Inter-American Court of Human Rights

Case of Velásquez-Rodríguez *v.* Honduras

Judgment of July 29, 1988
(Merits)

In the Velásquez Rodríguez case,

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

Rafael Nieto-Navia, President
Héctor Gros Espiell, Vice President
Rodolfo E. Piza E., Judge
Thomas Buergenthal, Judge
Pedro Nikken, Judge
Héctor Fix-Zamudio, Judge
Rigoberto Espinal Irías, Judge ad hoc

Also present:

Charles Moyer, Secretary
Manuel Ventura, Deputy Secretary

delivers the following judgment pursuant to Article 44 (1) of its Rules of Procedure (hereinafter "the Rules of Procedure") in the instant case submitted by the Inter-American Commission on Human Rights against the State of Honduras.

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") submitted the instant case to the Inter-American Court of Human Rights (hereinafter "the Court") on April 24, 1986. It originated in a petition (No. 7920) against the State of Honduras (hereinafter "Honduras" or "the Government"), which the Secretariat of the Commission received on October 7, 1981.

2. In submitting the case, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and requested that the Court determine whether the State in question had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the Convention in the case of Angel Manfredo Velásquez Rodríguez (also known as Manfredo Velásquez). In addition, the Commission asked the Court to rule that "the consequences of the situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party or parties."

3. According to the petition filed with the Commission, and the supplementary information received subsequently, Manfredo Velásquez, a student at the National Autonomous University of Honduras, "was violently detained without a warrant for his arrest by members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras." The detention took

place in Tegucigalpa on the afternoon of September 12, 1981. According to the petitioners, several eyewitnesses reported that Manfredo Velásquez and others were detained and taken to the cells of Public Security Forces Station No. 2 located in the Barrio El Manchén of Tegucigalpa, where he was "accused of alleged political crimes and subjected to harsh interrogation and cruel torture." The petition added that on September 17, 1981, Manfredo Velásquez was moved to the First Infantry Battalion, where the interrogation continued, but that he police and security forces denied that he had been detained.

4. After transmitting the relevant parts of the petition to the Government, the Commission, on various occasions, requested information on the matter. Since the Commission received no reply, it applied Article 42 (formerly 39) of its Regulations and presumed "as true the allegations contained in the communication of October 7, 1981 concerning the detention and possible disappearance of Angel Manfredo Velásquez Rodríguez in the Republic of Honduras" and pointed out to the Government "that such acts are most serious violations of the right to life (Art. 4) and the right to personal liberty (Art. 7) of the American Convention" (Resolution 30/83 of October 4, 1983).

5. On November 18, 1983, the Government requested reconsideration of Resolution 30/83 on the grounds that domestic remedies had not been exhausted, that the National Office of Investigations had no knowledge of the whereabouts of Manfredo Velásquez, that the Government was making every effort to find him, and that there were rumors that Manfredo Velásquez was "with Salvadoran guerrilla groups."

6. On May 30, 1984, the Commission informed the Government that it had decided, "in light of the information submitted by the Honorable Government, to reconsider Resolution 30/83 and to continue its study of the case." The Commission also asked the Government to provide information on the exhaustion of domestic legal remedies.

7. On January 29, 1985, the Commission repeated its request of May 30, 1984 and notified the Government that it would render a final decision on the case at its meeting in March 1985. On March 1 of that year, the Government asked for a postponement of the final decision and reported that it had set up an Investigatory Commission to study the matter. The Commission agreed to the Government's request on March 11, granting it thirty days in which to present the information requested.

8. On October 17, 1985, the Government presented to the Commission the Report of the Investigatory Commission.

9. On April 7, 1986, the Government provided information about the outcome of the proceeding brought in the First Criminal Court against those persons supposedly responsible for the disappearance of Manfredo Velásquez and others. That Court dismissed the complaints "except as they applied to General Gustavo Alvarez Martínez, because he had left the country and had not given testimony." This decision was later affirmed by the First Court of Appeals.

10. By Resolution 22/86 of April 18, 1986, the Commission deemed the new information presented by the Government insufficient to warrant reconsideration of Resolution 30/83 and found, to the contrary, that "all evidence shows that Angel Manfredo Velásquez Rodríguez is still missing and that the Government of Honduras . . . has not offered convincing proof that would allow the Commission to determine that the allegations are not true." In that same Resolution, the Commission confirmed Resolution 30/83 and referred the matter to the Court.

11. The Court has jurisdiction to hear the instant case. Honduras ratified the Convention on September 8, 1977 and recognized the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on September 9, 1981. The case was submitted to the Court by the Commission pursuant to Article 61 of the Convention and Article 50 (1) and 50 (2) of the Regulations of the Commission.

II

12. The instant case was submitted to the Court on April 24, 1986. On May 13, 1986, the Secretariat of the Court transmitted the application to the Government, pursuant to Article 26 (1) of the Rules of Procedure.

13. On July 23, 1986, Judge Jorge R. Hernández Alcerro informed the President of the Court (hereinafter "the President") that, pursuant to Article 19 (2) of the Statute of the Court (hereinafter "the Statute"), he had "decided to recuse (him)self from hearing the three cases that . . . were submitted to the Inter-American Court." The President accepted the disqualification and, by note of that same date, informed the Government of its right to appoint a judge ad hoc under Article 10 (3) of the Statute. The Government named Rigoberto Espinal Irías to that position by note of August 21, 1986.

14. In a note of July 23, 1986, the President confirmed a preliminary agreement that the Government present its submissions by the end of August 1986. On August 21, 1986, the Government requested the extension of this deadline to November 1986.

15. By his Order of August 29, 1986, having heard the views of the parties, the President set October 31, 1986 as the deadline for the Government's presentation of its submissions. The President also fixed the deadlines of January 15, 1987 for the filing of the Commission's submissions and March 1, 1987 for the Government's response.

16. In its submissions of October 31, 1986, the Government objected to the admissibility of the application filed by the Commission.

17. On December 11, 1986, the President granted the Commission's request for an extension of the deadline for the presentation of its submissions to March 20, 1987 and extended the deadline for the Government's response to May 25, 1987.

18. In his Order of January 30, 1987, the President made clear that the application which gave rise to the instant proceeding should be deemed to be the Memorial provided for in Article 30(3) of the Rules of Procedure. He also specified that the deadline of March 20, 1987 granted to the Commission was the time limit set forth in Article 27(3) of the Rules for the presentation of its observations and conclusions on the preliminary objections raised by the Government. The President, after consulting the parties, ordered a public hearing on June 15, 1987 for the presentation of oral arguments on the preliminary objections and left open the time limits for submissions on the merits, pursuant to the above-mentioned article of the Rules of Procedure.

19. By note of March 13, 1987, the Government informed the Court that because

> the Order of January 30, 1987 is not restricted to matters of mere procedure nor to the determination of deadlines, but rather involves the interpretation and classification of the submissions (the Government) considers it advisable, pursuant to Article 25 of the Statute of the Court and Article 44(2) of its Rules of

> Procedure, for the Court to affirm the terms of the President's Order of January 30, 1987, in order to avoid further confusion between the parties. As these are the first contentious cases submitted to the Court, it is especially important to ensure strict compliance with and the correct application of the procedural rules of the Court.

20. In a motion contained in its observations of March 20, 1987, the Commission asked the President to rescind paragraph 3 of his Order of January 30, 1987 in which he had set the date for the public hearing. The Commission also observed that "in no part of its Memorial had the Government of Honduras presented its objections as preliminary objections." In its note of June 11, 1987, the Government did however refer to its objections as "preliminary objections."

21. By Resolution of June 8, 1987, the Court affirmed the President's Order of January 30, 1987, in its entirety.

22. The hearing on the preliminary objections raised by the Government took place on June 15, 1987. Representatives of the Government and the Commission participated in this hearing.

23. On June 26, 1987, the Court delivered its judgment on the preliminary objections. In this unanimous decision, the Court:

> 1. Reject(ed) the preliminary objections interposed by the Government of Honduras, except for the issues relating to the exhaustion of the domestic legal remedies, which (were) ordered joined to the merits of the case.
>
> 2. Decide(d) to proceed with the consideration of the instant case.
>
> 3. Postpone(d) its decision on the costs until such time as it renders judgment on the merits.
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> (**Velásquez Rodríguez Case, Preliminary Objections**, Judgment of June 26, 1987. Series C No. 1).

24. On that same date, the Court adopted the following decision:

> 1. To instruct the President, in consultation with the parties, to set a deadline no later than August 27, 1987 for the Government to submit its Counter-Memorial on the merits and offer its evidence, with an indication of the facts that each item of evidence is intended to prove. In its offer of proof, the Government should show how, when and under what circumstances it wishes to present the evidence.
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> 2. Within thirty days of the receipt of the submission of the Government, the Commission must ratify in writing the request of proof already made, without prejudice to the possibility of amending or supplementing what has been offered. The Commission should indicate the facts that each item of evidence is intended to prove and how, when and under what circumstances it wishes to present the evidence. As soon as possible after receiving the Government's submission referred to in paragraph one, the Commission may also supplement or amend its offer of proof.
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> 3. To instruct the President, without prejudice to a final decision being taken by the Court, to decide preliminary matters that might arise, to admit or exclude evidence that has been offered or may be offered, to order the filing of expert or

other documentary evidence that may be received and, in consultation with the parties, to set the date of the hearing or hearings on the merits at which evidence shall be presented, the testimony of witnesses and any experts shall be received, and at which the final arguments shall be heard.

4. To instruct the President to arrange with the respective authorities for the necessary guarantees of immunity and participation of the Agents and other representatives of the parties, witnesses and experts, and, if necessary, the delegates of the Court.

25. In its submission of July 20, 1987, the Commission ratified and supplemented its request for oral testimony and offered documentary evidence.

26. On August 27, 1987, the Government filed its Counter-Memorial and documentary evidence. In its prayer, the Government asked the Court to dismiss "the suit against the State of Honduras on the grounds that it does not find the allegations to be true and that the domestic remedies of the State of Honduras have not yet been exhausted."

