. Cançado Trindade, *El Derecho Internacional de los Derechos Humanos en el Siglo XXI*, 1st ed., Santiago, Editorial Jurídica de Chile, 2001, pp. 317-374 (2nd ed., 2006); A.A. Cançado Trindade, *El Acceso Directo del Individuo a los Tribunales Internacionales de Derechos Humanos*, Bilbao, Universidad de Deusto, 2001, pp. 9-104; A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, tome III, Porto Alegre/Brazil, S.A. Fabris Ed., 2003, pp. 447-497.

[29]. ICC, *Selected Basic Documents Related to the International Criminal Court*, The Hague, ICC Secretariat, 2005, pp. 47, 52, 122 and 151-153.

[30]. *Ibid*., pp. 32 and 122-124.

ordered (Statute, Article 79, and Rules of Procedure, rule 98),[31] and this was established by decision of the Assembly of the States Parties of December 3, 2005.[32]

37. The presence of the victims in the proceedings before the ICC represents, I believe, a significant point of confluence between contemporary international criminal law and international human rights law. This is no longer merely punitive justice, but also reparatory justice (Rome Statute, Article 75), establishing different forms and means of reparation (ICC Rules of Procedure, rule 98),[33] both individual and collective. It is not surprising that, in its first rulings – in the *Th. Lubanga Dyilo* case and the investigation of the *situation in the Democratic Republic of the Congo*[34] - the ICC has referred expressly to the rich case law of the Inter-American Court.[35] International human rights law and contemporary international criminal law can provide mutual reinforcement, to the ultimate benefit of the individual.

38. The consolidation of the legal status of the individual in international criminal law, as an active and passive subject of international law strengthens accountability under international law for abuses perpetrated against the individual. Thus, individuals are also bearers of obligations under international law, which is reflected in the consolidation of their international legal status.[36] Developments in international legal status and international responsibility occur *pari passu*, and this whole evolution testifies to the formation of the *opinio juris communis* to the effect that the gravity of certain fundamental human rights directly affects basic values that are shared by the international community as a whole.[37]

2. The complementarity between the international responsibility of the State and that of the individual

39. An additional element for an approximation to the complementarity between international human rights law and international criminal law resides in the area of responsibility, encompassing, in my opinion, at the same time, the State and the individual (as subjects of international law). As I have been indicating since my separate opinions in the *Myrna Mack Chang* (2003) and *Plan de Sánchez Massacre*

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[31]. *Ibid*., pp. 53 and 155-156.

[32]. The decision was adopted by consensus; *cf.* ICC, *4th Assembly of the States Parties of the International Criminal Court* (The Hague, 28.11-03.12.2005), p. 2. For the text on the Trust Fund for Victims, cf. ICC, *Trust Fund for Victims*, resolution ICC-ASP/4/Res.3, pp. 320-333.

[33]. ICC, *Selected Basic Documents Related to the International Criminal Court*, The Hague, ICC Secretariat, 2005, pp. 52 and 155.

[34]. *Cf.* International Criminal Court (ICC)/Pre-Trial Chamber I, doc. ICC-01/04, of January 17, 2006, pp. 14-15, 29 and 34; ICC-01/04, of March 31, 2006, p. 12; and ICC-01/04, of July 31, 2006, pp. 8-9.

[35]. E.g., in cases such as: *Blake v. Guatemala*, 1998; *the Street Children v. Guatemala*, 1999; *El Amparo v. Venezuela*, 1996; *Neira Alegría v. Peru*, 1996; *Paniagua Morales v. Guatemala*, 2001; *Baena Ricardo et al. v. Panama*, 2001.

[36]. H.-H. Jescheck, "The General Principles of International Criminal Law Set Out in Nuremberg, as Mirrored in the ICC Statute," 2 *Journal of International Criminal Justice* (2004) p. 43.

[37]. *Cf.,* e.g., A. Cassese, "Y a-t-il un conflit insurmontable entre souveraineté des États et justice pénale internationale?" in *Crimes internationaux et juridictions internationales* (eds. A. Cassese and M. Delmas-Marty), Paris, PUF, 2002, pp. 15-29; and *cf.,* generally [various authors], *La Criminalización de la Barbarie: La Corte Penal Internacional* (ed. J.A. Carrillo Salcedo), Madrid, Consejo General del Poder Judicial, 2000, pp. 17-504.

