DISSENTING OPINION OF JUDGE A. A. CANÇADO TRINDADE

1. I regret not to be able to concur with the decision taken by the majority of the Court in operative paragraph n. 3, and the criterion that it adopted in paragraphs 55-57, of the present Judgment on reparations in the *Caballero Delgado and Santana* case, to the effect of refraining the Court from seeking a review of the pertinent provisions of Colombian domestic legislation regarding the remedy of *habeas corpus* with a view to determining its compatibility or otherwise with the American Convention on Human Rights, and from ordering the legislative tipification of the crime of forced disappearance of persons, in the framework of the determination of the distinct measures of reparation in the circumstances of the *cas d'espèce*. May I proceed to an explanation of the juridical foundations of my dissenting position on the matter.

2. In order to reach the decision not to order the non-pecuniary reparations at issue, the Court invoked its previous decision in the present case (Judgment of 08 December 1995, on the merits, paragraph 62) to the effect that Colombia did not violate Article 2 of the Convention (obligation to adopt measures of domestic law), nor Articles 8 and 25 (judicial guarantees and protection). While it is by no means my intention to reopen discussion of that decision - which would not be proper at the present phase of reparations, - it should not pass unnoticed that, at the same time as the Court arrived at that decision, it also decided that "as Colombia had not redressed the consequences of the violations carried out by its agents, it failed to comply with the obligations that Article 1(1) of the Convention ... imposes on it" (*ibid.*, paragraph 59). This is a point which does warrant consideration at the present phase of reparations, since the Court itself has expressly established the link between the general duty of Article 1(1) of the Convention and the reparations, while Article 63(1) of the Convention adds to the indemnizations other measures of reparation resulting from the duty to secure the enjoyment of the violated rights.

3. In fact, the general duty *to respect and to ensure respect* of the protected rights (enshrined in Article 1(1) of the Convention) has a broad scope, as this Court has already indicated in previous cases.[1] The

1 Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of 29 July 1988, Series C, n. 4, paragraphs 163-171; *Godínez Cruz Case*, Judgment of 20 January 1989, Series C, n. 5, paragraphs 172-180.

present *Caballero Delgado and Santana* case adds a new element for analysis, inasmuch as we are now faced with a situation, unlike that in previous cases, in which the Court has determined that there was violation of Article 1(1) (in conjunction with Articles 7 and 4) but not of Article 2 (in conjunction with Articles 8 and 25) of the Convention. Compliance with the obligation *to ensure respect* for the protected rights depends not only on the existing constitutional or legislative provisions - which often are not sufficient *per se* - but requires furthermore other measures from the States Parties to the effect of educating and empowering individuals under their jurisdiction to make full use of all the protected rights. They include the adoption of legislative and administrative measures designed to remove obstacles, fill in *lacunae*, and enhance the conditions for the exercise of the protected rights.

4. In the examination of a concrete case, even if a decision is reached that Article 2 of the Convention has not been violated, as the Court has done in the present *Caballero Delgado and Santana* case, it cannot be inferred therefrom that the States Parties would not be obliged to take the measures necessary to *ensure respect* for the protected rights. This general and immediate, and truly fundamental obligation, ensues from Article 1(1) of the Convention; to deny its comprehensive scope would be to deprive the American Convention of its effects. The general obligation of Article 1(1) embraces all the rights protected by the Convention. There is nothing to prevent the matter from being considered at the phase of reparations, inasmuch as these latter are demanded for the failure to comply with both the specific obligations pertaining to each of the protected rights, as well as the additional general obligations of respecting and ensuring respect for those rights (Article 1(1)) and of bringing domestic law into conformity with the norms of protection of the Convention to that effect.

5. It could hardly be denied that, at times, the reparation itself for proven human rights violations in concrete cases may require changes in domestic laws and administrative practices. Enforcement of human rights treaties has not only been known to resolve individual cases, it has also brought about such changes, thus transcending the particular circumstances of the concrete cases; examples of cases in which national laws were in fact modified, in accordance with the decisions of the international human rights supervisory organs in individual cases, abound in international practice.[2] The efficacy of human rights treaties

2 At regional level, cf., for examples, European Court of Human Rights, *Aperçus - Trente-cinq années d'activité 1959-1994*, Strasbourg, Council of

is measured, to a large extent, by their impact upon the domestic law of the States Parties. It cannot be legitimately expected that a human rights treaty be "adapted" to the conditions prevailing within each country, as, *a contrario sensu*, it ought to have the effect of improving the conditions of exercise of the rights it protects in the ambit of the domestic law of the States Parties.