27. In his Order of September 1, 1987, the President admitted the testimonial and documentary evidence offered by the Commission. On September 14, 1987, he also admitted the documentary evidence offered by the Government.

28. The Court held hearings on the merits and heard the final arguments of the parties from September 30 to October 7, 1987.

There appeared before the Court

a) for the Government of Honduras:

Edgardo Sevilla Idiáquez, Agent
Ramón Pérez Zúñiga, Representative
Juan Arnaldo Hernández, Representative
Enrique Gómez, Representative
Rubén Darío Zepeda, Adviser
Angel Augusto Morales, Adviser
Olmeda Rivera, Adviser
Mario Alberto Fortín, Adviser
Ramón Rufino Mejía, Adviser

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

Gilda M. C. M. de Russomano, President, Delegate
Edmundo Vargas Carreño, Executive Secretary, Delegate
Claudio Grossman, Adviser
Juan Méndez, Adviser
Hugo Muñoz, Adviser
José Miguel Vivanco, Adviser

c) Witnesses presented by the Commission to testify as to "whether between the years 1981 and 1984 (the period in which Manfredo Velásquez disappeared) there were numerous cases of persons who were kidnapped and who then disappeared, and whether these actions were imputable to the Armed Forces of Honduras and enjoyed the acquiescence of the Government of Honduras:"

Miguel Angel Pavón Salazar, Alternate Deputy
Ramón Custodio López, surgeon
Virgilio Carías, economist
Inés Consuelo Murillo, student
Efraín Díaz Arrivillaga, Deputy
Florencio Caballero, former member of the Armed Forces

d) Witnesses presented by the Commission to testify as to "whether between the years 1981 and 1984 effective domestic remedies existed in Honduras to protect those persons who were kidnapped and who then disappeared in actions imputable to the Armed Forces of Honduras:"

Ramón Custodio López, surgeon
Virgilio Carías, economist
Milton Jiménez Puerto, lawyer
Inés Consuelo Murillo, student
René Velásquez Díaz, lawyer
César Augusto Murillo, lawyer
José Gonzalo Flores Trejo, shoemaker

e) Witnesses presented by the Commission to testify on specific facts related to this case:

Leopoldo Aguilar Villalobos, advertising agent
Zenaida Velásquez Rodríguez, social worker

f) The following witnesses offered by the Commission did not appear at these hearings:

Leónidas Torres Arias, former member of the Armed Forces
Linda Drucker, reporter
José María Palacios, lawyer
Mauricio Villeda Bermúdez, lawyer
José Isaías Vilorio, policeman

29. After having heard the witnesses, the Court directed the submission of additional evidence to assist it in its deliberations. Its Order of October 7, 1987 reads as follows:

A. Documentary Evidence

1. To request the Government of Honduras to provide the organizational chart showing the structure of Battalion 316 and its position within the Armed Forces of Honduras.

B. Testimony

1. To call as a witnesses, Marco Tulio Regalado and Alexander Hernández, members of the Armed Forces of Honduras.

C. Reiteration of a Request

1. To the Government of Honduras to establish the whereabouts of José Isaías Vilorio and, once located, to call him as a witness.

30. By the same Order, the Court set December 15, 1987 as the deadline for the submission of documentary evidence and decided to hear the oral testimony at its January session.

31. In response to that Order, on December 14, 1987 the Government: a) with respect to the organizational structure of Battalion 316, requested that the Court receive the testimony of its Commandant in a closed hearing "because of strict security reasons of the State of Honduras"; b) requested that the Court hear the testimony of Alexander Hernández and Marco Tulio Regalado "in the Republic of Honduras, in a manner to be decided by the Court and in a closed hearing to be set at an opportune time . . . because of security reasons and because both persons are on active duty in the Armed Forces of Honduras"; and c) reported that José Isaías Vilorio was "working as an administrative employee of the National Office of Investigations, a branch of the Public Security Forces, in the city of Tegucigalpa."

32. By note of December 24, 1987, the Commission objected to hearing the testimony of members of the Honduran military in closed session. This position was reiterated by note of January 11, 1988.

33. On the latter date, the Court decided to receive the testimony of the members of the Honduran military at a closed hearing in the presence of the parties.

34. Pursuant to its Order of October 7, 1987 and its decision of January 11, 1988, the Court held a closed hearing on January 20, 1988, which both parties attended, at which it received the testimony of persons who identified themselves as Lt. Col. Alexander Hernández and Lt. Marco Tulio Regalado Hernández. The Court also heard the testimony of Col. Roberto Núñez Montes, Head of the Intelligence Services of Honduras.

35. On January 22, 1988, the Government submitted a brief prepared by the Honduran Bar Association on the legal remedies available in cases of disappeared persons. The Court had asked for this document in response to the Government's request of August 26, 1987.

36. On July 7, 1988, the Commission responded to a request of the Court concerning another case before the Court (Fairén Garbi and Solís Corrales Case). In its response, the Commission included some "final observations" on the instant case.

37. By decision of July 14, 1988, the President refused to admit the "final observations" because they were untimely and because "reopening the period for submissions would violate the procedure opportunely established and, moreover, would seriously affect the procedural equilibrium and equality of the parties."

38. The following non-governmental organizations submitted briefs as **amici curiae**: Amnesty International, Association of the Bar of the City of New York, Lawyers Committee for Human Rights and Minnesota Lawyers International Human Rights Committee.

III

39. By note of November 4, 1987, addressed to the President of the Court, the Commission asked the Court to take provisional measures under Article 63 (2) of the Convention in view of the threats against the witnesses Milton Jiménez Puerto and Ramón Custodio López. Upon forwarding this information to the Government of Honduras, the President stated that he "does not have enough proof to ascertain which persons or entities might be responsible for the threats, but he strongly wishes to request that the Government of Honduras take all measures necessary to guarantee the safety of the lives and property of Milton Jiménez and Ramón Custodio and the property of the Committee for the Defense of Human Rights in Honduras (CODEH) . . . ." The President also stated that he was prepared to consult with the Permanent Commission of the Court and, if necessary, to convoke the Court for an emergency meeting "for taking the

appropriate measures, if that abnormal situation continues." By communications of November 11 and 18, 1987, the Agent of the Government informed the Court that the Honduran government would guarantee Ramón Custodio and Milton Jiménez "the respect of their physical and moral integrity . . . and the faithful compliance with the Convention...."

40. By note of January 11, 1988, the Commission informed the Court of the death of José Isaías Vilorio, which occurred on January 5, 1988 at 7:15 a.m. The Court had summoned him to appear as a witness on January 18, 1988. He was killed "on a public thoroughfare in Colonia San Miguel, Comayaguela, Tegucigalpa, by a group of armed men who placed the insignia of a Honduran guerrilla movement known as Cinchonero on his body and fled in a vehicle at high speed."

41. On January 15, 1988, the Court was informed of the assassinations of Moisés Landaverde and Miguel Angel Pavón which had occurred the previous evening in San Pedro Sula. Mr. Pavón had testified before the Court on September 30, 1987 as a witness in this case. Also on January 15, the Court adopted the following provisional measures under Article 63 (2) of the Convention:

> 1. That the Government of Honduras adopt, without delay, such measures as are necessary to prevent further infringements on the basic rights of those who have appeared or have been summoned to do so before this Court in the "Velásquez Rodríguez," "Fairén Garbi and Solís Corrales" and "Godínez Cruz" cases, in strict compliance with the obligation of respect for and observance of human rights, under the terms of Article 1 (1) of the Convention.
>
> 2. That the Government of Honduras also employ all means within its power to investigate these reprehensible crimes, to identify the perpetrators and to impose the punishment provided for by the domestic law of Honduras.

42. After it had adopted the above Order of January 15, the Court received a request from the Commission, dated the same day, that the Court take the necessary measures to protect the integrity and security of those persons who had appeared or would appear before the Court.

43. On January 18, 1988, the Commission asked the Court to adopt the following complementary provisional measures:

> 1. That the Government of Honduras inform the Court, within 15 days, of the specific measures it has adopted to protect the physical integrity of witnesses who testified before the Court as well as those persons in any way involved in these proceedings, such as representatives of human rights organizations.
>
> 2. That the Government of Honduras report, within that same period, on the judicial investigations of the assassinations of José Isaías Vilorio, Miguel Angel Pavón and Moisés Landaverde.
>
> 3. That the Government of Honduras provide the Court, within that same period, the public statements made regarding the aforementioned assassinations and indicate where those statements appeared.
>
> 4. That the Government of Honduras inform the Court, within the same period, on the criminal investigations of threats against Ramón Custodio and Milton Jiménez, who are witnesses in this case.

5. That it inform the Court whether it has ordered police protection to ensure the personal integrity of the witnesses who have testified and the protection of the property of CODEH.

6. That the Court request the Government of Honduras to send it immediately a copy of the autopsies and ballistic tests carried out regarding the assassinations of Messrs. Vilorio, Pavón and Landaverde.

44. That same day the Government submitted a copy of the death certificate and the autopsy report of José Isaías Vilorio, both dated January 5, 1988.

45. On January 18, 1988, the Court decided, by a vote of six to one, to hear the parties in a public session the following day regarding the measures requested by the Commission. After the hearing, taking into account "Articles 63 (2), 33 and 62 (3) of the American Convention on Human Rights, Articles 1 and 2 of the Statute of the Court and Article 23 of its Rules of Procedure and its character as a judicial body and the powers which derive therefrom," the Court unanimously decided, by Order of January 19, 1988, on the following additional provisional measures:

1. That the Government of Honduras, within a period of two weeks, inform this Court on the following points:

a. the measures that have been adopted or will be adopted to protect the physical integrity of, and to avoid irreparable harm to, those witnesses who have testified or have been summoned to do so in these cases.

b. the judicial investigations that have been or will be undertaken with respect to threats against the aforementioned individuals.

c. the investigations of the assassinations, including forensic reports, and the actions that are proposed to be taken within the judicial system of Honduras to punish those responsible.