(2004) cases among others,[38] and in a recent essay,[39] the State's international responsibility and the international criminal responsibility of the individual are effectively complementary.

3. The conceptualization of crimes against humanity

40. A third point of approximation to the intersection between international human rights law and international criminal law resides in the conceptualization of crimes against humanity, which they both include. Such crimes are perpetrated by individuals, but following State policies, with the powerlessness or tolerance or connivance of society, which does nothing to prevent them; explicit or implicit, State policy is present in crimes against humanity, which even rely on the use of State institutions, personnel and resources.[40] Such crimes are not limited to a simple isolated action of deluded individuals. They are coldly calculated, planned and executed.

41. The definition of crimes against humanity is a major contemporary victory, encompassing, in my opinion, not only international human rights law but also international criminal law, by reflecting the universal condemnation of grave and systematic violations of fundamental and non-derogable rights; in other words, violations of *jus cogens*. Consequently the so-called *statutes of limitations* typical of domestic or national legal systems are not applicable.[41] The establishment of crimes against humanity is, I believe, one more manifestation of the *universal juridical conscience*; of its prompt reaction to crimes that affect humanity as a whole.

42. Crimes against humanity are situated at the confluence between international criminal law and international human rights law. They are particularly grave and originated in the crimes against humanity linked to armed conflicts; however, nowadays it is accepted, from a humanist perspective, that they also have implications in the domain of international human rights law (for example, in cases of the systematic torture and humiliation of the victims), which deny humanity in general and seek to dehumanize their victims.[42] Crimes against humanity are of a massive and systematic nature, they are organized and planned as part of a policy of State crime – as conceptualized in their case law by the *ad hoc* International Criminal Tribunals for the Former Yugoslavia and Rwanda[43] - they are authentic State crimes.[44]

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[38]. *Cf.* also, for example, my separate opinions in the cases of the *Mapiripán Massacres* (2005) and the *Ituango Massacres* (2006), both in relation to Colombia.

[39]. A.A. Cançado Trindade, "Complementarity between State Responsibility and Individual Responsibility...", *op. cit. supra* n. (27), pp. 253-269.

[40]. *Cf.,* in this sense, e.g., M.Ch. Bassiouni, *Crimes against Humanity in International Criminal Law*, 2nd. rev. ed., The Hague, Kluwer, 1999, pp. 252, 254-257. This is the understanding that underlies the United Nations Convention against Torture, which criminalizes the conduct of State agents under international law; *ibid*., p. 263, and *cf.* p. 277.

[41]. M.Ch. Bassiouni, *op. cit. supra* n. (40), pp. 227 and 289.

[42]. Y. Jurovics, *Réflexions sur la spécificité du crime contre l'humanité*, Paris, LGDJ, 2002, pp. 21-23, 40, 52-53 and 66-67. And *cf.* E. Staub, *The Roots of Evil – The Origins of Genocide and Other Group Violence*, Cambridge, University Press, 2005 [reprint], pp. 119, 121 and 264.

[43]. Regarding contemporary international case law on crimes against humanity, cf. J.R.W.D. Jones, *The Practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, 2nd ed., Ardsley/N.Y.,

43. Organized and planned by the States, at their most senior levels, State crimes are executed by many individuals complying with a criminal policy of the State in question, constituting authentic State crimes, which immediately involve the international responsibility of both the State in question (in the sphere of international human rights law) and that of the individuals who executed them.[45] Hence the importance of preventing them, given their particular gravity, as well as the guarantee of non-repetition (cf. *infra*).

4. Prevention and guarantee of non-repetition

44. Both international human rights law and international criminal law seek, each in its own way, the *prevention* and the *guarantee of non-repetition* of the harmful acts. Both combat impunity. In cases of grave violations, the former determines exemplary reparations (or exemplary damages), as a legal consequence of authentic State crimes. The latter determines penalties for those who, in the name of a State policy, have committed acts of genocide, or crimes against humanity, or war crimes.