6. It is indeed surprising, and regrettable, that, at the end of five decades of evolution of the International Law of Human Rights, doctrine has not yet sufficiently and satisfactorily examined and developed the extent and consequences of the interrelations between the general duties to respect and to ensure respect for the protected rights and to harmonize the domestic legal order with the international norms of protection. The few existing indications are to be found in case-law. This Court began to consider such interrelations in its seventh Advisory Opinion, of 1986, in which it warned that the fact that States Parties "may fix the conditions of exercise" of the protected rights "does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1)" of the Convention; and it added that that conclusion was reinforced by the wording of Article 2 of the Convention.[3]

7. One decade after that consideration by the Court, the time has come to retake and examine the matter more deeply. The general and fundamental duty of Article 1(1) of the American Convention on Human Rights is paralleled in other treaties on the rights of the human person,

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Europe, 1995, pp. 70-83. - At global (United Nations) level, one may recall, e.g. that in the *Aumeeruddy-Cziffra and Others* case, the Human Rights Committee (under the Covenant on Civil and Political Rights), in its Views of 09 April 1981, concluded that the State Party (Mauritius) should modify provisions of its legislation on immigration and deportation (the *Immigration (Amendment) Act* and the Deportation (Amendment) Act, both of 1997) in order to harmonize them with its conventional obligations under the Covenant, and should provide "immediate remedies" to the victims of the substantiated human rights violations. Cf. International Covenant on Civil and Political Rights, *Human Rights Committee - Selected Decisions under the Optional Protocol*, vol. I, 1985, p. 71.

3 *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-7/86 of 29 August 1986, Series A, n. 7, paragraphs 28-29. In their lucid Separate Opinions on that Advisory Opinion, Judges R.E. Piza Escalante (*loc. cit.*, paragraphs 25-33) and H. Gros Espiell (*ibid.*, paragraph 6) argued that the obligation of Article 2 complements, but does not substitute or fulfil, the unconditional and fundamental obligation of Article 1(1) of the American Convention.

such as the Covenant on Civil and Political Rights (Article 2(1)), the Convention on the Rights of the Child (Articles 2(1) and 38(1)), the four Geneva Conventions of 1949 on International Humanitarian Law (Article 1) and the Additional Protocol I of 1977 to these latter (Article 1(1)). In its turn, the general duty of Article 2 of the American Convention on Human Rights also has equivalents, in its Additional Protocol of 1988 on Economic, Social and Cultural Rights (Article 2), in the Covenant on Civil and Political Rights (Article 2(2)),[4] in the African Charter on Human and Peoples' Rights (Article 1), and in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 2(1)).

8. In fact, those two general obligations, - which are added to the other specific conventional obligations concerning each of the protected rights, - are incumbent upon the States Parties by the application of International Law itself, of a general principle (*pacta sunt servanda*) whose source is metajuridical, in seeking to be based, beyond the individual consent of each State, on considerations concerning the binding character of the duties derived from international treaties. In the present domain of protection, the States Parties have the general obligation, arising from a general principle of International Law, to take all measures of domestic law *to guarantee* the effective protection (*effet utile*) of the recognized rights.[5]

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4 Provision which served as source of Article 2 of the American Convention on Human Rights, which was only included in this latter at an already late stage of its preparatory work. Cf. OAS, *International Specialized Conference on Human Rights - Proceedings and Documents* (San José of Costa Rica, 07-22 July 1969), doc. OEA/Ser.K/XVI/1.2, pp. 38, 104, 146, 148, 295, 309, 440 and 481.

5 One may recall, for instance, that under the Covenant on Civil and Political Rights, in the *J. D. Herrera Rubio* case, the Human Rights Committee, in its Views of 02 November 1987, concluded that the respondent State (Colombia) had not taken the measures needed to prevent the disappearance and death of the parents of the author of the communication, and to undertake adequate investigations, and that it accordingly had the duty, under Article 2 of the Covenant, to adopt effective measures of reparations, and to proceed with the investigations, and to take measures to ensure that similar violations did not occur in future. Cf. International Covenant on Civil and Political Rights, *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. II, 1990, pp. 194-195. - In another case, that of O.R., *M.M. and M.S. versus Argentina*, the U.N. Committee against Torture (under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), in its decision of 23 November 1989, in spite of declaring the communications (ns. 1/1988, 2/1988 and 3/1988) inadmissible ratione temporis (inasmuch as the Convention could not apply retroactively), expressed never-