2. That the Government of Honduras adopt concrete measures to make clear that the appearance of an individual before the Inter-American Commission or Court of Human Rights, under conditions authorized by the American Convention and by the rules of procedure of both bodies, is a right enjoyed by every individual and is recognized as such by Honduras as a party to the Convention.

This decision was delivered to the parties in Court.

46. Pursuant to the Court's decision of January 19, 1988, the Government submitted the following documents on February 3, 1988:

1. A copy of the autopsy report on the death of Professor Miguel Angel Pavón Salazar, certified by the Third Criminal Court of San Pedro Sula, Department of Cortés, on January 27, 1988 and prepared by forensic specialist Rolando Tábora, of that same Court.

2. A copy of the autopsy report on the death of Professor Moisés Landaverde Recarte, certified by the above Court on the same date and prepared by the same forensic specialist.

> 3. A copy of a statement made by Dr. Rolando Tábora, forensic specialist, as part of the inquiry undertaken by the above Court into the deaths of Miguel Angel Pavón and Moisés Landaverde Recarte, and certified by that Court on January 27, 1988.
>
> . . .
>
> 4. A copy of the inquiry into threats against the lives of Ramón Custodio and Milton Jiménez, conducted by the First Criminal Court of Tegucigalpa, Central District, and certified by that Court on February 2, 1988.

In the same submission, the Government stated that:

> The content of the above documents shows that the Government of Honduras has initiated a judicial inquiry into the assassinations of Miguel Angel Pavón Salazar and Moisés Landaverde Recarte, under the procedures provided for by Honduran law.
>
> Those same documents show, moreover, that the projectiles were not removed from the bodies for ballistic study because of the opposition of family members, which is why no ballistic report was submitted as requested.

47. The Government also requested an extension of the deadline ordered above "because, for justifiable reasons, it has been impossible to obtain some of the information." Upon instructions from the President, the Secretariat informed the Government on the following day that it was not possible to extend the deadline because it had been set by the full Court.

48. By communication of March 10, 1988, the Inter-Institutional Commission of Human Rights of Honduras, a governmental body, made several observations regarding the Court's decision of January 15, 1988. On the threats that have been made against some witnesses, it reported that Ramón Custodio "refused to bring a complaint before the proper courts and that the First Criminal Court of Tegucigalpa, Department of Morazán, had initiated an inquiry to determine whether there were threats, intimidations or conspiracies against the lives of Dr. Custodio and Milton Jiménez, and had duly summoned them to testify and to summit any evidence," but they failed to appear. It added that no Honduran official "has attempted to intimidate, threaten or restrict the liberty of any of the persons who testified before the Court . . . who enjoy the same guarantees as other citizens."

49. On March 23, 1988 the Government submitted the following documents:

> 1. Copies of the autopsies performed on the bodies of Miguel Angel Pavón Salazar and Moisés Landaverde, certified by the Secretariat of the Third Criminal Court of the Judicial District of San Pedro Sula.
>
> 2. The ballistic report on the shrapnel removed from the bodies of those persons, signed by the Director of the Medical-Legal Department of the Supreme Court of Justice.

IV

50. The Government raised several preliminary objections that the Court ruled upon in its Judgment of June 26, 1987 (**supra** 16-23). There the Court ordered the joining of the merits and the preliminary objection regarding the failure to exhaust domestic remedies, and gave the Government and the Commission another opportunity to "substantiate their contentions" on the matter (**Velásquez Rodríguez Case, Preliminary Objections**, **supra** 23, para. 90).

51. The Court will first rule upon this preliminary objection. In so doing, it will make use of all the evidence before it, including that presented during the proceedings on the merits.

52. The Commission presented witnesses and documentary evidence on this point. The Government, in turn, submitted some documentary evidence, including examples of writs of habeas corpus successfully brought on behalf of some individuals (**infra** 120 (c)). The Government also stated that this remedy requires identification of the place of detention and of the authority under which the person is detained.

53. In addition to the writ of habeas corpus, the Government mentioned various remedies that might possibly be invoked, such as appeal, cassation, extraordinary writ of amparo, **ad effectum videndi**, criminal complaints against those ultimately responsible and a presumptive finding of death.

54. The Honduran Bar Association in its brief (**supra** 35) expressly mentioned the writ of habeas corpus, set out in the Law of Amparo, and the suit before a competent court "for it to investigate the whereabouts of the person allegedly disappeared."

55. The Commission argued that the remedies mentioned by the Government were ineffective because of the internal conditions in the country during that period. It presented documentation of three writs of habeas corpus brought on behalf of Manfredo Velásquez that did not produce results. It also cited two criminal complaints that failed to lead to the identification and punishment of those responsible. In the Commission's opinion, those legal proceedings exhausted domestic remedies as required by Article 46 (1) (a) of the Convention.

56. The Court will first consider the legal arguments relevant to the question of exhaustion of domestic remedies and then apply them to the case.

57. Article 46 (1) (a) of the Convention provides that, in order for a petition or communication lodged with the Commission in accordance with Articles 44 or 45 to be admissible, it is necessary

> that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

58. The same article, in the second paragraph, provides that this requirement shall not be applicable when

> a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
>
> b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
>
> c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

59. In its Judgment of June 26, 1987, the Court decided, **inter alia**, that "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and

that they are effective" (**Velásquez Rodríguez Case, Preliminary Objections, supra** 23, para. 88).

60. Concerning the burden of proof, the Court did not go beyond the conclusion cited in the preceding paragraph. The Court now affirms that if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46 (2). It must not be rashly presumed that a State Party to the Convention has failed to comply with its obligation to provide effective domestic remedies.

61. The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble).

62. It is a legal duty of the States to provide such remedies, as this Court indicated in its Judgment of June 26, 1987, when it stated:

> The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1). (**Velásquez Rodríguez Case, Preliminary Objections, supra** 23, para. 91).

63. Article 46 (1) (a) of the Convention speaks of "generally recognized principles of international law." Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46 (2).

64. Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. For example, a civil proceeding specifically cited by the Government, such as a presumptive finding of death based on disappearance, the purpose of which is to allow heirs to dispose of the estate of the person presumed deceased or to allow the spouse to remarry, is not an adequate remedy for finding a person or for obtaining his liberty.

65. Of the remedies cited by the Government, habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty. The other remedies cited by the Government are either for reviewing a decision within an inchoate proceeding (such as those of appeal or cassation) or are addressed to other objectives. If, however, as the Government has stated, the writ of habeas corpus requires the identification of the place of detention and the authority ordering the detention, it would not be adequate for finding a person clandestinely held by State officials, since in such cases there is only hearsay evidence of the detention, and the whereabouts of the victim is unknown.

66. A remedy must also be effective --that is, capable of producing the result for which it was designed. Procedural requirements can make the remedy of habeas corpus ineffective: if it is

powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied.

67. On the other hand, contrary to the Commission's argument, the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion.

68. It is a different matter, however, when it is shown that remedies are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. In such cases, resort to those remedies becomes a senseless formality. The exceptions of Article 46 (2) would be fully applicable in those situations and would discharge the obligation to exhaust internal remedies since they cannot fulfill their objective in that case.

69. In the Government's opinion, a writ of habeas corpus does not exhaust the remedies of the Honduran legal system because there are other remedies, both ordinary and extraordinary, such as appeal, cassation, and extraordinary writ of amparo, as well as the civil remedy of a presumptive finding of death. In addition, in criminal procedures parties may use whatever evidence they choose. With respect to the cases of disappearances mentioned by the Commission, the Government stated that it had initiated some investigations and had opened others on the basis of complaints, and that the proceedings remain pending until those presumed responsible, either as principals or accomplices, are identified or apprehended.

70. In its conclusions, the Government stated that some writs of habeas corpus were granted from 1981 to 1984, which would prove that this remedy was not ineffective during that period. It submitted various documents to support its argument.

71. In response, the Commission argued that the practice of disappearances made exhaustion of domestic remedies impossible because such remedies were ineffective in correcting abuses imputed to the authorities or in causing kidnapped persons to reappear.

72. The Commission maintained that, in cases of disappearances, the fact that a writ of habeas corpus or amparo has been brought without success is sufficient to support a finding of exhaustion of domestic remedies as long as the person does not appear, because that is the most appropriate remedy in such a situation. It emphasized that neither writs of habeas corpus nor criminal complaint were effective in the case of Manfredo Velásquez. The Commission maintained that exhaustion should not be understood to require mechanical attempts at formal procedures; but rather to require a case-by-case analysis of the reasonable possibility of obtaining a remedy.

73. The Commission asserted that, because of the structure of the international system for the protection of human rights, the Government bears the burden of proof with respect to the exhaustion of domestic remedies. The objection of failure to exhaust presupposes the existence of an effective remedy. It stated that a criminal complaint is not an effective means to find a disappeared person, but only serves to establish individual responsibility.

74. The record before the Court shows that the following remedies were pursued on behalf of Manfredo Velásquez:

a. Habeas corpus

i. Brought by Zenaida Velásquez against the Public Security Forces on September 17, 1981. No result.

ii. Brought by Zenaida Velásquez on February 6, 1982. No result.

iii. Brought by various relatives of disappeared persons on behalf of Manfredo Velásquez and others on July 4, 1983. Denied on September 11, 1984.

b. Criminal Complaints

i. Brought by the father and sister of Manfredo Velásquez before the First Criminal Court of Tegucigalpa on November 9, 1982. No result.

ii. Brought by Gertrudis Lanza González, joined by Zenaida Velásquez, before the First Criminal Court of Tegucigalpa against various members of the Armed Forces on April 5, 1984. The court dismissed this proceeding on January 16, 1986, although it left open the complaint with regard to General Gustavo Alvarez Martínez, who was declared a defendant in absence (**supra** 9).