45. There is no statute of limitations, typical of domestic law; there is no extinguishment or extinctive prescription in cases of grave violations of human rights and international humanitarian law. The Inter-American Court has made its corresponding contribution, as exemplified in its "leading cases" in this regard of *Barrios Altos v. Peru* (2001) and *Bulacio v. Argentina* (2003). The respective international tribunals are not bound by *res judicata* (typical of domestic law) either, because the applicable law is distinct, international human rights law and international criminal law, respectively.

5. Reparatory justice in the confluence of international human rights law and international criminal law

46. Alongside the recognition of the individual's *ownership* of rights, arising directly from international law (*supra*), contemporary legal writings have accepted the existence of obligations also attributed by international law directly to the individual. And – what it significant – grave violations of such rights, for example, by crimes against humanity, involve *international* individual criminal responsibility, *irrespective* of the provisions of *domestic* law on the matter.[46] Contemporary developments in international criminal law have had a direct effect on the emergence of individual international criminal responsibility (the individual as both an active and passive subject of international law, possessor of rights and bearer of obligations arising directly from public international law (*droit des gens*)), and the principle of universal jurisdiction.

47. It is worth adding that the decisions of the United Nations Security Council to create the *ad hoc* International Criminal Tribunals for the Former Yugoslavia (1993) and for Rwanda (1994), added to the establishment of the permanent International Criminal Court by the 1998 Rome Conference to prosecute those responsible for

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Transnational Publs., 2000, pp. 103-120 and 490-494; L.J. van den Herik, *The Contribution of the Rwanda Tribunal to the Development of International Law*, Leiden, Nijhoff, 2005, pp. 151-198.

[44]. *Ibid*., pp. 93, 183, 192, 199, 228, 278-279, 310, 329-331, 335, 360 and 375.

[45]. *Cf. ibid*., pp. 375-377, 403, 405-407, 441 and 447-448.

[46]. M.Ch. Bassiouni, *Crimes against Humanity*..., *op. cit. supra* n. (40), pp. 106 and 118.

grave violations of human rights and international humanitarian law (for acts of genocide, crimes against humanity and war crimes), gave new impetus to the international community's struggle against impunity – as a violation *per se* of human rights – in addition to reaffirming the principle of the international criminal responsibility of the individual[47] for such violations; thus seeking to avoid or prevent future crimes.

48. More than 50 years ago, the renowned Nuremberg Tribunal created a new paradigm by stating that individuals can be punished for violating international law, because crimes against international law are committed by individuals and "not by abstract entitles," and only by punishing these perpetrators can the provisions of international law be implemented.[48] This famous *obiter dictum* has effectively paved the way towards the development of international criminal law, which has filled a gap in classic international law, by seeking to end impunity.

49. However, this *obiter dictum* has never satisfied me completely, because it reflects only one aspect of the reality, by ignoring the State's role in the perpetration of these crimes. Hence, the *parallel* development of international criminal law and international human rights law, whereas I consider that their convergence and complementarity should be fostered. Even though States appear to be "abstract entities" when providing basic services, such as free access to education and public health care, to employment and housing (often failing to comply with their obligations in these areas and alienating large segments of the population), they are *very concrete realities* when they punish, sanction, exclude, imprison, torture and murder "undesirables" – as revealed in this specific case as well as many others.

VI. The concealment of State crimes in "Operation Condor"

50. Reparatory justice gains importance in the face of one of the most shocking aspects of "Operation Condor": the concealment of the State crimes perpetrated in the context of this Operation, from the planning to the execution of its criminal policies. A study published in Asunción in 2002, indicates that:

> "Rarely in the recent history of Latin America has the truth about massive plans and actions of repression taken so long to come to light as in the case of Operation Condor. Only recently, a quarter of a century later, is it possible to know a significant part of the documented history of those acts. It is still far from being the complete and final version. This has been because the criminal acts committed involved the repressive forces of several countries and because the secret pact signed in the 1970s continued afterwards, through networks of concealment and impunity. […]
>
> Operation Condor, which only now is beginning to be reconstructed based on the documentary evidence that has begun to emerge, is a paradigmatic example of the effects of State terrorism. […] Even though its winding-up was meticulously planned, Condor has ended up losing the fight against remembrance."[49]

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47. *Cf.,* in this regard, e.g., D. Thiam, "Responsabilité internationale de l'individu en matière criminelle," in *International Law on the Eve of the Twenty-First Century - Views from the International Law Commission / Le droit international à l'aube du XXe siècle - Réflexions de codificateurs*, N.Y., U.N., 1997, pp. 329-337.

