

INTRODUCTION AND UPDATING

The manuscripts for this book were solicited and completed towards the end of Judge Pedro Nikken's term as President of the Inter-American Court of Human Rights (1983-85). By that time, the Court had decided one contentious case¹ and four advisory opinions.² Circumstances beyond the control of the Inter-American Institute of Human Rights, the publisher of this book, delayed its publication. These pages are designed to provide the reader with a short overview of developments relating to the Court that took place after most of the essays in this book had been completed.

The first development of importance to be noted is that since that time the Court has rendered three additional advisory opinions.³ Considering that in the first five years of its existence it had decided merely four such requests, the sudden increase in the Court's advisory practice would appear to suggest that this aspect of its work has gained acceptance and is seen as performing a useful and important judicial function.

The recent advisory opinions dealt with very different questions relating to the interpretation of the American Convention on Human Rights from those that were considered in the earlier opinions. In one of them, the Court had to determine whether a state-mandated requirement of compulsory membership by journalists in an association of journalists violated the right to freedom of expression guaranteed in Article 13 of the Convention.⁴ The Court answered this question in the affirmative. The second recent advisory opinion⁵ request concerned the meaning of "laws" as that concept is used in Article

30, which provides, *inter alia*, that the restrictions on the exercise or enjoyment of the rights guaranteed in the Convention may not be imposed "except in accordance with laws enacted for reasons of general interest..." Although recognizing that the term "law" or "laws" found in different provisions of the Convention did not always have the same meaning, the Court emphasized that the "laws" to which Article 30 referred had to be norms that were adopted in accordance with the formal requirements prescribed for the promulgation of legislative enactments and complied with the standards of legality and legitimacy governing lawmaking in constitutional democracies. The third advisory opinion concerned the meaning and scope of the right of reply proclaimed in Article 14 of the Convention.⁶ Rejecting arguments that this provision merely permitted states to provide for the right without mandating it, the Court ruled that the States Parties to the Convention had an affirmative obligation to recognize this right.

It is worth noting that in these three advisory opinions the Court was for the first time called upon to explore the philosophical underpinnings of the Convention. Freedom of expression, the meaning of restrictions imposed "in accordance with laws", and the right to reply (the latter can be seen either as an inherent element of freedom of expression or a restriction thereof), bear on the exercise of political rights in general. They call for the resolution of questions about the philosophical conceptions that underlie the Convention, requiring the Court to explore the relationship that exists between the international protection of human rights and principles of constitutional legality and legitimacy applicable in democratic societies, which derive from the concept of representative democracy embodied in the Convention.

A number of other recent developments deserve to be noted. One has to do with the fact that in April 1986 the Inter-American Commission on Human Rights referred three contentious cases to the Court.⁷ These are the first such cases to reach the Court on the initiative of the Commission. Since the Court had previously dealt with only one contentious case - it was filed by Costa Rica, but had to be ruled inadmissible on jurisdictional grounds - the Commission's action marks an important milestone in the evolution of the inter-American human rights system.

The second noteworthy development has to do with the composition of the Court. Three new judges joined the Court in January 1986 upon the expiration of terms of Judges Huntley E. Munroe (Jamaica), Máximo Cisneros (Peru), and Carlos Roberto Reina (Honduras). The new judges are Drs. Héctor Fix Zamudio (Mexico), Héctor Gros Espiell (Uruguay) and Jorge Ramón Hernández Alcerro (Honduras). The three outgoing judges were all founding members of the Court, having served on it since its establishment in 1979. They influenced its jurisprudence and institutional development to a very significant extent and deserve very special thanks and appreciation for their valuable contributions.

The incoming judges bring noteworthy qualifications to the Court: Judge Fix Zamudio is an eminent legal scholar and world renowned expert on *habeas corpus* and *amparo* legal, institutions critical to the protection of human rights. Judge Gros Espiell is a distinguished international legal scholar and human rights expert who has earned wide recognition for his important contributions to both fields. He deserves our special appreciation, moreover, for editing and conceiving the idea of this book. The third new judge, Dr. Hernández Alcerro comes to the Court after a brilliant academic and diplomatic career in his country. His experience and outstanding legal qualifications should enable him to make significant contributions to the work of the Court.

Noteworthy, finally, is a decision of the present Guatemalan Government bearing on the Court's Advisory Opinion on Restrictions to the Death Penalty.⁸ In this opinion, as will be recalled, the Court was asked to interpret the scope of Guatemalan reservation to Article 4 (4). That provision prohibits the imposition of the death penalty "for political offenses or related common crimes." Guatemala's reservation excluded the application of the "related common crimes" exception. The specific issue before the Court concerned the question whether the reservation could be relied upon by Guatemala to adopt the death penalty for crimes that might be described as "related common crimes," but which were not punishable by that penalty under prior Guatemalan law. The Court answered the question in the negative on the ground that the relevant provision of the Convention was not Article 4 (4) but Article 4 (2), which

prohibits the extension of the death penalty "to crimes to which it does not presently apply" and with regard to which Guatemala had made no reservation. In a worthy epilogue to the Court's opinion, the new Guatemalan Government formally withdrew its reservation to Article 4 (4). Moreover, during a visit to the Court in May 1986, President Vinicio Cerezo of Guatemala indicated that his government would in the near future accept the contentious jurisdiction of the Court. Although this step remains to be taken, it appears that the necessary domestic measures authorizing the Cerezo Government to subscribe to the Court's jurisdiction are nearing completion.

All in all, it would appear that the referral by the Commission of three contentious cases to the Court and the change in the composition of the tribunal have ushered in a new era. The "old" Court, that is, the Court which functioned between 1979 and 1985, deserves special credit for laying a legally sound and imaginative foundation for the institutional development of the tribunal and the evolution of inter-American human rights law. It did this through its advisory opinions and the manner in which it drafted the Court's Statute and its Rules of Procedure. The task facing the "new" Court is to solidify the tribunal's accomplishments and lay the proper foundation for the evolution of its contentious jurisdiction.

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President, 1985

FOOTNOTES

1. I/A Court H.R., **In the Matter of Viviana Gallardo et al.**, No. G 101/81. Series A.
2. I/A Court H.R., **"Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)**, Advisory Opinion OC-1/82 of September 24, 1982. Series A No.1.
I/A Court H.R., **The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)**, Advisory Opinion OC-2/82 of September 24, 1982. Series A No.2.

I/A Court H.R., **Restrictions to the Death Penalty (Arts. 4 (2) and 4 (4) American Convention on Human Rights)**, Advisory Opinion OC-3/83 of September 8, 1983. Series A No.3.

I/A Court H.R., **Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica**, Advisory Opinion OC-4/84 of January 19, 1984. Series A No.4.

3. I/A Court H.R., **Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)**, Advisory Opinion OC-5/85 of November 13, 1985. Series A No.5.

I/A Court H.R., **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.

I/A Court H.R., **Enforcement of the Right of Reply or to Make a Correction (Arts. 14(1), 1 (1) and 2 American Convention on Human Rights)**, Advisory Opinion OC-7/86 of August 29, 1986. Series A No.7.

4. OC-5/85, **supra**.
5. OC-6/86, **supra**.
6. OC-7/86, **supra**.
7. Resolution 22/86, Case 7920 (Honduras); Resolution 23/86, Case 7951 (Honduras); Resolution 24/86, Case 8097 (Honduras).
8. OC-3/83, **supra**.