75. Although the Government did not dispute that the above remedies had been brought, it maintained that the Commission should not have found the petition admissible, much less submitted it to the Court, because of the failure to exhaust the remedies provided by Honduran law, given that there are no final decisions in the record that show the contrary. It stated that the first writ of habeas corpus was declared void because the person bringing it did not follow through; regarding the second and third, the Government explained that additional writs cannot be brought on the same subject, the same facts, and based on the same legal provisions. As to the criminal complaints, the Government stated that no evidence had been submitted and, although presumptions had been raised, no proof had been offered and that the proceeding was still before Honduran courts until those guilty were specifically identified. It stated that one of the proceedings was dismissed for lack of evidence with respect to those accused who appeared before the court, but not with regard to General Alvarez Martínez, who was out of the country. Moreover, the Government maintained that dismissal does not exhaust domestic remedies because the extraordinary remedies of amparo, rehearing and cassation may be invoked and, in the instant case, the statute of limitations has not yet run, so the proceeding is pending.

76. The record (**infra** Chapter V) contains testimony of members of the Legislative Assembly of Honduras, Honduran lawyers, persons who were at one time disappeared, and relatives of disappeared persons, which purports to show that in the period in which the events took place, the legal remedies in Honduras were ineffective in obtaining the liberty of victims of a practice of enforced or involuntary disappearances (hereinafter "disappearance" of "disappearances"), ordered or tolerated by the Government. The record also contains dozens of newspaper clippings which allude to the same practice. According to that evidence, from 1981 to 1984 more than one hundred persons were illegally detained, may of whom never reappeared, and, in general, the legal remedies which the Government claimed were available to the victims were ineffective.

77. That evidence also shows that some individuals were captured and detained without due process and subsequently reappeared. However, in some of those cases, the reappearances were not the result of any of the legal remedies which, according to the Government, would have been effective, but rather the result of other circumstances, such as the intervention of diplomatic missions or actions of human rights organizations.

78. The evidence offered shows that lawyers who filed writs of habeas corpus were intimidated, that those who were responsible for executing the writs were frequently prevented from entering or inspecting the places of detention, and that occasional criminal complaints

against military or police officials were ineffective, either because certain procedural steps were not taken or because the complaints were dismissed without further proceedings.

79. The Government had the opportunity to call its own witnesses to refute the evidence presented by the Commission, but failed to do so. Although the Government's attorneys contested some of the points urged by the Commission, they did not offer convincing evidence to support their arguments. The Court summoned as witnesses some members of the armed forces mentioned during the proceeding, but their testimony was insufficient to overcome the weight of the evidence offered by the Commission to show that the judicial and governmental authorities did not act with due diligence in cases of disappearances. The instant case is such an example.

80. The testimony and other evidence received and not refuted leads to the conclusion that, during the period under consideration, although there may have been legal remedies in Honduras that theoretically allowed a person detained by the authorities to be found, those remedies were ineffective in cases of disappearances because the imprisonment was clandestine; formal requirements made them inapplicable in practice; the authorities against whom they were brought simply ignored them, or because attorneys and judges were threatened and intimidated by those authorities.

81. Aside from the question of whether between 1981 and 1984 there was a governmental policy of carrying out or tolerating the disappearance of certain persons, the Commission has shown that although writs of habeas corpus and criminal complaints were filed, they were ineffective or were mere formalities. The evidence offered by the Commission was not refuted and is sufficient to reject the Government's preliminary objection that the case is inadmissible because domestic remedies were not exhausted.

V

82. The Commission presented testimony and documentary evidence to show that there were many kidnappings and disappearances in Honduras from 1981 to 1984 and that those acts were attributable to the Armed Forces of Honduras (hereinafter "Armed Forces"), which was able to rely at least on the tolerance of the Government. Three officers of the Armed Forces testified on this subject at the request of the Court.

83. Various witnesses testified that they were kidnapped, imprisoned in clandestine jails and tortured by members of the Armed Forces (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Días and Leopoldo Aguilar Villalobos).

84. Inés Consuelo Murillo testified that she was secretly held for approximately three months. According to her testimony, she and José Gonzalo Flores Trejo, whom she knew casually, were captured on March 13, 1983 by men who got out of a car, shouted that they were from Immigration and hit her with their weapons. Behind them was another car which assisted in the capture. She said she was blindfolded, bound, and driven presumably to San Pedro Sula, where she was taken to a secret detention center. There she was tied up, beaten, kept nude most of the time, not fed for many days, and subjected to electrical shocks, hanging, attempts to asphyxiate her, threats of burning her eyes, threats with weapons, burns on the legs, punctures of the skin with needles, drugs and sexual abuse. She admitted carrying false identification when detained, but ten days later she gave them her real name. She stated that thirty-six days after her detention she was moved to a place near Tegucigalpa, where she saw military officers (one of whom was Second Lt. Marco Tulio Regalado Hernández), papers with an Army letterhead, and Armed Forces graduation rings. This witness added that she was finally turned over to the police

and was brought before a court. She was accused of some twenty crimes, but her attorney was not allowed to present evidence and there was no trial (testimony of Inés Consuelo Murillo).

85. Lt. Regalado Hernández said that he had no knowledge of the case of Inés Consuelo Murillo, except for what he had read in the newspaper (testimony of Marco Tulio Regalado Hernández).

86. The Government stated that it was unable to inform Ms. Murillo's relatives of her detention because she was carrying false identification, a fact which also showed, in the Government's opinion, that she was not involved in lawful activities and was, therefore, not telling the whole truth. It added that her testimony of a casual relationship with José Gonzalo Flores Trejo was not credible because both were clearly involved in criminal activities.

87. José Gonzalo Flores Trejo testified that he and Inés Consuelo Murillo were kidnapped together and taken to a house presumably located in San Pedro Sula, where his captors repeatedly forced his head into a trough of water until he almost drowned, kept his hands and feet tied, and hung him so that only his stomach touched the ground. He also declared that, subsequently, in a place where he was held near Tegucigalpa, his captors covered his head with a "capucha" (a piece of rubber cut from an inner tube, which prevents a person from breathing through the mouth and nose), almost asphyxiating him, and subjected him to electric shocks. He said he knew he was in the hands of the military because when his blindfold was removed in order to take some pictures of him, he saw a Honduran military officer and on one occasion when they took him to bathe, he saw a military barracks. He also heard a trumpet sound, orders being given and the report of a cannon (testimony of José Gonzalo Flores Trejo).

88. The Government argued that the testimony of the witness, a Salvadoran national, was not credible because he attempted to convince the Court that his encounters with Inés Consuelo Murillo were of a casual nature. The Government added that both individuals were involved in illicit activities.

89. Virgilio Carías, who was President of the Socialist Party of Honduras, testified that he was kidnapped in broad daylight on September 12, 1981, when 12 or 13 persons, armed with pistols, carbines and automatic rifles, surrounded his automobile. He stated that he was taken to a secret jail, threatened and beaten, and had no food, water or bathroom facilities for four or five days. On the tenth day, his captors gave him an injection in the arm and threw him, bound, in the back of a pick-up truck. Subsequently, they draped him over the back of a mule and set it walking through the mountains near the Nicaraguan border, where he regained his liberty (testimony of Virgilio Carías).

90. The Government indicated that this witness expressly admitted that he opposed the Honduran government. The Government also maintained that his answers were imprecise or evasive and argued that, because the witness said he could not identify his captors, his testimony was hearsay and of no evidentiary value since, in the Government's view, he had no personal knowledge of the events and only knew of them through others.

91. A Honduran attorney, who stated that he defended political prisoners, testified that Honduran security forces detained him without due process in 1982. He was held for ten years in a clandestine jail, without charges, and was beaten and tortured before he was brought before the court (testimony of Milton Jiménez Puerto).

92. The Government affirmed that the witness was charged with the crimes of threatening national security and possession of arms that only the Armed Forces were authorized to carry and, therefore, had a personal interest in discrediting Honduras with his testimony.

93. Another lawyer, who also said that he defended political detainees and who testified on Honduran law, stated that personnel of the Department of Special Investigations detained him a broad daylight in Tegucigalpa on June 1, 1982, blindfolded him, took him to a place he was unable to recognize and kept him without food or water for four days. He was beaten and insulted. He said that he could see through the blindfold that he was in a military installation (testimony of René Velásquez Díaz).

94. The Government claimed that this witness made several false statements regarding the law in force in Honduras and that his testimony "lacks truth or force because it is not impartial and his interest is to discredit the State of Honduras."

95. The Court received testimony which indicated that somewhere between 112 and 130 individuals were disappeared from 1981 and 1984. A former member of the Armed Forces testified that, according to a list in the files of Battalion 316, the number might be 140 or 150 (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga and Florencio Caballero).

96. The Court heard testimony from the President of the Committee for the Defense of Human Rights in Honduras regarding the existence of a unit within the Armed Forces which carried out disappearances. According to his testimony, in 1980 there was group called "the fourteen" under the command of Major Adolfo Díaz, attached to the General Staff of the Armed Forces. Subsequently, this group was replaced by "the ten," commanded by Capt. Alexander Hernández, and finally by Battalion 316, a special operations group, with separate units trained in surveillance, kidnapping, execution, telephone tapping, etc. The existence of this group had always been denied until it was mentioned in a communiqué of the Armed Forces in September 1986 (testimony of Ramón Custodio López. See also the testimony of Florencio Caballero).

97. Alexander Hernández, now a Lieutenant Colonel, denied having participated in the group "the ten," having been a part of Battalion 316, or having had any type of contact with it (testimony of Alexander Hernández).

98. The current Director of Honduran Intelligence testified that he learned from the files of his department that in 1984 an intelligence battalion called 316 was created, the purpose of which was to provide combat intelligence to the 101st, 105th and 110th Brigades. He added that this battalion initially functioned as a training unit, until the creation of the Intelligence School, to which all its training functions were gradually transferred, and that the Battalion was finally disbanded in September 1987. He stated that there was never any group called "the fourteen" or "the ten" in the Armed Forces or security forces (testimony of Roberto Núñez Montes).