48. *Cf.,* e.g., *inter alia*, Ph. Sands (ed.), *From Nuremberg to The Hague - The Future of International Criminal Justice*, Cambridge, University Press, 2003, pp. 32-33.

49. A. Boccia Paz, M.H. López, A.V. Pecci and M.G. Giménez, *En los Sótanos de los Generales - Los Documentos Ocultos del Operativo Cóndor*, Asunción, Expobook/Servibook, 2002, pp. 295-296. The statistical information is still not final, but it is calculated that more than 30,000 Latin Americans were assassinated within the framework of "Operation Condor"; *ibid*., p. 83. and *cf.* also, for example, N.C. Mariano, *op. cit. infra* n. (52) pp. 18-19.

51. Indeed, "Operation Condor" (formally created in November 1975, but with some previous activities in 1973-1974, and which, in 1976, achieved its highest level of repression, and in 1980 entered into decline), was planned by the "intelligence services" of the countries of the Southern Cone,[50] to implement a *State extermination policy*, characterized by the *concealment* of transborder "counterinsurgency" operations by death squadrons (illegal and arbitrary detentions, abductions, torture, murders or extrajudicial executions, and the forced disappearance of persons). The participating States endowed it with a *para-State structure* – to further a State criminal policy – which enabled those who held power to hide the atrocities and avoid the application of international law and human rights guarantees, with total irresponsibility and impunity.[51]

52. The reports and testimony of survivors – only recently published – of the atrocities committed in the countries of "Operation Condor" are terrifying; in addition to the above-mentioned crimes, the most macabre forms of torture were perpetrated, together with collective executions, the kidnapping of babies and young children and alteration of their identities, confinement in clandestine prisons (and clandestine cemeteries), the use of fierce dogs against detainees in infrahuman conditions, and micro-fractures caused by the wheels of vehicles passing over the hands and feet of detainees[52] - forming a Dantesque picture of horrifying torments. The concern to conceal the crimes was permanent:

> "During the war to exterminate those who were opposed to the dictatorship, the military tried to hide the corpses, the evidence of their crimes. Almost two thousand political prisoners were thrown into the sea alive, from cargo aircraft. Thousands of others were buried in clandestine cemeteries."[53]

53. The macabre "death flights" were carried out on a weekly basis, taking 15 to 20 prisoners each time, who were told that they were being transferred to "ordinary prisons," and who, "believing that they would be released from the torment of torture, boarded the [Argentine Navy] cargo aircraft with relief"; because:

> "the executioners had the problem of where to hide the thousands of dead, since the clandestine cemeteries were full. The solution was to throw the condemned men into the sea so that they would be eaten by sharks."[54]

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[50]. Also, the involvement of the United States "intelligence service" in this Operation has today been proved, with the declassification of some (although not all) of the United States' documents on Condor in June 1999; Condor as a component of a broader United States "counterinsurgency" strategy to prevent social movements in favor of political, economic and social change in the region; J. Patrice McSherry, *Predatory States*..., *op. cit. infra* n. (51), pp. XVIII-XIX, 241, 249-250 and 252-253; and *cf*. J. Dinges, *Operación Cóndor*..., *op. cit. supra* n. (16), p. 22. The FBI was well aware of everything that was happening in the mid-1970s in the countries of the Southern Cone, as indicated in paragraph 61(8) of this judgment of the Inter-American Court.

[51]. J. Patrice McSherry, *Predatory States - "Operation Condor" and Covert War in Latin America*, Lanham, Rowman & Littlefield Publs., 2005, pp. 4-5, 7-11, 21-23 and 242-243.

[52]. N.C. Mariano, *Operación Cóndor - Terrorismo de Estado en el Cono Sur*, Buenos Aires, Ed. Lohlé Lumen, 1998, pp. 73, 87, 62 and 95.

[53]. N.C. Mariano, *op. cit. supra* n. (52), p. 45.

[54]. *Ibid*., pp. 30-31.