9. The two general obligations enshrined in the American Convention - that of respecting and guaranteeing the protected rights (Article 1(1)) and that of harmonizing domestic law with the international norms of protection (Article 2) - appear to me to be ineluctably intertwined. Hence, the breach of Article 2 always brings about, in my view, the violation likewise of Article 1(1). The violation of Article 1(1) takes place whenever there is a breach of Article 2. And in cases of violation of Article 1(1) there is a strong presumption of non-compliance with Article 2, by virtue, e.g., of insufficiencies or lacunae of the domestic legal order as to the regulation of the conditions of the exercise of the protected rights. There is, likewise, no underestimating of the obligation of Article 2, inasmuch as it confers precision to the immediate and fundamental obligation of Article 1(1), of which it appears as almost a corollary. The obligation of Article 2 requires the adoption of the legislation needed to give effect to the conventional norms of protection, filling in eventual lacunae or insufficiencies in the domestic law, or else the modification of national legal provisions so as to harmonize them with the conventional norms of protection.

10. As those conventional norms bind the States Parties - and not only their governments, - in addition to the Executive, the Legislative and the Judicial Powers are also under the obligation to take the necessary measures to give effectiveness to the American Convention at domestic law level. Non-compliance with the conventional obligations, as known, engages the international responsibility of the State, for acts or omissions, either of the Executive Power, or of Legislative, or of the Judiciary. In sum, the international obligations of protection, which in their wide scope are incumbent upon all the powers of the State, comprise those which pertain to each of the protected rights, as well as the additional general obligations to respect and guarantee these latter, and

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theless its view that the national laws at issue ("*Ley de Punto Final*" and "*Ley de Obediencia Debida*", this latter enacted after the respondent State had ratified the aforementioned Convention and only 18 days before that Convention entered into force) were "incompatible with the spirit and purpose" of the United Nations Convention against Torture. The Committee observed that, although its competence was limited to violations of that Convention, it could not fail to indicate that, "even before the entry into force of the Convention against Torture, there was a general rule of international law that obliged all States to take effective measures to prevent torture and to punish acts of torture." Lastly, the Committee urged the State Party at issue to adopt "appropriate measures" of reparation. Cf. U.N., *Report of the Committee against Torture*, G.A.O.R. - XLV Session, 1990, pp. 111-112.

to harmonize domestic law with the conventional norms of protection, taken altogether. As I maintained also in my Dissenting Opinion in the *El Amparo* case (*El Amparo Case, Reparations (Article 63(1) [of the] American Convention on Human Rights)*, Judgment of 14 September 1996, Series C, n. 28), human rights violations and reparations for damages resulting therefrom ought to be determined under the American Convention bearing in mind the specific obligations pertaining to each of the protected rights in conjunction with the general obligations enshrined in Articles 1(1) and 2 of the Convention. Recognition of the *inseparability* of those two general obligations *inter se* would constitute a step forward in the evolution of the matter.

11. The interpretation which I here sustain of the meaning and wide scope of the general and fundamental duty to *respect and to ensure respect* of the protected rights (Article 1(1) of the American Convention) *in its relations* with the other general duty to adopt measures of domestic law so as to harmonize it with the international norms of protection (Article 2), accords perfectly with the provision of Article 63(1) of the American Convention, on the duty to make reparation for damages resulting from violations of the protected human rights. Article 63(1) (mentioned in the Judgment on the merits, of 08 December 1995, in the present *Caballero Delgado and Santana* case, paragraph 68) stipulates that

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the *injured party be ensured* the enjoyment of his right 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 a *fair compensation* be paid to the injured party.[6]

12. May I single out three points that appear to me to be of capital importance in the provision of the above-cited Article 63(1) of the American Convention. Firstly, unlike the corresponding Article 50 of the European Convention on Human Rights,[7] Article 63(1) of the American

6 Emphasis added.

7 Article 50 of the European Convention provides: - "If the [European] Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of

Convention makes no reference to domestic law, thus enabling the Inter-American Court to proceed to the determination of the measures of reparation on the basis - autonomously - of the American Convention itself and of the applicable general principles of International Law. Secondly, unlike Article 50 of the European Convention, Article 63(1) of the American Convention does not limit itself to provide for "just satisfaction" (*satisfaction équitable/satisfacción equitativa*); the American Convention goes further, to provide both for "just satisfaction" as a measure of reparation, *as well as* for the *duty to ensure* the enjoyment of the protected rights. Thirdly, Article 63(1) of the American Convention, in providing for the *duty to ensure*, refers to the *injured party* whose rights have been violated: in my understanding, the term "injured party" covers both the direct victims of human rights violations as well as the indirect victims (their relatives and dependents), who also suffer the consequences of such violations.

13. Since its earliest contentious cases on reparations (*Velásquez Rodríguez* and *Godínez Cruz*), the case-law of the Court has focused above all on the element of the "just compensation" as a measure of reparation, curiously making abstraction of the *duty to ensure or guarantee* in the present context, likewise enshrined in Article 63(1) of the American Convention. The time has come to link that duty to the "just compensation", as stipulated in Article 63(1). Such duty comprises all measures - including legislative measures - which the States Parties ought to take in order to afford the individuals under their jurisdiction the full exercise of all the rights enshrined in the American Convention. Accordingly, in the light of the provision of Article 63(1), I understand that the Court should proceed to the determination of both the indemnizations as well as the other measures of reparation resulting from the *duty to ensure or guarantee* the enjoyment of the rights that were violated. The interpretation which I uphold is the one which seems to me to be in full conformity with the objective character[8] of the conventional obligations contracted by the States Parties to the American Convention.

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the said Party allows only partial reparation to be made for the consequences of this decision or measure to be erased, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

8 Acknowledged in the Court's case-law itself: *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 24 September 1982, Series A, n. 2, paragraphs 29-31; *Restrictions to the Death Penalty (Arts 4.2 and 4.4 American Convention on Human Rights)*, Advisory Opinion OC-3/83, of 08 September 1983, Series A, n. 3, paragraph 50. Human rights treaties are oriented towards

14. For the reasons here expressed, I am unable to concur with the determination by the Court, in operative paragraph n. 3, and its criteria, in paragraphs 55-57, of the present Judgment, to the effect that it is not possible to consider the request by the Inter-American Commission on Human Rights[9] (of 10 May 1996), to proceed, as one of the measures of non-pecuniary reparation pertaining to the remedy of *habeas corpus*, to the determination of the compatibility or otherwise of the pertinent provisions of the Colombian domestic legislation with the American Convention, and to the harmonization that may be necessary of those legal provisions with the criteria set forth in the Convention,[10] as well as to the determination of the legislative tipification of the crime of forced disappearance of persons.

15. As this Court itself pertinently warned one decade ago, in its eighth Advisory Opinion,

> ...*habeas corpus* performs a vital role in ensuring that a person's life and physical integrity are respected, in *preventing his disappearance or the keeping of his whereabouts secret* and in protecting him against torture or other cruel, inhumane or degrading punishment or treatment.[11]

The efficacy of *habeas corpus* is an imperative of the duty of prevention as one of the components of the general obligation *to guarantee* the protected rights (Article 1(1) of the Convention),[12] including in order to

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guaranteeing the enjoyment of the protected rights, rather than establishing a balance of interests between States; *"Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82, of 24 September 1982, Series A, n. 1, paragraph 24.

9 Making its own the request of 07 May 1996 of the petitioners in the case on behalf of the victims.

10 That is, harmonization in the sense that the remedy of *habeas corpus* is not to limit itself only to ascertaining unlawful arrests or unlawful prolongations of deprivation of liberty, but, in addition, that it is also to confer, upon national judges, faculties to undertake the search of the persons at issue, with particular urgency.

11 *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87, January 30 1987, Series A, No. 8, paragraph 35 (emphasis added).

12 One may recall that the the Court itself, on another occasion, linked such general obligation of Article 1(1) to the right to an effective remedy before the competent judges or tribunals, enshrined in Article 25(1), which "incorporates the principle, recognized in the international law of human rights, of the effectiveness of the procedural instruments or means designed to guarantee such rights". Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8

avoid that situations are created in violation of the rights enshrined in the American Convention, such as that of forced disappearance of persons, which moreover lead to the impunity of the persons responsible for the facts constitutive of such crime.

16. The ensuring of the efficacy of *habeas corpus* is complementary, in the present case, in my view, with the other measure of non-pecuniary reparation, consisting in the legislative tipification of the crime of forced disappearance of persons, in conformity with the provisions of the Inter-American Convention on Forced Disappearance of Persons of 1994, even as a means of guaranteeing some of the rights protected by the American Convention on Human Rights (such as the right to life, Article 4, and the right to personal freedom, Article 7). The above-mentioned tipification, mentioned by the Court in paragraph 56 of the present Judgment, in my understanding is, more than "desirable", *necessary*. It is foreseen in the aforementioned Convention of 1994 (Article IV), among other legislative obligations (Article III), which adds that the persons allegedly responsible for the facts constitutive of the crime of forced disappearance of persons "may be tried only in the competent jurisdictions of ordinary law in each State, to the exclusion of all other special jurisdictions, particular military jurisdiction" (Article IX).[13]

17. At the public hearing of 07 September 1996 before the Court, the Colombian Government itself referred clearly to the matter at issue in two moments (alluding even to national initiatives for the revision of Law 15 of 1992 on *habeas corpus*),[14] indicating that "there [was] no divergence" between itself and the Inter-American Commission in respect of the subject of *habeas corpus*.[15] Moreover, in its brief of 26 July 1996, the Government informed the Court *inter alia* that it was "progressing with the initiatives tending to place once again before Congress" the text of the Inter-American Convention on Forced

American Convention on Human Rights), Advisory Opinion OC-9/87, of 06 October 1987, Series A, n. 9, paragraphs 22-24.

13 Article IX adds that the facts "constituting forced disappearance may not be deemed to have been committed in the course of military duties". And Article VII, in its turn, stipulates that "[c]riminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations".

14 Mentioned in paragraph 54 of the present Judgment.

15 *Verbatim Records of the Public Hearing Held by the Inter-American Court of Human Rights on 07 September 1996 - Caballero Delgado and Santana Case, Phase of Reparations*, pp. 31 and 15.

Disappearance of Persons, as well as to incorporate that category of crime into its domestic criminal legislation.[16] I thus see no reason for the Court not to consider the request of the Commission[17] for non-pecuniary measures of reparation.[18] In the present Judgment on reparations, the Court has failed to extract the juridical consequences of its own determination of violation of Article 1(1) (in combination with Articles 7 and 4) of the American Convention on Human Rights, to which it devoted no less than five paragraphs in its Judgment on the merits.[19]

18. In one of those paragraphs, in the aforementioned Judgment on the merits (of 08 December 1995) in the present *Caballero Delgado and Santana* case, the Court in fact linked its determination of non-compliance by the respondent State with the general obligation of Article 1(1) of the Convention to the measures of reparation (paragraph 59).[20] That was not the first time in which the Court acted this way: in previous cases, the Court determined that the general duty to *guarantee* the protected rights implies the obligation of the States Parties to organize all the structures of public power in order to secure juridically the full exercise of the protected rights and, accordingly, to prevent, investigate and punish all violations of those rights and, moreover, *to seek repara-*

16 Page 4 of the aforementioned brief.

17 And of the petitioners in the case on behalf of the victims.

18 It may be recalled, in this connection, that, in the cases concerning Honduras (merits), the Court, in determining the inadequacy and ineffectiveness of the remedy of *habeas corpus* in the cases of forced or involuntary disappearances at issue, in a way revised the formal "requirements" of the national law, demonstrating their insufficiencies. Cf. *Velásquez Rodríguez Case, loc. cit. supra* n. (1), paragraphs 65-77; *Godínez Cruz Case, loc. cit. supra* n. (1), paragraphs 68-82.

19 Paragraphs 55 until 59, besides operative paragraph n. 1 of the Judgment on the merits, of 08 December 1995, in the present *Caballero Delgado and Santana* case.

20 Besides having determined the violation of Article 1(1) of the Convention (paragraph 59, and operative paragraph n. 1 of that Judgment), the Court pondered that "to guarantee fully the rights recognized by the Convention, it is not sufficient that the Government undertakes an investigation and tries to sanction those guilty; rather it is also necessary that all this activity of the Government culminates in the reparation to the injured party, which in this case has not occurred" (paragraph 58). And the Court added that "in the present case the reparation ought to consist in the continuation of the judicial proceedings to inquire into the disappearance of Isidro Caballero-Delgado and María del Carmen Santana and the punishment of those responsible in accordance with Colombian domestic law" (paragraph 69).

tion for the damages resulting from those violations.[21]

19. Thus established that link by the Court itself, its Judgment on the merits in the present *Caballero Delgado and Santana* case[22] enabled it, thereby, in my view, to pronounce affirmatively on the aforementioned measures of non-pecuniary reparation requested by the Commission,[23] as it should have done in the present Judgment on reparations. In my understanding, despite the assertion that there was no violation of Article 2 of the Convention, the finding of non-compliance with the general duty of Article 1(1) is *per se* sufficient to determine to the State Party that it ought to take measures, including of legislative character, *to guarantee* to all persons under its jurisdiction the full exercise of all the rights protected by the American Convention.

20. It is perfectly possible to proceed to such determination in the present context of reparation for damages, inasmuch as the normative basis of Article 63(1) of the American Convention contemplates the ruling on both the indemnizations as well as other measures of reparation resulting from the *duty to guarantee* the enjoyment of the rights violated. In the present domain of protection, international law and domestic law are in constant interaction; *national* measures of implementation, particularly those of legislative character, assume capital importance for the future of the *international* protection of human rights itself.

21. Hence, just as the value of concrete initiatives in this sense is acknowledged, one cannot consent to the reduction to a little more than dead letter of the provisions of human rights treaties concerning the conditions of exercise of the protected rights, by the omission or inaction at domestic law level. The whole future evolution of this matter, under the American Convention on Human Rights, depends ultimately today, to a large extent, on a clear understanding of the extent of the legislative obligations of the States Parties[24] to protect individual rights, and on the willingness (*animus*) to give concrete expression to

21 *Velásquez Rodríguez Case, loc. cit. supra* n. (1), paragraph 166; *Godínez Cruz Case, loc. cit. supra* n. (1), paragraph 175.

22 Paragraphs 59, 58 and 69, and operative paragraph n. 1.

23 And by the petitioners in the case on behalf of the victims.

24 Cf. my Dissenting Opinion in the *El Amparo Case, Reparations (Art. 63(1) of the American Convention on Human Rights)* Judgment of 14 September 1996, Series C, n. 28). The *existence* of such obligations under the Convention has been maintained by both the Inter-American Court and the Inter-American

the scope of those *legislative obligations* in the framework of the determination of the distinct measures of reparation for violations of the protected human rights.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura Robles
Secretary

Commission. The Court has pointed out that a State Party may violate the Convention both by "failing to establish the norms required by Article 2" and by "adopt[ing] provisions which do not conform to its obligations under the Convention" (*Certain Attributions of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93, of 16 July 1993, Series A, n. 13, paragraph 26). And the Commission has likewise observed that if a law is incompatible with the Convention, the State Party "is obligated, under Article 2, to adopt such legislative measures as may be necessary to give effect to the rights and freedoms guaranteed in the Convention" (IACHR, Report n. 22/94, of 20 September 1994, case 11.012 (Argentina), friendly settlement, in *Annual Report of the Inter-American Commission on Human Rights - 1994*, paragraph 22, page 45). - If it were necessary to seek for support for the affirmation of the existence of legislative obligations in previous international case-law, we would anyway find it therein, as from the *locus classicus* on the matter, in the Judgment in the case concerning *Certain German Interests in Polish Upper Silesia* (Germany *versus* Poland, 1926), and in the Advisory Opinion of 1923 on *German Settlers in Poland*, both rendered by the former Permanent Court of International Justice (PCIJ). In the exercise of both its contentious and advisory jurisdiction, the PCIJ pronounced clearly on the matter: in the aforementioned Judgment, it stated that national laws were "acts that express the will of States and constitute their activities, just as judicial decisions and administrative measures do", and concluded that the Polish legislation in question was contrary to the German-Polish Convention which protected the German interests at stake; and in the aforementioned Advisory Opinion, it maintained that the Polish legislative measures at issue were not in conformity with Poland's international obligations. *Cit. in* U.N., *Yearbook of the International Law Commission* (1964) vol. II, p. 138. However, to resort to classic international case-law on the matter does not appear strictly necessary to me: given the specificity of the International Law of Human Rights, the pronouncements, on the subject, on the part of the international human rights supervisory organs, are, in my view, more than sufficient to affirm the existence of *legislative obligations* of the States Parties to the treaties of protection. - The incompatibility or otherwise of a law with human rights treaties such as the American Convention ought to be demonstrated *in the particular circumstances of a concrete case*. Once affirmed the existence of such legislative obligations of States Parties, the next step to be taken would consist of giving precision to its scope, so as to render effective the protected rights.