99. According to testimony on the **modus operandi** of the practice of disappearances, the kidnappers followed a pattern: they used automobiles with tinted glass (which requires a special permit from the Traffic Division), without license plates or with false plates, and sometimes used special disguises, such as wigs, false mustaches, masks, etc. The kidnappings were selective. The victims were first placed under surveillance, then the kidnapping was planned. Microbuses or vans were used. Some victims were taken from their homes; others were picked up in public streets. On one occasion, when a patrol car intervened, the kidnappers identified themselves as members of a special group of the Armed Forces and were permitted to leave with the victim (testimony of Ramón Custodio López, Miguel Angel Pavón Salazar, Efraín Díaz Arrivillaga and Florencio Caballero).

100. A former member of the Armed Forces, who said that he belonged to Battalion 316 (the group charged with carrying out the kidnappings) and that he had participated in some kidnappings, testified that the starting point was an order given by the chief of the unit to investigate an individual and place him under surveillance. According to this witness, if a decision was made to take further steps, the kidnapping was carried out by persons in civilian clothes

using pseudonyms and disguises and carrying arms. The unit had four double-cabin Toyota pick-up trucks without police markings for use in kidnappings. Two of the pick-ups had tinted glass (testimony of Florencio Caballero. See also testimony of Virgilio Carías).

101. The Government objected, under Article 37 of the Rules of Procedure, to the testimony of Florencio Caballero because he had deserted from the Armed Forces and had violated his military oath. By unanimous decision of October 6, 1987, the Court rejected the challenge and reserved the right to consider his testimony.

102. The current Director of Intelligence of the Armed Forces testified that intelligence units do not carry out detentions because they "get burned" (are discovered) and do not use pseudonyms or automobiles without license plates. He added that Florencio Caballero never worked in the intelligence services and that he was a driver for the Army General Headquarters in Tegucigalpa (testimony of Roberto Núñez Montes).

103. The former member of the Armed Forces confirmed the existence of secret jails and of specially chosen places for the burial of those executed. He also related that there was a torture group and an interrogation group in his unit, and that he belonged to the latter. The torture group used electric shock, the water barrel and the "capucha." They kept the victims nude, without food, and threw cold water on them. He added that those selected for execution were handed over to a group of former prisoners, released from jail for carrying out executions, who used firearms at first and then knives and machetes (testimony of Florencio Caballero).

104. The current Director of Intelligence denied that the Armed Forces had secret jails, stating that it was not its **modus operandi**. He claimed that it was subversive elements who do have such jails, which they call "the peoples' prisons." He added that the function of an intelligence service is not to eliminate or disappear people, but rather to obtain and process information to allow the highest levels of government to make informed decisions (testimony of Roberto Núñez Montes).

105. A Honduran officer, called as a witness by the Court, testified that the use of violence or psychological means to force a detainee to give information is prohibited (testimony of Marco Tulio Regalado Hernández).

106. The Commission submitted many clippings from the Honduran press from 1981 to 1984 which contain information on at least 64 disappearances, which were apparently carried out against ideological or political opponents or trade union members. Six of those individuals, after their release, complained of torture and other cruel, inhuman and degrading treatment. There clippings mention secret cemeteries where 17 bodies had been found.

107. According to the testimony of his sister, eyewitnesses to the kidnapping of Manfredo Velásquez told her that he was detained on September 12, 1981, between 4:30 and 5:00 p.m., in a parking lot in downtown Tegucigalpa by seven heavily-armed men dressed in civilian clothes (one of them being First Sgt. José Isaías Vilorio), who used a white Ford without license plates (testimony of Zenaida Velásquez. See also testimony of Ramón Custodio López).

108. This witness informed the Court that Col. Leónidas Torres Arias, who had been head of Honduran military intelligence, announced in a press conference in Mexico City that Manfredo Velásquez was kidnapped by a special squadron commanded by Capt. Alexander Hernández, who was carrying out the direct orders of General Gustavo Alvarez Martínez (testimony of Zenaida Velásquez).

109. Lt. Col. Hernández testified that he never received any order to detain Manfredo Velásquez and had never worked in police operations (testimony of Alexander Hernández).

110. The Government objected, under Article 37 of the Rules of Procedure, to the testimony of Zenaida Velásquez because, as sister of the victim, she was a party interested in the outcome of the case.

111. The Court unanimously rejected the objection because it considered the fact that the witness was the victim's sister to be insufficient to disqualify her. The Court reserved the right to consider her testimony.

112. The Government asserted that her testimony was irrelevant because it did not refer to the case before the Court and that what she related about the kidnapping of her brother was not her personal knowledge but rather hearsay.

113. The former member of the Armed Forces who claimed to have belonged to the group that carried out kidnappings told the Court that, although the did not take part in the kidnapping of Manfredo Velásquez, Lt. Flores Murillo had told him what had happened. According to this testimony, Manfredo Velásquez was kidnapped in downtown Tegucigalpa in an operation in which Sgt. José Isaías Vilorio, men using the pseudonyms Ezequiel and Titanio, and Lt. Flores Murillo himself, took part. The Lieutenant told him that during the struggle Ezequiel's gun went off and wounded Manfredo in the leg. They took the victim to INDUMIL (Military Industries) where they tortured him. They then turned him over the those in charge of carrying out executions who, at the orders of General Alvarez, Chief of the Armed Forces, took him out of Tegucigalpa and killed him with a knife and machete. They dismembered his body and buried the remains in different places (testimony of Florencio Caballero).

114. The current Director of Intelligence testified that José Isaías Vilorio was a file clerk of the DNI. He said he did not know Lt. Flores Murillo and stated that INDUMIL had never been used as a detention center (testimony of Roberto Núñez Montes).

115. One witness testified that he was taken prisoner on September 29, 1981 by five or six persons who identified themselves as members of the Armed Forces and took him to the officers of DNI. They blindfolded him and took him in a car to an unknown place, where they tortured him. On October 1, 1981, while he was being held, he heard a moaning and pained voice through a hole in the door to an adjoining room. The person identified himself as Manfredo Velásquez and asked for help. According to the testimony of the witness, at that moment Lt. Ramón Mejía came in and hit him because he found him standing up, although the witness told the Lieutenant that he had gotten up because he was tired. He added that, subsequently, Sgt. Carlos Alfredo Martínez, whom he had met at the bar where he worked, told him they had turned Manfredo Velásquez over to members of Battalion 316 (testimony of Leopoldo Aguilar Villalobos).

116. The Government asserted that the testimony of this witness "is not completely trustworthy because of discrepancies that should not be overlooked, such as the fact that he had testified that he had only been arrested once, in 1981, for trafficking in arms and hijacking a plane, when the truth was that Honduran police had arrested him on several occasions because of his unenviable record."

117. The Commission also presented evidence to show that from 1981 to 1984 domestic judicial remedies in Honduras were ineffective in protecting human rights, especially the rights of disappeared persons to life, liberty and personal integrity.

118. The Court heard the following testimony with respect to this point:

> a. The legal procedures of Honduras were ineffective in ascertaining the whereabouts of detainees and ensuring respect for their physical and moral integrity. When writs of habeas corpus were brought, the courts were slow to name judges to execute them and, once named, those judges were often ignored

by police authorities. On several occasions, the authorities denied the detentions, even in cases in which the prisoners were later released. There were no judicial orders for the arrests and the places of detention were unknown. When writs of habeas corpus were formalized, the police authorities did not present the persons named in the writs (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Milton Jiménez Puerto and Efraín Díaz Arrivillaga).

b. The judges named by the Courts of Justice to execute the writs did not enjoy all the necessary guarantees. Moreover, they feared reprisals because they were often threatened. Judges were imprisoned on more than one occasion and some of them were physically mistreated by the authorities. Law professors and lawyers who defended political prisoners were pressured not to act in cases of human rights violations. Only two dared bring writs of habeas corpus on behalf of disappeared persons and one of those was arrested while he was filing a writ (testimony of Milton Jiménez Puerto, Miguel Angel Pavón Salazar, Ramón Custodio López, César Augusto Murillo, René Velásquez Díaz and Zenaida Velásquez).

c. In no case between 1981 and 1984 did a writ of habeas corpus on behalf of a disappeared person prove effective. If some individuals did reappear, this was not the result of such a legal remedy (testimony of Miguel Angel Pavón Salazar, Inés Consuelo Murillo, César Augusto Murillo, Milton Jiménez Puerto, René Velásquez Díaz and Virgilio Carías).

VI

119. The testimony and documentary evidence, corroborated by press clippings, presented by the Commission, tend to show:

a. That there existed in Honduras from 1981 to 1984 a systematic and selective practice of disappearances carried out with the assistance or tolerance of the government;

b. That Manfredo Velásquez was a victims of that practice and was kidnapped and presumably tortured, executed and clandestinely buried by agents of the Armed Forces of Honduras, and

c. That in the period in which those acts occurred, the legal remedies available in Honduras were not appropriate or effective to guarantee his rights to life, liberty and personal integrity.

120. The Government, in turn, submitted documents and based its argument on the testimony of three members of the Honduran Armed Forces, two of whom were summoned by the Court because they had been identified in the proceedings as directly involved in the general practice referred to and in the disappearance of Manfredo Velásquez. This evidence may be summarized as follows:

a. The testimony purports to explain the organization and functioning of the security forces accused of carrying out the specific acts and denies any knowledge of or personal involvement in the acts of the officers who testified;

b. Some documents purport to show that no civil suit had been brought to establish a presumption of the death of Manfredo Velásquez; and,

c. Other documents purport to prove that the Supreme Court of Honduras received and acted upon some writs of habeas corpus and that some of those writs resulted in the release of the persons on whose behalf they were brought.