The atrocities of "Operation Condor" reveal that human evil has no limits. In the context of this Operation, the case of Dr. Agustín Goiburú is today considered "paradigmatic of the cooperation of the [Paraguayan and Argentine] intelligence services.[55] Since the participating States concealed their criminal policy, it is not surprising that, following the discovery, of the "Terror Files" (the main documentary source in Latin America of the evil "Operation Condor"), in Paraguay in December 1992, "hundreds of *habeas data* were filed by former political prisoners or their next of kin."[56]

VII. Condor *Redivivus*: History repeats itself

54. The repressive acts of "Operation Condor," on a widespread inter-State scale, that occurred – as has been historically proved – in the 1970s, can happen again. If they have occurred once or more, they can happen again; atrocities have repeated themselves over time. I fear that, today, such acts may be being repeated. And, just as many years elapsed before we learned about the acts committed under the criminal policies of the States in "Operation Condor" (and we still do not know everything today), perhaps it will take a long time before we learn about what is happening today – also with State concealment.

55. In the 1970s, it was the "war [*sic*] against subversion," today it is the "war [*sic*] against terrorism." In both cases, for the perpetrators of grave human rights violations, the ends justify the means, and anything is allowed, outside the law. As an advocate of the current "war [*sic*] on terrorism," stated recently, "those who are not with us are against us," exactly as the members of the Army, all Heads of State, engaged in "Operation Condor" affirmed in the 1970s in order to sow terror and try to justify State crimes.

56. State crimes really exist, they have existed and continue existing, as recent reports indicate (for example, a report for the Parliamentary Assembly of the Council of Europe) on systematic practices of torture in prisons (even secret prisons), on other continents – authentic concentration camps – in the so-called "war [*sic*] on terrorism").[57] Today, also, information is emerging on the practice of torture (under the euphemism of "intensive interrogation"), illegal and arbitrary detentions, abductions, clandestine flights, and forced disappearances of persons, of possible extrajudicial executions, also on an inter-State scale.[58]

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[55]. A. Boccia Paz, M.H. López, A.V. Pecci and M.G. Giménez, *op. cit. supra* n. (56), p. 205; and cf. J. Dinges, *Operación Cóndor*..., *op. cit. infra* n. (16), p. 305.

[56]. A. Boccia Paz, M.A. González and R. Palau Aguilar, *Es Mi Informe - Los Archivos Secretos de la Policía de Stroessner*, 4a. ed., Asunción, CDE, 1994, p. 30.

[57]. *Cf.* D. Marty *(rapporteur),* "Alleged Secret Detentions in Council of Europe Member States", Strasbourg, Council of Europe Parliamentary Assembly/Committee on Legal Affairs and Human Rights, doc. AS/Jur(2006)03.rev., of January 22, 2006, pp. 1-25; D. Marty (rapporteur), "Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States", Strasbourg, Council of Europe Parliamentary Assembly/Committee on Legal Affairs and Human Rights, doc. AS/Jur(2006)16-II, of June 7, 2006, pp. 1-71 (limited circulation).

[58]. *Cf.* J. Patrice McSherry, *Predatory States*..., *op. cit. supra* n. (51), pp. XXI, 247-249 and 254; and *cf.* J. Dinges, *Operación Cóndor*..., *op. cit. supra* n. (16), p. 22.

57. Very recently, on July 6, 2006, the European Parliament adopted a resolution on "the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners."[59] In its extensive resolution, the European Parliament began by affirming that:

> "The fight against terrorism cannot be won by sacrificing the very principles that terrorism seeks to destroy, notably that the protection of fundamental rights must never be compromised; [...] terrorism must be fought by legal means and it must be defeated while respecting international and national law."[60]

It then states that the practices of "secret detention" and the abduction of suspects in the territory of the States members involve the State's international responsibility (paras. 2 and 8). It expresses its profound concern owing to the use of European airspace and airports for suspects to "be transferred illegally to the custody of the CIA or the US military or to other countries" (para. 13).

58. The said Resolution "condemns the practice of extraordinary renditions, which is aimed at ensuring that suspects are not brought before a court but are transferred to third countries to be interrogated, where they could be tortured, and detained in facilities controlled by the USA or local authorities." The Resolution also "considers unacceptable the practices of certain governments consisting in limiting their responsibilities by asking for diplomatic assurances from countries in respect of which there is strong reason to believe they practice torture" (para. 10). And, in continuation the same Resolution:

> "Stresses that the prohibition of torture or cruel, inhuman and degrading treatment as defined in Article 1 of the U.N. Convention against Torture, is absolute and allows no exceptions whether in times of war or threat of war, domestic political instability or any other emergency; recalls that cases of *incommunicado* detention, abduction or extraordinary rendition constitute violations of fundamental rights in International Law, in particular Articles 3 and 5 of the European Convention on Human Rights, especially since these acts are synonymous with torture or inhuman and degrading treatment" (para. 29)[61].

59. Condor *redivivus*! Its atrocious and inhuman methods and practices continue to be applied, in a different context, today! When will humanity learn from the lessons of the past, from the terrible suffering of previous generations? If it has not learned yet, perhaps it will never learn. When will human beings cease to dehumanize their fellow human beings? If they have not ceased to do so today, perhaps they will never cease to do so. And they will continue to co-exist with evil, and submit to it. This is why the struggle for the primacy of the *recta ratio*[62] has not ended, as in the myth of Sisyphus.

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[59]. European Parliament, doc. A6-0213/2006, pp. 1-6.

[60]. Preamble, *considerandum* C.

[61]. In addition to this Resolution of the European Parliament, the Secretary General of the Council of Europe presented recommendations – in light of article 52 of the European Convention on Human Rights – in his recent Reports to the Government of the European States, on news that suggested that "individuals, notably persons suspected of involvement in acts of terrorism, may have been arrested and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive co-operation of States Parties to the Convention or by States Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged"; cf. Council of Europe, doc. SG/Inf(2006)5, of February 28, 2006, pp. 1-15; Council of Europe, doc. SG/Inf(2006)13, of June 14, 2006, pp. 1-8.

[62]. *Cf.,* in this regard A.A. Cançado Trindade, *A Humanização do Direito Internacional*, Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-106 and 385-409.

60. It is not surprising then that the problem of evil has been and continues to be a major concern throughout the history of human thought. Over the centuries, philosophers, theologians and scholars have examined the problem, without finding a conclusive or completely satisfactory answer. As R.P. Sertillanges stated in an authoritative work on the issue:

> "L'angoisse du mal s'impose à toutes les âmes, à tous les groupes et à toutes civilisations. [...] Le problème du mal met en cause la destinée de chacun, l'avenir du genre humain."[63]

61. In brief, terror cannot be fought by terror, but rather by law. As I stated also in my separate opinion in the *Ituango Massacres v. Colombia* (Judgment of July 1, 2006), lamentably and tragically, State crimes:

> "are continually repeated in different latitudes, amidst the manipulation or fabrication of so-called 'public (or published) opinion. The 'post-modern' human being seems to have lost his memory and, consequently, State crimes continue to be repeated. Thus, the *invasion and occupation* of Iraq in 2003, perpetrated by the so-called "coalition" of States, contrary to the Charter of the United Nations and in one of the most flagrant violations of international law of recent decades, has been followed by the killing of innocent people, arbitrary detentions (even in secret prisons), the systematic practice of torture and cruel, inhuman and degrading treatment, and severe and systematic violations of human rights and international humanitarian law, notorious and public and reliably proved,[64] in implementation – evidently wrongful – of a State policy (the so-called "war [*sic*][65] on terror"). Since its judgments in *Cantoral Benavides v. Peru* (of August 18, 2000, paras. 95-96) and *Maritza Urrutia v. Guatemala* (of November 27, 2003, para. 89), the Inter-American Court has consistently maintained the absolute prohibition of torture and ill-treatment, under any circumstances, including war, threat of war, counter-terrorism activities, internal conflicts, or internal states of emergency or instability" (para. 38).

VIII. The expansion of the substantial content of *jus cogens*

62. Despite what I have described above with regard to "Operation Condor," I would like to conclude this separate opinion on a positive note. In this case of *Goiburú et al. v. Paraguay*, the Court has reaffirmed its *consistent case law* in the sense that the crimes of torture and forced disappearance of persons are violations of *jus cogens*, entailing the obligation to investigate them and punish those responsible (paras. 84, 93 and 128), in order to end impunity. In the instant case, the States of the Southern Cone established a repressive plan to commit these violations systematically and conceal their acts, which are aggravating circumstances (aggravated international responsibility).