121. The record contains no other direct evidence, such as expert opinion, inspections or reports.

VII

122. Before weighing the evidence, the Court must address some questions regarding the burden of proof and the general criteria considered in its evaluation and finding of the facts in the instant proceeding.

123. Because the Commission is accusing the Government of the disappearance of Manfredo Velásquez, it, in principle, should bear the burden of proving the facts underlying its petition.

124. The Commission's argument relies upon the proposition that the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference. Otherwise, it would be impossible to prove that an individual has been disappeared.

125. The Government did not object to the Commission's approach. Nevertheless, it argued that neither the existence of a practice of disappearances in Honduras nor the participation of Honduran officials in the alleged disappearance of Manfredo Velásquez had been proven.

126. The Court finds no reason to consider the Commission's argument inadmissible. If it can be shown that there was an official practice of disappearances in Honduras, carried out by the Government or at least tolerated by it, and if the disappearance of Manfredo Velásquez can be linked to that practice, the Commission's allegations will have been proven to the Court's satisfaction, so long as the evidence presented on both points meets the standard of proof required in cases such as this.

127. The Court must determine what the standards of proof should be in the instant case. Neither the Convention, the Statute of the Court nor its Rules of Procedure speak to this matter. Nevertheless, international jurisprudence has recognized the power of the courts to weigh the evidence freely, although it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment (Cfr. **Corfu Channel**, Merits, Judgment, I.C.J. Reports 1949; **Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)**, Merits, Judgment, I.C.J. Reports 1986, paras. 29-30 and 59-60).

128. The standards of proof are less formal in an international legal proceeding that in a domestic one. The latter recognize different burdens of proof, depending upon the nature, character and seriousness of the case.

129. The Court cannot ignore the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of disappearances in its territory. This

requires the Court to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner.

130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.

131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.

132. Since the Court is an international tribunal, it has its own specialized procedures. All the elements of domestic legal procedures are therefore not automatically applicable.

133. The above principle is generally valid in international proceedings, but is particularly applicable in human rights cases.

134. The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.

135. In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

136. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.

137. Since the Government only offered some documentary evidence in support of its preliminary objections, but none on the merits, the Court must reach its decision without the valuable assistance of a more active participation by Honduras, which might otherwise have resulted in a more adequate presentation of its case.

138. The manner in which the Government conducted its defense would have sufficed to prove many of the Commission's allegations by virtue of the principle that the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law. This result would not hold under criminal law, which does not apply in the instant case (**supra** 134 and 135). The Court tried to compensate for this procedural principle by admitting all the evidence offered, even if it was untimely, and by ordering the presentation of additional evidence. This was done, of course, without prejudice to its discretion to consider the silence or inaction of Honduras or to its duty to evaluate the evidence as a whole.

139. In its own proceeding and without prejudice to its having considered other elements of proof, the Commission invoked Article 42 of its Regulations, which reads as follows:

> The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34

> paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

Because the Government did not object here to the use of this legal presumption in the proceedings before the Commission and since the Government fully participated in these proceedings, Article 42 is irrelevant here.

VIII

140. In the instant case, the Court accepts the validity of the documents presented by the Commission and by Honduras, particularly because the parties did not oppose or object to those documents nor did they question their authenticity or veracity.

141. During the hearings, the Government objected, under Article 37 of the Rules of Procedure, to the testimony of witnesses called by the Commission. By decision of October 6, 1987, the Court rejected the challenge, holding as follows:

> b. The objection refers to circumstances under which, according to the Government, the testimony of these witnesses might not be objective.
>
> c. It is within the Court's discretion, when rendering judgment, to weigh the evidence.
>
> d. A violation of the human rights set out in the Convention is established by facts found by the Court, not by the method of proof.
>
> f. When testimony is questioned, the challenging party has the burden of refuting that testimony.

142. During cross-examination, the Government's attorneys attempted to show that some witnesses were not impartial because of ideological reasons, origin or nationality, family relations, or a desire to discredit Honduras. They even insinuated that testifying against the State in these proceedings was disloyal to the nation. Likewise, they cited criminal records or pending charges to show that some witnesses were not competent to testify (**supra** 86, 88, 90, 92, 101, 110 and 116)

143. It is true, of course, that certain factors may clearly influence a witness' truthfulness. However, the Government did not present any concrete evidence to show that the witnesses had not told the truth, but rather limited itself to making general observations regarding their alleged incompetency or lack of impartiality. This is insufficient to rebut testimony which is fundamentally consistent with that of other witnesses. The Court cannot ignore such testimony.

144. Moreover, some of the Government's arguments are unfounded within the context of human rights law. The insinuation that persons who, for any reason, resort to the Inter-American system for the protection of human rights are disloyal to their country is unacceptable and cannot constitute a basis for any penalty or negative consequence. Human rights are higher values that "are not derived from the fact that (an individual) is a national of a certain state, but are based upon attributes of his human personality" (American Declaration of the Rights and Duties of Man, Whereas clauses, and American Convention, Preamble).

145. Neither is it sustainable that having a criminal record or charges pending is sufficient in and of itself to find that a witness is not competent to testify in Court. As the Court ruled, in its decision of October 6, 1987, in the instant case,

> under the American Convention on Human Rights, it is impermissible to deny a witness, **a priori**, the possibility of testifying to facts relevant to a matter before the Court, even if he has an interest in that proceeding, because he has been prosecuted or even convicted under internal laws.

146. Many of the press clippings offered by the Commission cannot be considered as documentary evidence as such. However, many of them contain public and well-known facts which, as such, do not require proof; others are of evidentiary value, as has been recognized in international jurisprudence (**Military and Paramilitary Activities in and against Nicaragua, supra** 127, paras. 62-64), insofar as they textually reproduce public statements, especially those of high-ranking members of the Armed Forces, of the Government, or even of the Supreme Court of Honduras, such as some of those made by the President of the latter. Finally, others are important as a whole insofar as they corroborate testimony regarding the responsibility of the Honduran military and police for disappearances.

IX

147. The Court now turns to the relevant facts that it finds to have been proven. They are as follows:

a. During the period 1981 to 1984, 100 to 150 persons disappeared in the Republic of Honduras, and many were never heard from again (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

b. Those disappearances followed a similar pattern, beginning with the kidnapping of the victims by force, often in broad daylight and in public places, by armed men in civilian clothes and disguises, who acted with apparent impunity and who used vehicles without any official identification, with tinted windows and with false license plates or no plates (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

c. It was public and notorious knowledge in Honduras that the kidnappings were carried out by military personnel or the police, or persons acting under their orders (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

d. The disappearances were carried out in a systematic manner, regarding which the Court considers the following circumstances particularly relevant:

i. The victims were usually persons whom Honduran officials considered dangerous to State security (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz, Inés Consuelo Murillo, José Gonzalo Flores Trejo, Zenaida Velásquez, César Augusto Murillo and press clippings). In addition, the victims had usually

been under surveillance for long periods of time (testimony of Ramón Custodio López and Florencio Caballero);

ii. The arms employed were reserved for the official use of the military and police, and the vehicles used had tinted glass, which requires special official authorization. In some cases, Government agents carried out the detentions openly and without any pretense or disguise; in others, government agents had cleared the areas where the kidnappings were to take place and, on at least one occasion, when government agents stopped the kidnappers they were allowed to continue freely on their way after showing their identification (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López and Florencio Caballero);

iii. The kidnappers blindfolded the victims, took them to secret, unofficial detention centers and moved them from one center to another. They interrogated the victims and subjected them to cruel and humiliating treatment and torture. Some were ultimately murdered and their bodies were buried in clandestine cemeteries (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Florencio Caballero, René Velásquez Díaz, Inés Consuelo Murillo and José Gonzalo Flores Trejo);

iv. When queried by relatives, lawyers and persons or entities interested in the protection of human rights, or by judges charged with executing writs of habeas corpus, the authorities systematically denied any knowledge of the detentions or the whereabouts or fate of the victims. That attitude was seen even in the cases of persons who later reappeared in the hands of the same authorities who had systematically denied holding them or knowing their fate (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz, Zenaida Velásquez, César Augusto Murillo and press clippings);

v. Military and police officials as well as those from the Executive and Judicial Branches either denied the disappearances or were incapable of preventing or investigating them, punishing those responsible, or helping those interested discover the whereabouts and fate of the victims or the location of their remains. The investigative committees created by the Government and the Armed Forces did not produce any results. The judicial proceedings brought were processed slowly with a clear lack of interest and some were ultimately dismissed (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz, Zenaida Velásquez, César Augusto Murillo and press clippings);

e. On September 12, 1981, between 4:30 and 5:00 p.m., several heavily-armed men in civilian clothes driving a white Ford without license plates kidnapped Manfredo Velásquez from a parking lot in downtown Tegucigalpa. Today, nearly seven years later, he remains disappeared, which creates a reasonable presumption that he is dead (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Zenaida Velásquez, Florencio Caballero, Leopoldo Aguilar Villalobos and press clippings).

f. Persons connected with the Armed Forces or under its direction carried out that kidnapping (testimony of Ramón Custodio López, Zenaida Velásquez, Florencio Caballero, Leopoldo Aguilar Villalobos and press clippings).

g. The kidnapping and disappearance of Manfredo Velásquez falls within the systematic practice of disappearances referred to by the facts deemed proved in paragraphs a-d. To wit:

i. Manfredo Velásquez was a student who was involved in activities the authorities considered "dangerous" to national security (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López and Zenaida Velásquez).

ii. The kidnapping of Manfredo Velásquez was carried out in broad daylight by men in civilian clothes who used a vehicle without license plates.

iii. In the case of Manfredo Velásquez, there were the same type of denials by his captors and the Armed Forces, the same omissions of the latter and of the Government in investigating and revealing his whereabouts, and the same ineffectiveness of the courts where three writs of habeas corpus and two criminal complaints were brought (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Zenaida Velásquez, press clippings and documentary evidence).

h. There is no evidence in the record that Manfredo Velásquez had disappeared in order to join subversive groups, other than a letter from the Mayor of Langue, which contained rumors to that effect. The letter itself shows that the Government associated him with activities it considered a threat to national security. However, the Government did not corroborate the view expressed in the letter with any other evidence. Nor is there any evidence that he was kidnapped by common criminals or other persons unrelated to the practice of disappearances existing at that time.

148. Based upon the above, the Court finds that the following facts have been proven in this proceeding: (1) a practice of disappearances carried out or tolerated by Honduran officials existed between 1981 and 1984; (2) Manfredo Velásquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice; and (3) the Government of Honduras failed to guarantee the human rights affected by that practice.

X

149. Disappearances are not new in the history of human rights violations. However, their systematic and repeated nature and their use not only for causing certain individuals to disappear, either briefly or permanently, but also as a means of creating a general state of anguish, insecurity and fear, is a recent phenomenon. Although this practice exists virtually worldwide, it has occurred with exceptional intensity in Latin American in the last few years.

150. The phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion.

151. The establishment of a 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 at the UN General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Subcommission for the Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the rapporteurs or special envoys of the Commission on Human Rights show concern that the practice of disappearances be stopped, the victims reappear and that those responsible be punished.

152. Within the inter-American system, the General Assembly of the Organization of American States (OAS) and the Commission have repeatedly referred to the practice of disappearances and have urged that disappearances be investigated and that the practice be stopped (AG/RES. 443 (IX-0/79) of October 31, 1979; AG/RES.510 (X-0/80) of November 27, 1980; AG/RES. 618 (XII-0/82) of November 20, 1982; AG/RES. 666 (XIII-0/83) of November 18, 1983; AG/RES. 742 (XIV-0/84) of November 17, 1984 and AG/RES. 890 (XVII-0/87) of November 14, 1987; Inter-American Commission on Human Rights: Annual Report 1978, pp. 24-27; Annual Report, 1980-1981, pp. 113-114; Annual Report, 1982-1983, pp. 46-67; Annual Report, 1985-1986, pp. 37-40; Annual Report, 1986-1987, pp. 277-284 and in many of its Country Reports, such as OEA/Ser. L/V/II.49, doc. 19, 1980 (Argentina); OEA/Ser. L/V/II.66, doc. 17, 1985 (Chile) and OEA/Ser. L/V/II.66, doc. 16, 1985 (Guatemala)).

153. International practice and doctrine have often categorized disappearances as a crime against humanity, although there is no treaty in force which is applicable to the States Parties to the Convention and which uses this terminology (Inter-American Yearbook on Human Rights, 1985, pp. 368, 686 and 1102). The General Assembly of the OAS has resolved that it "is an affront to the conscience of the hemisphere and constitutes a crime against humanity" (AG/RES. 666, **supra**) and that "this practice is cruel and inhuman, mocks the rule of law, and undermines those norms which guarantee protection against arbitrary detention and the right to personal security and safety" (AG/RES. 742, **supra**).

154. Without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action.

155. The forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty by providing that:

> 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.

156. Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person by providing that:

> 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 with respect for the inherent dignity of the human person.

In addition, investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhuman and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention.

157. The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention, the first clause of which reads as follows:

> 1. 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.

158. The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, moreover, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention, as set out below.

XI

159. The Commission has asked the Court to find that Honduras has violated the rights guaranteed to Manfredo Velásquez by Articles 4, 5 and 7 of the Convention. The Government has denied the charges and seeks to be absolved.

160. This requires the Court to examine the conditions under which a particular act, which violates one of the rights recognized by the Convention, can be imputed to a State Party thereby establishing its international responsibility.

161. Article 1 (1) of the Convention provides:

> **Article 1. Obligation to Respect Rights**
>
> 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

162. This article specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1 (1) of the Convention has also been violated.

163. The Commission did not specifically allege the violation of Article 1 (1) of the Convention, but that does not preclude the Court from applying it. The precept contained therein constitutes the generic basis of the protection of the rights recognized by the Convention and would be applicable, in any case, by virtue of a general principle of law, **iura novit curia**, on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them (**"Lotus"**, Judgment No. 9, 1927, P.C.I.J., Series A No. 10, p. 31 and Eur. Court H.R., **Handyside Case**, Judgment of 7 December 1976, Series A No. 24, para. 41).

164. Article 1 (1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

165. The first obligation assumed by the States Parties under Article 1 (1) is "to respect the rights and freedoms" recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. On another occasion, this court stated:

> The protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. There are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power (**The Word "Laws" in Article 30 of the American Convention on Human Rights**, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para 21).

166. The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

167. The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation --it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.

168. The obligation of the States is, thus, much more direct than that contained in Article 2, which reads:

> **Article 2. Domestic Legal Effects**
>
> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

169. According to Article 1 (1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.

170. This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.

171. This principle suits perfectly the nature of the Convention, which is violated whenever public power is used to infringe the rights recognized therein. If acts of public power that exceed the State's authority or are illegal under its own laws were not considered to compromise that State's obligations under the treaty, the system of protection provided for in the Convention would be illusory.

172. Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

173. Violations of the Convention cannot be founded upon rules that take psychological factors into account in establishing individual culpability. For the purposes of analysis, the intent or

motivation of the agent who has violated the rights recognized by the Convention is irrelevant -- the violation can be established even if the identity of the individual perpetrator is unknown. What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1 (1) of the Convention.

174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party. Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. On the other hand, subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case.

176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

177. In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.

178. In the instant case, the evidence shows a complete inability of the procedures of the State of Honduras, which were theoretically adequate, to carry out an investigation into the disappearance of Manfredo Velásquez, and of the fulfillment of its duties to pay compensation and punish those responsible, as set out in Article 1 (1) of the Convention.

179 As the Court has verified above, the failure of the judicial system to act upon the writs brought before various tribunals in the instant case has been proven. Not one writ of habeas corpus was processed. No judge has access to the places where Manfredo Velásquez might have been detained. The criminal complaint was dismissed.

180. Nor did the organs of the Executive Branch carry out a serious investigation to establish the fate of Manfredo Velásquez. There was no investigation of public allegations of a practice of

disappearances nor a determination of whether Manfredo Velásquez had been a victim of that practice. The Commission's requests for information were ignored to the point that the Commission had to presume, under Article 42 of its Regulations, that the allegations were true. The offer of an investigation in accord with Resolution 30/83 of the Commission resulted in an investigation by the Armed Forces, the same body accused of direct responsibility for the disappearances. This raises grave questions regarding the seriousness of the investigation. The Government often resorted to asking relatives of the victims to present conclusive proof of their allegations even though those allegations, because they involved crimes against the person, should have been investigated on the Government's own initiative in fulfillment of the State's duty to ensure public order. This is especially true when the allegations refer to a practice carried out within the Armed Forces, which, because of its nature, is not subject to private investigations. No proceeding was initiated to establish responsibility for the disappearance of Manfredo Velásquez and apply punishment under internal law. All of the above leads to the conclusion that the Honduran authorities did not take effective action to ensure respect for human rights within the jurisdiction of that State as required by Article 1 (1) of the Convention.

181. The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.

182. The Court is convinced, and has so found, that the disappearance of Manfredo Velásquez was carried out by agents who acted under cover of public authority. However, even had that fact not been proven, the failure of the State apparatus to act, which is clearly proven, is a failure on the part of Honduras to fulfill the duties it assumed under Article 1 (1) of the Convention, which obligated it to ensure Manfredo Velásquez the free and full exercise of his human rights.

183. The Court notes that the legal order of Honduras does not authorize such acts and that internal law defines them as crimes. The Court also recognizes that not all levels of the Government of Honduras were necessarily aware of those acts, nor is there any evidence that such acts were the result of official orders. Nevertheless, those circumstances are irrelevant for the purposes of establishing whether Honduras is responsible under international law for the violations of human rights perpetrated within the practice of disappearances.

184. According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.

185. The Court, therefore, concludes that the facts found in this proceeding show that the State of Honduras is responsible for the involuntary disappearance of Angel Manfredo Velásquez Rodríguez. Thus, Honduras has violated Articles 7, 5 and 4 of the Convention.

186. As a result of the disappearance, Manfredo Velásquez was the victim of an arbitrary detention, which deprived him of his physical liberty without legal cause and without a determination of the lawfulness of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized by Article 7 of the Convention (**supra** 155) and are a violation imputable to Honduras of the duties to respect and ensure that right under Article 1 (1).

187. The disappearance of Manfredo Velásquez violates the right to personal integrity recognized by Article 5 of the Convention (**supra** 156). First, the mere subjection of an individual

to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment which harms the psychological and moral integrity of the person, and violates the right of every detainee under Article 5 (1) and 5 (2) to treatment respectful of his dignity. Second, although it has not been directly shown that Manfredo Velásquez was physically tortured, his kidnapping and imprisonment by governmental authorities, who have been shown to subject detainees to indignities, cruelty and torture, constitute a failure of Honduras to fulfill the duty imposed by Article 1 (1) to ensure the rights under Article 5 (1) and 5 (2) of the Convention. The guarantee of physical integrity and the right of detainees to treatment respectful of their human dignity require States Parties to take reasonable steps to prevent situations which are truly harmful to the rights protected.

188. The above reasoning is applicable to the right to life recognized by Article 4 of the Convention (**supra** 157). The context in which the disappearance of Manfredo Velásquez occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed. Even if there is a minimal margin of doubt in this respect, it must be presumed that his fate was decided by authorities who systematically executed detainees without trial and concealed their bodies in order to avoid punishment. This, together with the failure to investigate, is a violation by Honduras of a legal duty under Article 1 (1) of the Convention to ensure the rights recognized by Article 4 (1). That duty is to ensure every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily. These rights imply an obligation on the part of States Parties to take reasonable steps to prevent situations that could result in the violation of that right.

XII

189. Article 63 (1) of the Convention provides:

> 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.

Clearly, in the instant case the Court cannot order that the victim be guaranteed the enjoyment of the rights or freedoms violated. The Court, however, can rule that the consequences of the breach of the rights be remedied and that just compensation be paid.

190. During this proceeding the Commission requested the payment of compensation, but did not offer evidence regarding the amount of damages or the manner of payment. Neither did the parties discuss these matters.

191. The Court believes that the parties can agree on the damages. If an agreement cannot be reached, the Court shall award an amount. The case shall, therefore, remain open for that purpose. The Court reserves the right to approve the agreement and, in the event no agreement is reached, to set the amount and order the manner of payment.

192. The Rules of Procedure establish the legal procedural relations among the Commission, the State of States Parties in the case and the Court itself, which continue in effect until the case is no longer before the Court. As the case is still before the Court, the Government and the Commission should negotiate the agreement referred to in the preceding paragraph. The

recipients of the award of damages will be the next-of-kin of the victim. This does not in any way imply a ruling on the meaning of the word "parties" in any other context under the Convention or the rules pursuant thereto.

XIII

193. With no pleading to support an award of costs, it is not proper for the Court to rule on them (Art. 45 (1), Rules of Procedure).

XIV

194. **THEREFORE,**

THE COURT:

Unanimously

1. Rejects the preliminary objection interposed by the Government of Honduras alleging the inadmissibility of the case for the failure to exhaust domestic legal remedies.

Unanimously

2. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligations to respect and to ensure the right to personal liberty set forth in Article 7 of the Convention, read in conjunction with Article 1 (1) thereof.

Unanimously

3. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligations to respect and to ensure the right to humane treatment set forth in Article 5 of the Convention, read in conjunction with Article 1 (1) thereof.

Unanimously

4. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligation to ensure the right to life set forth in Article 4 of the Convention, read in conjunction with Article 1 (1) thereof.

Unanimously

5. Decides that Honduras is hereby required to pay fair compensation to the next-of-kin of the victim.

By six votes to one

6. Decides that the form and amount of such compensation, failing agreement between Honduras and the Commission within six months of the date of this judgment, shall be settled by the Court and, for that purpose, retains jurisdiction of the case.

Judge Rodolfo E. Piza E. dissenting.

Unanimously

7. Decides that the agreement on the form and amount of the compensation shall be approved by the Court.

Unanimously

8. Does not find it necessary to render a decision concerning costs.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this twenty-ninth day of July, 1988.

Rafael Nieto-Navia
President

Héctor Gros Espiell — Rodolfo E. Piza E.

Thomas Buergenthal — Pedro Nikken

Héctor Fix-Zamudio — Rigoberto Espinal Irías

Charles Moyer
Secretary

DISSENTING OPINION OF JUDGE PIZA-ESCALANTE

1. I would have had no reservation in approving the Judgment in its entirety had point 6 been drafted as follows:

> 6. Decides that the form and amount of such compensation, failing agreement between the parties, with the intervention of the Commission, within six months of the date of this judgment, shall be settled by the Court and, for that purpose, retains jurisdiction of the case.

I would even have concurred with a less definitive decision to remit the agreement to the parties, without referring to the Commission, as the Court concluded in paragraph 191; but not with the conclusion of paragraph 192, to which I also dissent.

2. My dissent is not the on the merits or the basic sense of that provision, insofar as it reserves to the Court the final decision on the compensation awarded in the abstract and leaves to the parties the initiative to reach an agreement within the time period stipulated, but only to the granting of the status of parties for that purpose, which the majority vote gives the Commission, but not the assignees of the victim.

3. I dissent, therefore, in order to be consistent in my interpretation of the Convention and of the Regulations of the Commission and Rules of Procedure of the Court, according to which the only active party in the proceeding before the Court, in a substantive sense, is the victim and his assignees, who posses the rights in question and are the beneficiaries of the provisions contained in the Judgment, in keeping with Article 63 (1) of the Convention, which specifically provides that:

> . . . fair compensation be paid to the injured party.

The Commission, an impartial and instrumental party comparable to a public prosecutor (Ministerio Público) in the inter-American system of protection of human rights, is a party only in a procedural sense, as the prosecution, and not in a substantive or material sense, as beneficiary of the judgment (Arts. 57 and 61, Convention; 19. b of the Regulations of the Commission; and 28 of the Statute of the Court).

4. This thesis regarding the parties in the proceeding before the Court is the same that I have consistently urged, beginning with my Separate Opinions on the decisions of 1981 and 1983 in the **Matter of Viviana Gallardo et al.** (see, e.g., Decision of November 13, 1981, "Explanation of Vote" by Judge Piza, para. 8, and Decision of September 8, 1983, "Separate Vote" of Judge Piza, paras. 36, 39 and operative point No. 8, where I argued, **inter alia**:

> 39. . . . in my judgment, the parties in the substantial sense are . . .: a) the State of Costa Rica as the "passive party," which is charged with the violations and is the eventual debtor of its reparation . . . and b) as the "active party," the person entitled to the rights claimed and, therefore, the creditor of any eventual estimatory sentence, the victims . . . . The Commission is not a party in any substantial sense because it is not the holder of the rights or the duties that might be or can be declared or constituted by the verdict).

5. Although valid, the majority opinion is deficient because it does not recognize the assignees of Manfredo Velásquez as a party, in conformity with Article 63 (1) of the Convention, and, also, insofar as what must be contained in the Judgment according to Article 45 (2) and 45 (3) of the Rules of Procedure, which read as follows:

> 2. Where the Court finds that there is a breach of the Convention, it shall give in the same judgment a decision on the application of Article 63 (1) of the Convention if that question, after being raised under Article 43 of these Rules, is ready for decision; if the question is not ready for decision, the Court shall decide on the procedure to follow. If, on the other hand, the matter has not been raised under Article 43, the Court shall determine the period within which it may be presented by a party or by the Commission.
>
> 3. If the Court is informed that an agreement has been reached between the victim of the violation and the State Party concerned, it shall verify the equitable nature of such agreement.

6. In those Separate Opinions, I also explained my position regarding the procedural relationship of the parties, that is, not as beneficiary and debtor, but rather as plaintiff and respondent in the proceeding, as follows:

> 40. . . . there is no valid reason to refuse to the victims, the substantial "active party," their independent condition of "active party" in the proceedings. . . . in my judgment, the Convention only bars the individual from submitting a case to the Court (Art. 61 (1)). This limitation, as such, is, in the light of the principles, a "repugnant matter" (materia odiosa) and should thus be interpreted restrictively. Therefore, one cannot draw from that limitation the conclusion that the individual is also barred from his autonomous condition of "party" in the procedures once they have begun . . . . (A)s concerns the Inter-American Commission, which must appear in all cases before the Court . . . this is clearly a **sui generis** role, purely procedural, as an auxiliary of the judiciary, like that of a "Ministerio Público" of the inter-American system for the protection of human rights (Decision of September 8, 1983).

As I have said (**supra** 1), the foregoing forces me to dissent to paragraph 192, insofar as it recognizes the Commission as the sole procedural party other than the State or States that participate in a case before the Court, without recognizing the legal standing, even in a purely procedural sense, of the victims or their assignees, among others.

7. In addition, I believe that if the Convention and the Rules of the Commission and the Court generally authorize a friendly settlement both before and after the case is brought to the Court, and this process is always controlled directly by the victim with only the mediation or oversight of the Commission, it makes no sense to authorize a direct agreement after the Court has ordered, in the abstract, the payment of an indemnization, naming the Commission as the only party to deal with the State concerned rather that the assignees of Manfredo Velásquez to whom the indemnization is owed. The following provisions are self-explanatory:

> **Convention**
>
> Article 48
>
> 1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, . . .

f. (It) shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

Regulations of the Commission

Article 45. Friendly Settlement

1. At the request of any of the parties, or on its own initiative, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights.

Rules of Procedure of the Court

Article 42. Discontinuance

2. When, in a case brought before the Court by the Commission, the Court is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after having obtained the opinion, if necessary, of the delegates of the Commission, strike the case off its list.

With respect to this last provision, it is obvious that if the "party" in the friendly settlement were the Commission, it would be absurd that the Court would later have to obtain the opinion of the Commission in order to strike the case off its lists.

8. Nothing in the foregoing means that I do not understand or share the concern that the majority decision appears to reveal, in the sense that the Commission, possibly, is in a better condition to oversee the interests of the assignees of Manfredo Velásquez, or that a specific agreement between the Government and the Commission could have the greater standing of an international agreement. Nevertheless, I hold as follows:

a. Regarding the first point, that the Court is required to apply the norms of the Convention and its Rules in conformity with their ordinary meaning. In my opinion, the text of those norms does not support the interpretation adopted.

b. I did not mean to suggest at any time that the Commission should not actively participate in the negotiation of an agreement with the Government concerning the compensation ordered by the judgment. My draft specifically recognized that and my willingness to accept a simple reference to "the parties" implied the Commission's participation. Of course, the Court has reserved the right to confirm that agreement anyway (operative point 7, adopted unanimously).

c. Regarding the effectiveness of the agreement, I am not concerned whether the legal framework is national or international. In either case the validity and force of that agreement would derive from the Convention by virtue of the judgment itself and the confirmation or formal approval of the Court, which would be subject to execution at the international and the domestic level, as expressly provided by Article 68 (2) of the Convention in the sense that

> 2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

d. In addition, it must be kept in mind that the period established in the judgment is only six months, after which the Court shall hear the matter, either to confirm the agreement of the parties (operative point 7) or to set the amount of compensation and manner of payment (operative point 6) on the motion of the Commission or the interested parties, as provided by Article 45 (2) and 45 (3) of the Rules cited above, according to which

> 2. . . . the Court shall determine the period within which it may be presented by a party or by the Commission.
>
> 3. If the Court is informed that an agreement has been reached between the victim of the violation and the State Party concerned, it shall verify the equitable nature of such agreement.

Rodolfo E. Piza E.

Charles Moyer
Secretary