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63. R.P. Sertillanges, *Le problème du mal - l'histoire*, Paris, Aubier, 1948, p. 5.

64. *Cf.,* very recently, e.g.: United Nations/Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention - United States of America: Conclusions and Recommendations of the Committee against Torture*, document CAT/C/USA/CO/2, of 18 May 2006, pp. 1-11; Council of Europe/Parliamentary Assembly - Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions in Council of Europe Member States - Memorandum* (rapporteur D. Marty), document AS/JUR/2006/03.rev, of January 22, 2006, pp. 1-25; Council of Europe/Parliamentary Assembly - Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions and Unlawful Inter-State Transfers Involving Council of Europe Member States - Report* (rapporteur D. Marty), document AS/JUR/2006/16/Part II, of June 7, 2006, pp. 1-71.

65. A term inadequately used with ominous consequences.

63. In these circumstances, ensuring that justice is done, so as to end impunity, is an important form of reparation. In this regard, in my separate opinion in *Bulacio v. Argentina* (Judgment of September 18, 2003), I stated that law reacts in the face of the extreme violence with which human beings treat each other, since this is unacceptable. I reflected that:

> "It is here that the Law intervenes, to halt the cruelty with which human beings treat their fellow men or women […] to affirm its own prevalence over brute force, to attempt to organize human relations on the basis of *recta ratio* (natural law), to mitigate human suffering, and thus make life less unbearable, or perhaps bearable – understanding that life with suffering, and solidarity, is preferable to non-existence […]
>
> This explains the importance of the realization of justice. The juridical order (both domestic and international) sets itself up to oppose violent acts that breach human rights, to ensure that justice prevails and, thus, to provide satisfaction to the direct and indirect victims. In his work on *L'Ordinamento Giuridico*, originally published in 1918, the Italian philosopher of the Law, Santi Romano, argued that punishment is not attached to specific juridical provisions, but rather is inherent to the juridical order as a whole, operating as an "effective safeguard" of all subjective rights protected by said order.[66] […]
>
> The Law, issuing from and moved by human awareness, provides *reparatio* (from the Latin *reparare*, "to dispose once again"); it also intervenes to avoid repetition of the wrong, in other words, to establish, as one of the non-pecuniary forms of reparation of damage resulting from violations of human rights, the *guarantee of non-recidivism of the injurious acts.* […]
>
> *Reparatio* does not end what happened, the violation of human rights. The wrong was already committed;[67] *reparatio* avoids a worsening of its consequences (due to indifference of the social milieu, due to impunity, due to oblivion). From this perspective, *reparatio* takes on a dual meaning: it provides satisfaction (as a form of reparation) to the victims, or to their next of kin, whose rights have been abridged, while also reestablishing the legal order weakened by said violations –a legal order erected on the basis of full respect for the inherent rights of the human person.[68] The legal order, thus reestablished, requires guarantees of non-recidivism of the injurious facts. *Reparatio* disposes once again, reestablishes order in the lives of the surviving victims, but cannot eliminate the pain that is inevitably incorporated into their daily existence. The loss is, from this angle, strictly irreparable. Even so, *reparatio* is an unavoidable duty of those responsible for rendering justice. In a stage of greater development of human awareness, and therefore of the Law itself, undoubtedly the realization of justice overcomes any and every obstacle, even those derived from the abusive exercise of rules or precepts of substantive law […]. *Reparatio* is a reaction, in the field of the Law, to human cruelty, expressed in various ways: violence in dealing with other human beings, impunity of those responsible with respect to the public authorities, indifference and oblivion in the social milieu.
>
> This reaction of the legal order breached (the *substratum* of which is precisely respect for human rights) is ultimately moved by the spirit of human solidarity.[…] Reparation, thus understood - providing satisfaction to the victims (or their next of kin) and guarantees of non-recidivism of the injurious facts, in the framework of the realization of justice - is undeniably important. Rejection of indifference and oblivion, and guarantees of non-recidivism of the violations, are expressions of solidarity between the victims and the potential victims, in the violent world, empty of values, in which we live. It is, ultimately, an eloquent expression of the ties of solidarity that link the living to their deceased ones […]"[69] (paras. 30, 33, 35 and 37-40).

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66. Santi Romano, *L'ordre juridique* (trad. 2nd ed., reed.), Paris, Dalloz, 2002, p. 16.

67. Human capacity both to promote good and for evil has not ceased to attract the attention of human reflection over the centuries; cf. F. Alberoni, *Las Razones del Bien y del Mal*, Mexico, Gedisa Edit., 1988, pp. 9-196; A.-D. Sertillanges, *Le problème du mal*, Paris, Aubier, 1949, pp. 5-412.

68. As I had pointed out in my Separate Concurring Opinion the previous day, with regard to Advisory Opinion No. 18 of the Inter-American Court on the *Juridical Status and Rights of Undocumented Migrants* (on September 17, 2003, para. 89.

69. Regarding these ties of solidarity, see my Separate Opinions in the *Bámaca Velásquez v. Guatemala* case (Judgments of the Inter-American Court on merits of November 25, 20002, and on reparations of February 22, 2002).

64. In this judgment, after underscoring the "continuing or permanent nature" of the crime of forced disappearance of persons (para. 83) and the context of impunity that still prevails in violation of Articles 8(1) and 25 of the American Convention, the Court took a step forward with regard to the *jus cogens* prohibitions, in the direction that I have been advocating for some time. Indeed, in my separate opinion in *Myrna Mack Chang v. Guatemala* (judgment of November 25, 2003), I sustained that, faced with the existence of a State crime, the right to justice is essential; in other words, the right to a legal system that effectively safeguards fundamental human rights (paras. 9-55).

65. I believe that this is an essential requirement of *jus cogens*, particularly when it has been proved that the State itself has planned (at the most senior level), and massively and systematically perpetrated crimes, making victims of individuals subject to their jurisdiction (and even subject to the jurisdiction of other States, such as in "Operation Condor"). In my separate opinion in the recent case of the *Pueblo Bello Massacre v. Colombia* (judgment of January 31, 2006), I observed that:

> "The indivisibility between Articles 25 and 8 of the American Convention [...] leads me to characterize access to justice, understood as the *full realization* of justice, as forming part of the sphere of *jus cogens*; in other words, that the inviolability of all the judicial rights established in Articles 25 and 8 considered *together* belongs to the sphere of *jus cogens.* There can be no doubt that the fundamental guarantees, common to international human rights law and international humanitarian law,[70] have a universal vocation because they are applicable in any circumstance, constitute a peremptory right (belonging to *jus cogens*), and entail obligations *erga omnes* of protection" (para. 64).[71]

66. In the same separate opinion, I argued that, in the same way as the Inter-American Court had expanded the substantial content of *jus cogens* in its historical Advisory Opinion No. 18 on the *Juridical Status and Rights of Undocumented Migrants* (of September 17, 2003), to include the basic principle of equality and non-discrimination, the moment had come to take another qualitative leap forward in the development of its case law, by proceeding to the necessary and "continued expansion of the substantial content of *jus cogens*" by recognizing that this also encompasses the right of access to justice *lato sensu*; in other words, the right to full jurisdictional assistance, even to end impunity.

67. To my great satisfaction, after insisting on this fundamental issue within the Court for three years, during my period as a judge of the Court, it has finally given this new qualitative leap forward that I have been advocating, when it affirms in this judgment, based on the gravity of the facts of the *cas d'espèce*:

> "[..] Access to justice is a peremptory norm of international law and, as such, gives rise to obligations *erga omnes* for the States to adopt all necessary measures not to let such violations remain unpunished, either by exercising their jurisdiction to apply their domestic law and international law to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so" (para. 131).

68. By correctly affirming that the *right for justice to be done* is a peremptory norm of *jus cogens*, I consider that the Court has shown that there are reasons to continue hoping: because, in the end, sooner or later, even in the face of the most

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[70]. E.g. Article 75 of Protocol I (1977) to the 1949 Geneva Conventions on international humanitarian law.

[71]. And *cf.* paras. 60-62 of the same separate opinion.

cruel State crimes, the law reacts – as testified by this judgment of the Inter-American Court. Nowadays, the universal juridical conscience has awoken to acknowledge human suffering judicially and to seek its reparation by the guarantee of the primacy of justice in human relations.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary