INTER-AMERICAN COURT OF HUMAN RIGHTS

BLAKE CASE

JUDGMENT OF JANUARY 24, 1998

In the Blake Case,

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

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge, and
Alfonso Novales-Aguirre, Judge *ad hoc*;

also present,

Manuel E. Ventura-Robles, Secretary
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to Articles 29 and 55 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), renders the following judgment in the instant case.

I
INTRODUCTION OF THE CASE

1. On August 3, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court a case against the Republic of Guatemala (hereinafter "the State" or "Guatemala") which originated in petition No. 11.219 lodged with the Secretariat of the Commission on November 18, 1993. The Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 26 et seq. of the Rules of the Procedure of the Court then in force.[1] The Commission submitted this case for the Court to decide whether the State had violated the following articles of the Convention: 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 22 (Right of Movement and Residence), and 25 (Right to Judicial Protection), all these in relation to Article 1(1) of the Convention, for the alleged abduction and murder of Mr. Nicholas Chapman Blake (hereinafter "Nicholas Blake") by agents of the Guatemalan State on March 28, 1985, and his disappearance, which lasted over seven years until June 14, 1992. The Commission also asked the Court to find that the State had violated Article 51(2) of the Convention by its refusal to *"implement the recommendations made by the Commission."* It further requested that the Court declare that Guatemala must:

> make full reparation to Nicholas Chapman Blake's next of kin for the grave material and moral damage suffered as a result of the multiple violations of rights protected by the Convention and the enormous expenses incurred by the victim's relatives to establish his whereabouts and identify those responsible for his disappearance and its subsequent concealment.

1 Rules of Procedure of the Court approved at its XXIII regular session held from January 9 to 18, 1991; amended on January 25, 1993 and July 16, 1993.

Lastly, it asked the Court to order the State to pay the costs *"of this case, including the fees of the professionals who served as the victim's representatives before the State authorities and in the processing of the case before the Commission and the Honorable Court."*

II
COMPETENCE OF THE COURT

2. Guatemala has been a State Party to the American Convention since May 25, 1978, and recognized the contentious jurisdiction of the Court on March 9, 1987.

3. The Court is competent to hear the instant case, in accordance with its judgment on preliminary objections of July 2, 1996, in which it decided that in this case its competence extended only to *"the effects and acts that occurred after the date on which Guatemala accepted the competence of the Court"* (operative paragraph 2). In any event, in its prior consideration of the merits, the Court will reconsider the question of its competence *ratione temporis* in the instant case (*infra* para. 53).

III
PROCEEDING BEFORE THE COMMISSION

4. The petition against Guatemala, lodged by the International Human Rights Law Group, was received by the Commission on November 18, 1993, and on December 6, 1993, it was transmitted to the State, which was asked to submit information relevant to the case within 90 days. On March 7, 1994, the State requested an extension of the deadline to enable it to collect the information, which was granted by the Commission for a period of thirty days.

5. On April 14, 1994, the State submitted to the Commission its comments on the case, in which, according to the Commission, *"it neither challenged nor refuted the acts denounced"*, but rather merely pointed out that the case was being investigated. On July 27, 1994, the petitioner requested the Commission to issue a decision on the case, in accordance with Article 50 of the American Convention.

6. The Commission placed itself at the disposal of the parties in order to facilitate a friendly settlement, and invited the parties to a public hearing at its headquarters on September 16, 1994. At that hearing, Guatemala raised the preliminary objection of non-exhaustion of domestic remedies and asked the Commission to consider its participation in the friendly settlement negotiations to be at an end.

7. At the petitioner's request, another hearing was held on February 14, 1995, at which, according to the Commission, Guatemala again rejected the proposal of a friendly settlement of the case, submitted a new report of the proceedings in progress in the domestic courts, and once more invoked the objection of non-exhaustion of domestic remedies.

8. On February 15, 1995, the Commission approved Report No. 5/95, and decided in its operative part:

TO RECOMMEND

1. That the State of Guatemala accept its objective responsibility for the murder of Mr. Nicholas Blake, his disappearance and the cover-up of his murder; and make the appropriate reparations to his successors;

2. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify, prosecute, detain and punish those responsible for the death of Mr. Nicholas Blake;

3. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify, prosecute, detain and punish those responsible for the cover-up and obstruction of the judicial proceedings concerning the disappearance and death of Mr. Nicholas Blake;

4. That the State of Guatemala take such measures as are necessary to avoid a recurrence of such types of violation, including

> abuses by the Civil Patrols, cover-ups by civilian and military authorities, and the lack of effective judicial proceedings;
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> 5. That this report, drawn up in accordance with Article 50, be transmitted to the Government, which shall not be at liberty to publish it, and
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> 6. That if within a period of sixty days from the transmittal of this Report, the Government has not implemented the above recommendations, the instant case be submitted to the Inter-American Court of Human Rights pursuant to Article 51 of the American Convention.

9. On May 4, 1995, the Commission transmitted Report No. 5/95 to Guatemala, informing it that if it failed to implement the recommendations contained therein, the Commission would submit the case for the consideration of the Inter-American Court, as provided in Article 51 of the Convention.

10. On July 5, 1995, the Government transmitted its reply to the Commission, declaring that:

> [t]he proceedings on the merits are currently at the investigation stage, the last procedural steps being the statements by witnesses in the instant case before the District Prosecutor of the Ministry of the Interior ["Ministerio Público] of Huehuetenango... [and a]s indicated by the statements made by the aforementioned persons, it is evident that the case is progressing.

11. On August 3, 1995, having not reached an agreement with the Government, the Commission submitted the case for the consideration and decision of the Court.

IV
PROCEEDINGS BEFORE THE COURT

12. On August 21, 1995, the Secretariat of the Court (hereinafter "the Secretariat") dispatched to the State the application and the attachment

submitted to the Court on August 3, 1995. The State received them on August 22, 1995.

13. The Commission named Claudio Grossman and John Donaldson as its Delegates, and Edith Márquez-Rodríguez, David J. Padilla and Domingo E. Acevedo as its Attorneys. The Commission also named Janelle M. Diller, Margarita Gutiérrez, Joanne E. Hoeper, Felipe González, Diego Rodríguez, Arturo González, and A. James Vázquez-Azpiri as assistants to represent the victims.

14. On September 1, 1995, Guatemala named Dennis Alonzo-Mazariegos as its Agent, and Vicente Arranz-Sanz as its Alternate Agent. On September 22, 1995, it designated Alfonso Novales-Aguirre as Judge *ad hoc*.

15. On September 16, 1995, the State filed the following preliminary objections: incompetence of the Inter-American Court to try the case, inasmuch as the acceptance of the compulsory jurisdiction of the Court applied exclusively to cases that occurred after the date on which the declaration was deposited with the Secretariat of the Organization of American States; the Court's lack of competence over the subject matter of the application, and the Commission's violation of the American Convention in view of the norm regarding interpretation contained in Article 29(d).

16. In its brief of September 16, 1995, the State also indicated that the criminal proceeding in progress in Guatemala to clarify the facts of this case *"began on June 26, 1985, at the Justice of the Peace of the Municipality of San Juan Ixcoy, on the basis of the report it had received from the National Police when it discovered that Mr. Nicholas Chapman Blake and Mr. Griffith Davis were lost"*, and that on July 10, 1985, the court file was referred to the Chiantla Justice of the Peace, which in turn referred it to the Second Court of Preliminary Criminal Investigation of the Department of Huehuetenango, where it was filed as case No. 542-85. The State also indicated that *"neither Report 5/95 nor the application claimed that... Mr. Blake's family had taken any steps before the aforementioned Tribunal, nor had they even appeared to testify in the case before it."* Lastly, it said that, at the Department

of the Public Prosecutor behest, the judge in the case issued an order for the arrest of Mario Cano, on August 22, 1995; Daniel Velásquez; Hipólito Ramos-García, alias "Polo"; Vicente Cifuentes, alias "Chente"; Candelario López-Herrera; Emeterio López, alias "Tello"; and Ezequiel Alvarado, *"that being the current status of the criminal proceeding."*

17. On November 9, 1995, Guatemala submitted its answer to the application, requesting that it be answered in the negative, that the Court declare the application inadmissible and reject the Commission's claims. It also argued that the Commission's intention was *"to transform a finite common criminal act"* into a human rights case. It further maintained that the events of March 28, 1985, constituted a "[c]*ommon, unlawful criminal act of a finite nature,*" such as aggravated homicide or assassination, and *"not a case of a violation of human rights, such as the right to personal liberty and the right to life, which are protected by the Convention, nor a contravention of the Convention with regard to the General Obligation of the States Parties to respect the human rights recognized therein."*

18. By Order of December 9, 1995, the President of the Court (hereinafter "the President") granted a period of one calendar month for Guatemala to specify and submit the evidence it considered pertinent to the case, inasmuch as in the brief submitted on November 9, 1995, the State had mentioned evidence which it deemed to amply *"support its answer to the petition, but neither specified what they were nor produced them."*

19. In its brief of January 12, 1996, the State declared that:

> [it would] submit within the next few days as part of its documentary evidence, a certificate issued by the Second Court of Criminal Investigation of Huehuetenango contain[ing] the judicial proceedings relating to the criminal case No. 542-85, Oficial Tercero, concerning Mr. Nicholas Chapman Blake's violent death, which, of the evidence offered in the Statement of the answer to the Application, [was] the only piece available [at that time] ...

20. On January 28, 1996, the President, after consulting the parties pursuant to Article 29(2) of the Rules of Procedure, determined that addi-

tional written proceeding were necessary. He therefore granted the Commission two months in which to submit a brief, and the State two months from the date of notification of that brief in which to submit its observations thereon.

21. By Order of February 3, 1996, the President granted the State one additional month in which to submit evidence. In response, on February 29, 1996, Guatemala submitted a brief in which it reported that *"it* [would] *not use the witnesses and experts proposed in its Statement of Negative Answer to the Application."*

22. On March 28, 1996, the Commission asked the Court to declare without merit the State's request that *"the arguments adduced by the Commission in the petition"* be rejected and, accordingly, asked that the judgment be rendered in conformity with the application. On May 28, 1996, the State submitted the brief containing its observations, in which it requested that the Commission's brief be set aside.

23. By Order of July 2, 1996, the Court decided to refuse the State's request that the Commission's brief of March 28, 1996, be disregarded, and consequently "[j]*oined both parties' briefs to the file and* [decided] *to retain them in mind for its consideration in the judgment on the merits."* The written proceedings were then closed.

24. On July 2, 1996, the Court rendered a judgment on the preliminary objections in which it declared itself *"incompetent to decide on Guatemala's alleged responsibility for the detention and death of Mr. Nicholas Chapman Blake",* inasmuch as the *"deprivation of Mr. Blake's freedom and his murder had indeed occurred in March, 1985,"* prior to Guatemala's acceptance of the contentious jurisdiction of the Court. However, the Court decided to continue to hear the case with regard to the results and acts subsequent to March 9, 1987, on which date Guatemala had accepted the competence of the Court.

25. On November 25, 1996, the Commission submitted the following list of witnesses to be summoned by the Court to appear at the public hearing on the merits of the case: Richard R. Blake, Jr., Samuel Blake

(Nicholas Blake's brothers); James Elleson (who knew Nicholas Blake and assisted his family in the investigation of the facts); Colonel George Hooker [who served at the Embassy of the United States of America (hereinafter "the United States Embassy") in Guatemala and was involved in the investigation of the events], Justo Victoriano Martínez-Morales (who conducted an investigation into Mr. Nicholas Blake's detention, disappearance and the subsequent concealment of his remains), Ricardo Roberto (Political Adviser at the Embassy in Guatemala), Ambassador Thomas Strook and Ambassador James Michael (both of whom participated in the investigation to shed light on Mr. Nicholas Blake's disappearance), and Felipe Alva (who assisted Mr. Nicholas Blake's family in locating his remains.)

26. On March 18, 1997, the President summoned the parties to a public hearing to be held on April 17, 1997 in order to hear the statements of the witnesses proposed by the Commission and the parties' final oral pleadings on the merits of the case.

27. On April 16, 1997, the State submitted a brief in which it stated that *"it accept*[ed] *international responsibility on the question of human rights stemming from the delay in the application of justice until the year nineteen hundred and ninety-five (1995)..."* (originally in capitals) and that this acknowledgment was independent of the outcome of the proceeding in the domestic courts, and reported that:

> 1. On May 31, 1995, the District Attorney's Office in Huehuetenango, Guatemala, received the statement of Mr. Justo Víctor (sic) Martínez Morales. Also, on June 22, 1995, Mr. Felipe Benicio Alva Carrillo testified, both in connection with case 542-85, Oficial Tercero, concerning the death of United States citizens Nicholas Blake and Griffith Williams Davis in March 1985.
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> 2. On March 12, 1997, at 7:30 a.m. the main person accused of being the physical author of the deed, Vicente Cifuentes-López, was apprehended on the main highway of Caserío "Lo de Chavez" in the village of "Oqbila," in the municipality of Huehuetenango, department of Huehuetenango. He is still being detained at the

Huehuetenango departmental prison. Mr. Cifuentes-López is one of the persons accused of the unlawful criminal act in the instant case.

3. Due to the circumstances described, the Government of Guatemala submit[ted] its acceptance of responsibility on the question of human rights stemming from the unwarranted delay in the application of justice in this case.

4. It respectfully request[ed] the Honorable Court to suspend the oral proceedings and grant it a term of six months to reach an agreement on reparations with the victims' next of kin and/or the Commission.

. . .

28. On April 17, 1997, the Commission submitted a brief in which it declared that:

> [I]t appreciate[d] the acceptance that was made by the Illustrious Government of Guatemala, but consider[ed] it to be exceedingly restrictive because as it refer[red] solely to the undue delay of justice.
>
> Given that in its brief the Commission [had] raised other issues that generate[d] international responsibility, and which [should] therefore be the subject of reparations and compensation, the Commission request[ed] the Honorable Court to pursue the oral proceeding and duly render a judgment in conformity with the request contained in the application.

29. On the same day, the Court issued an order in which it considered:

> [t]hat the State's declaration refer[red] exclusively to the facts concerning the *"unwarranted delay in the application of justice in the Blake Case,"* which, in the view of this Tribunal, represents a partial recognition of the facts contained in the application submitted by the Commission and which fall within the purview of the Court.

The Court also decided:

> 1. To take note of the partial recognition of responsibility on the part of the State of Guatemala in this case.
>
> 2. To proceed with the public hearing convened for [April 17, 1997], for the purpose of hearing the evidence on the merits in the Blake case insofar as it relates to those events and effects that occurred after March 9, 1987, not expressly recognized by the Government of Guatemala.

30. On April 17, 1987, the public hearing on the merits of the case was held and, pursuant to the Order issued by the Court on the same day, witnesses concerning the acts and effects that occurred after March 9, 1987, were heard. The Court also heard the parties' final oral arguments on the merits of the case.

There appeared before the Court:

For the State of Guatemala:

> Dennis Alonzo-Mazariegos, Agent; and
> Alejandro Sánchez, Adviser.

For the Inter-American Commission on Human Rights:

> Domingo E. Acevedo, Deputy Executive Secretary
> James Vázquez-Azpiri, Assistant
> Joanne M. Hoeper, Assistant
> Felipe González, Assistant; and
> Romina Picolotti, Assistant;

and as witnesses called by the Inter-American Commission on Human Rights:

> Richard R. Blake, Jr.
> Justo Victoriano Martínez-Morales

Ricardo Roberto, and
Samuel Blake.

The following witnesses proposed by the Commission did not appear for the hearing, despite being summoned by the Court:

James Elleson
Colonel George Hooker
Ambassador Thomas Strook
Ambassador James Michael, and
Felipe Alva.

31. During the course of the public hearing, the court heard the testimony of the witnesses presented by the Commission, which is summarized in the following paragraph:

a. Testimony of Richard R. Blake, Jr., brother of Nicholas Blake.

The witness testified that Nicholas Blake was his elder brother and was 27 years old when he died. He had submitted a petition to the Commission because Guatemala had not fulfilled its duty to investigate and prosecute the members of the civil patrol responsible for his brother's death. His brother had traveled to Guatemala in 1985 with Griffith Davis to write a series of articles on the situation of Guatemala's domestic conflict. Griffith Davis had also been killed in the mountains. On April 12, 1985 the United States Embassy in Guatemala had informed his family of Nicholas Blake's disappearance. His family sought assistance from the United States Government, its Embassy and the Guatemalan Government. Some time around April 24, 1985, he had gone to Guatemala to meet with United States Embassy officials and those of the Guatemalan Government. He had met Colonel Byron Lima, Commander of Zone 20 in El Quiché, who told him that the Army would assist in locating his brother, but that he had probably been killed by guerrillas. Six members of the Guerrilla Army of the Poor (EGP) denied having killed the two Americans. His family had made many trips

and met repeatedly with civilians and soldiers in Guatemala to try and locate his brother Colonel Byron Lima informed him that he had sent a patrol of 450 soldiers to look for his brother, but later admitted that he had not done so. On April 18, 1985, officials from the United States Embassy retraced in a helicopter the route his brother had taken in the Department of Huehuetenango, and spoke to Lieutenant Elel, Commander of the Army in Las Majadas, and members of the civil patrol. U.S. Embassy officials had established that Mr. Griffith Davis and Mr. Blake's brother had last been seen in El Llano; Commander Elel informed the U.S. Embassy that the two Americans had arrived there on March 29, 1985, had spoken to some civil patrolmen who told them that they were on their way to Cerro Sumal, and showed them their travel permits. The patrolmen told them that they could not visit the area because it was controlled by the guerrillas. Nicholas Blake was last seen on March 29, 1985. By 1987, teacher Justo Victoriano Martínez-Morales had already received information that the civil patrols were responsible for the disappearance. Justo Victoriano Martínez-Morales and the United States Embassy transmitted this information to the Guatemalan Government, that, as early as the beginning of 1988, Justo Victoriano Martínez-Morales had known the identity of the murderers and the names of those who had burned Mr. Nicholas Blake's and Mr. Griffith Davis' remains in late 1987. The remains were discovered approximately three kilometers southeast of El Llano on the road to Salquil, near the place indicated by Justo Victoriano Martínez-Morales. Felipe Alva took him to the place where the remains had been burned. In 1990, his family discovered that Felipe Alva could help them locate the remains, through his contacts in El Llano and Las Majadas, and asked for $5,000 to $10,000 in return. In 1992, Felipe Alva handed over to his family two satin-lined wooden boxes containing, among other things, earth, remains and tent poles. Felipe Alva had signed a document indicating that Nicholas Blake and Griffith Davis had been killed by the El Llano civil patrol. The boxes were transferred to the Smithsonian Institute of the United States Government for identification of the remains, but only those of Griffith Davis could be identified. While there were other remains, they could not be identi-

fied as Nicholas Blake's. His family again contacted Felipe Alva and informed him that they would not make the payment because the remains had not been identified as Nicholas Blake's, and asked him to make a second visit accompanied by experts. In June 1992, a second visit was made with a team of experts. With the assistance of the United States Embassy, Felipe Alva took them to a place situated 3 kilometers southeast of El Llano, but could not find the exact spot. They were accompanied by Colonel Otto Noack-Sierra of the Guatemalan Army. He had returned to El Llano in a helicopter with a patrolman who knew where Nicholas Blake's remains were to be found, and located the exact spot. They spent several hours collecting the remains, which they transported to the Smithsonian Institute, where they were identified as those of Nicholas Blake. Seven years had passed since his brother's disappearance and his family had made more than 20 visits to Guatemala and had met on many occasions with Government and U.S. Embassy officials, and the Government had issued his brother's death certificate. Guatemala had neither investigated nor prosecuted those responsible, although their identities had been known to them since 1988. The witness was aware that Vicente Cifuentes, one of those identified as being responsible, had been detained, but had no knowledge of any prosecution of the other persons responsible. Felipe Alva had not been arrested for the murder or for burning the remains. Members of his family had never met with a judge, because the Guatemalan Government had told them that they should speak to the military authorities since they controlled the area where Mr. Nicholas Blake and Mr. Griffith Davis had disappeared. He did not know whether the civil authorities had made any effort to arrest, investigate or denounce the other patrolmen.

b. Testimony of Justo Victoriano Martínez-Morales, a teacher, who investigated the facts relating to Mr. Nicholas Blake's detention, disappearance and death.

The witness testified that he had been a teacher from 1986 to 1992; in 1987 he had come to know the Blake family when he helped

them locate the remains of Nicholas Blake and Griffith Davis, who had disappeared near El Llano. He had initiated the investigation in January 1987. He had asked people who came to Las Majadas about the Americans' whereabouts and learned that they had been arrested in El Llano and disappeared in 1985. Mario Cano, Commander of the El Llano Civil Patrol, had ordered Candelario Cano-Herrera, Vicente Cifuentes and Hipólito García, members of the civil patrol, to take the American journalists to a military zone in the Department of El Quiché, take them out of Huehuetenango, and kill them if they wished. He had later been told that Hipólito García had shot Griffith Davis, that two other patrolmen had shot Nicholas Blake, and that the bodies had been left in the hills until 1987 when Felipe Alva ordered them to be collected and burned. The order to burn the corpses had been given to Daniel Velásquez, Commander of Las Majadas, who passed it on to Mario Cano. He discovered that in August or September 1987 the patrolmen had made a bonfire in which some of the bones were burned. He had subsequently visited the site and found the circle where the bonfire had been. The remains had been burned because the patrolmen were afraid they would be killed. The people of this place knew who the authors of the crime were. Two photos had been taken of Candelario Cano-Herrera and Mario Cano in 1988 or 1989 and sent to Ricardo Roberto, the Consul in Guatemala. The authors of the crime were summoned to the military zone of Huehuetenango to be interviewed by Colonel George Hooker of the United States Embassy but did not appear. When the U.S. Embassy officials asked for the files to ascertain the names of the patrolmen, the Army said that no such files existed, he told Samuel Blake that Felipe Alva could help him locate his brother's remains, since, as Commander-in-Chief of the Patrol, he knew who had been responsible for his brother's disappearance. He learned that Alva would be organizing a search for the remains and later discovered that Mr. Michael Shawcross and Mr. Felipe Alva had taken part in it. He had transferred back to the school in San Lorenzo because the parents of his students in Las Majadas no longer wanted him there because they knew that he was passing information to the United States Embassy.

c. Testimony of Ricardo Roberto, former Vice Consul at the United States Embassy in Guatemala.

The witness testified that from August 1988 to September 1990 he had been Vice Consul and Second Secretary at the United States Embassy in Guatemala. He had been in charge of the case concerning the disappearance of Nicholas Blake and Griffith Davis and acted as a liaison between the United States Embassy, the Guatemalan authorities and the Blake and Davis families. As soon as the United States Embassy learned of the disappearance of the aforementioned persons, it had repeatedly contacted representatives of the Army and the Guatemalan Government. When he arrived at the United States Embassy, no appeal had been made to the police authorities to investigate the case. On December 27, 1988, at the invitation of the military authorities, he had been present, together with Colonel George Hooker, Military Defense Attaché at the United States Embassy, at the interrogation of the members of the civil patrol suspected of responsibility for the disappearance, and had asked them a number of questions. On April 22, 1989, Colonel Hooker met with Colonel Francisco Ortega, Chief of Military Intelligence, and they agreed that no progress had been made with the case. On May 22, 1989, Colonel Hooker delivered some photographs of the suspects, taken by Justo Victoriano Martínez-Morales, to Colonel Ortega so that he could detain and interrogate them Colonel Ortega had never sent investigators to the area to arrest the suspects. On August 10, 1989, Philip Taylor, Deputy Head of Mission, the Consul General and Major Demarrest went to Huehuetenango to meet the new Commander, General Mata-Gálvez, discovered that he knew nothing about the case and that they were themselves obliged to provide him with all the information. The Consul General continued to contact General Mata once a month. The U.S. Embassy was not satisfied with the level of cooperation from the government of the Guatemalan Army. The Consul General met with General Mata on November 7. The Ambassador met with General Gramajo, Minister of Defense, and General Mata-Gálvez on November 9 and 10, and was told that thus far they had no information about the investigation or its

results, although they had been specifically told who the suspects were. Apparently, the Government had not instituted any criminal action or investigation. The Minister of Defense promised to bring the case to the attention of the Attorney-General, saying that this was not a military, but rather a police matter and that the outcome of the investigation would be submitted to the U.S. Embassy within a month. This, however, was not done. By November 1989 the Guatemalan authorities had known the identity of the suspects for one year. On November 27, 1989, General Gramajo met with Ambassador Strook and informed him that the case had been referred to a judge in Huehuetenango in 1986. On December 15, 1989, the Ambassador met with the Human Rights Prosecutor, Dr. Ramiro de Leon-Carpio, who also failed to take any action in the case. On February 27, 1990, Ambassador Strook met with General Gramajo after learning that the Blake family was prepared to pay a reward for the recovery of Nicholas Blake's remains and to refrain from bringing any criminal charges against the perpetrators. On March 21, 1990, he had gone to Huehuetenango to question several patrolmen, who did not appear. On March 26, 1990, he had gone to Huehuetenango with an FBI investigator and a few Military Intelligence officials to witness an interrogation, but as had occurred in December 1988, the military authorities knew next to nothing about the case and were not prepared to interrogate the three individuals. He and the investigator questioned suspects Mario Cano, Candelario López and Hipólito García about the disappearance. On April 18, 1990, he had gone to Huehuetenango but was unable to obtain any information. On March 26, 1990, General Mata-Gálvez brought three persons, and later two more, before the Ministry of National Defense, but did not complete the investigation. On April 26, 1990, he had interviewed Mr. Velásquez, a patrolman suspected of involvement in the murder, and Colonel Fernando Fuentes, Deputy Commander of the Military Zone, whom he asked about a lieutenant mentioned by Mr. Velásquez. Colonel Fuentes said that he would identify the lieutenant and take him to the United States Embassy, but never did so. On May 4, 1990, he had accompanied Mr. Nicholas Blake's father and one of his brothers to Huehuetenango and talked to General Mata, who

was asked by Mr. Nicholas Blake's father whether it was possible that the guerrillas had abducted the two Americans and whether they could still be alive, to which the General replied that it was unlikely. During a number of visits he had come to know five of the seven people involved in the deaths of Mr. Nicholas Blake and Mr. Griffith Davis; they were: Mario Cano-Acedo, Candelario Cano-Acedo, Cándido López, Hipólito García and Daniel Velásquez. General Mata had promised to help him investigate Mr. Nicholas Blake's disappearance and recover his remains, but never did so. The Guatemalan authorities had not really cooperated in the investigation. Ambassador Michael believed that it was the Government's responsibility to investigate the facts. He had repeatedly submitted the case to senior members of the Guatemalan Government. He was unaware of any effort made by that the Human Rights Prosecutor to conduct an investigation. He had never received any information indicating that an investigation had taken place or that the case had been referred to the judicial authorities. No progress had been made with the case and it appeared, instead, that the Army was covering up the murder committed by the civil patrolmen. He had only had contact with an investigating magistrate in Huehuetenango who had asked the United States Embassy for all the documents relating to the case. The United States Embassy had not hired a lawyer or put any pressure on the Blake family to contact a lawyer or investigator. The United States Embassy did not make any formal complaint to the Human Rights Prosecutor, but asked him for assistance in investigating the case. However, he had taken no action.

d. Testimony of Samuel Blake, brother of Nicholas Blake.

The witness testified that he was 23 years old when his elder brother, Nicholas Blake, disappeared. His first visit to Guatemala had been in 1985. The United States Embassy told him that the Guatemalan authorities had sent his brother and Griffith Davis to a village in El Quiché and that the soldiers claimed that the two men had joined the guerrillas and were subversives. He and his family knew that his brother and Griffith Davis had been going, in their

capacity as journalists, to interview the guerrillas. He had returned to Guatemala in March 1986, on his family's seventh visit, and had met with President Cerezo, who granted his request for a helicopter. He had been to the Department of El Quiché and to Huehuetenango and interviewed a number of persons. He had been to see General Gramajo who had told him that he believed his brother to be dead. He had also been to El Llano with a lieutenant, who embraced the Chief of the Civil Patrol, Mario Cano, and spoke to him in private. Mario Cano informed him that he had told Mr. Nicholas Blake and Mr. Griffith Davis that the guerrillas were in Sumal and that it was very dangerous to go there, but that they had gone nevertheless. In January 1988, he had visited Colonel Paco Ortega to inquire about the investigation conducted by Justo Victoriano Martínez-Morales, which had revealed that the El Llano Civil Patrol had murdered his brother and Mr. Griffith Davis. Despite Colonel Ortega's promise to conduct an investigation and hand over a list of the names of the El Llano civil patrolmen, he had never done so. In May 1988, he had met James Elleson, Justo Victoriano Martínez-Morales, Colonel Recinos and Major Baides in Guatemala. Major Baides told him that he had been unable to locate the members of the Civil Patrol identified by Justo Victoriano Martínez-Morales. In January 1989, he made his twelfth visit to Guatemala with his family. They had met with Ambassador James Michael, who told them that Colonel Hooker had interviewed civil patrolmen Mario Cano and Vicente Cano, who had at first denied being from El Llano, but that Mario Cano had later admitted that they did. Mario Cano could be seen on a March 1986 video speaking as Chief of the El Llano Civil Patrol. In May 1989, the United States Embassy had sent Colonel Ortega photographs of the suspects and he had promised to locate and arrest the perpetrators, but had never done so. In February 1990, he again went to Guatemala and met with United States Embassy officials, who told him of the measures they had taken and that the Army was not cooperating in the investigation into his brother's disappearance. He believed that the Army was covering up the disappearance. In the spring of 1990, he discovered that FBI agents, Ricardo Roberto of the United States Embassy and Michael Shawcross, had interviewed El Llano civil

patrol members Mario Cano, Hipólito Ramos-García, Vicente Cifuentes and López Herrera. They had never arrested the perpetrators. Daniel Velásquez, Chief of the Las Majadas Civil Patrol, was responsible for burning and transferring the remains, but had never been arrested. In January 1992, the Blake family visited Guatemala for the eighteenth time. Felipe Alva offered to help them in exchange for money. Michael Shawcross had received two boxes containing bone fragments from Felipe Alva. In June 1992, he was in Guatemala when the bones were found, together with tent pegs, and his brother's spectacles. It had taken more than seven years from his brother's disappearance for his whereabouts to be discovered. The remains were exactly where Justo Victoriano Martínez-Morales had said they were, corroborating his statement that Nicholas Blake had been murdered by the El Llano Civil Patrol. In November 1992, he met in New York with Lieutenant-Colonel Otto Noack-Sierra, who had been present when the remains were discovered. The Colonel told him that Guatemalan Military Intelligence had known almost immediately what had happened to his brother. In December 1993, he met with Lieutenant-Colonel Noack and President Ramiro de Leon-Carpio at the United States Embassy and requested that the State recognize its responsibility for the acts, punish those responsible and pay compensation. The President had replied that it was true that the Civil Patrol had killed his brother, that the Army had known this all along and had covered it up, but that he would have to think about punishment and compensation. Of the eight or ten persons responsible, only Vicente Cifuentes had been detained. Felipe Alva was currently Mayor of Chiantla, and although General Gramajo informed him of a 1986 court action, nothing was known about that case or any other. If his family had not made more than 20 visits in seven years, they would never have known what had happened. Since the Chief of Military Intelligence and the Minister of Defense, as well as other officers, could not provide a list of the Civil Patrol, it was quite ridiculous to attempt any litigation in Guatemala; they had therefore not retained a lawyer or initiated any proceedings. They had spent between $80,000 and $100,000 in the search for his brother. He had suffered a severe nervous breakdown after the disappeareance and

> had spent thousands of dollars on psychiatrists and medication, all of which had affected his family life, especially since a disappearance had been the cause of his suffering.

32. On August 7, 1997, the Inter-American Commission submitted the brief containing its final arguments, in which it maintained that it had fully demonstrated that Guatemala had violated many of the rights (enshrined) in the American Convention. It reiterated its request that the Court declare Guatemala responsible for the forced disappearance of Mr. Nicholas Blake, inasmuch as he had been abducted and subsequently disappeared as a part of a systematic practice of the State authorities. The Commission went on to say that, with the documentary evidence and witnesses' statements, it had been proven that Guatemala violated the following articles: Right to Personal Liberty (Article 7), Right to Humane Treatment (Article 5), Right to Life (Article 4), Right to Judicial Protection (Article 25), Right to a Fair Trial (Article 8), Freedom of Expression (Article 13), Freedom of Movement and Residence (Article 22), all in conexion to Article 1(1) of the Convention. It also requested reparations for the damages caused, through payment of fair compensation to the victim's relatives and reimbursement of all the costs involved in determining Mr. Nicholas Blake's whereabouts.

33. On August 11, 1997, Guatemala submitted the brief containing its final arguments in which, on the basis of the testimonies of Richard R. Blake, Jr., Justo Victoriano Martínez-Morales, Ricardo Roberto, and Samuel Blake, and the State's recognition of the delay in the administration of justice, requested that a judgment be rendered on the merits, based on the Court's *"prudent arbitration"*, since as such a judgment would facilitate the reparations proceedings in the case, which, for procedural reasons could not be opened on April 17, 1997.

34. On November 26, 1997, the Commission submitted a "complementary" brief to explain a point contained in the application and request in this case, to the effect that the Commission:

> ha[d] clearly and implicitly expressed in the application, and explicitly in the report [drawn up pursuant to] Article 50 and in the presen-

> tation of the case to the Court, its evidence, arguments and request with regard to the violation of Article 5, and ratifie[d] its claim that the acts set out in the application violated, *inter alia*, that article of the Convention.

35. On December 10, 1997, the State submitted the brief containing its observations on the Inter-American Commission's "complementary" brief, which pointed out that the subject of that brief had already been settled in operative paragraph 1 of the judgment on preliminary objections, and that, in accordance with that judgment, Guatemala "[did] *not submit a reply to the arguments presented*" and reiterated the contents of the brief containing its final pleadings.

V
PROVISIONAL MEASURES ADOPTED IN THIS CASE

36. In the brief of August 11, 1995, received at the Secretariat on that date, the Inter-American Commission submitted to the Court, pursuant to Article 63(2) of the American Convention and Articles 23 and 24 of the Rules of Procedure, a request for provisional measures in the Blake case with regard to the situation described as "a case of extreme urgency" in order to avoid irreparable damage to Mr. Justo Victoriano Martínez-Morales, a witness in the case, and his immediate relatives, Floridalma Rosalina López-Molina (wife), Víctor Hansel Morales-López (son), Edgar Ibal Martínez-López (son) and Sylvia Patricia Martínez-López (daughter). The grounds of the Commission's request are summarized as follows:

> (a) The request states that Mr. Justo Victoriano Martínez-Morales is "a key witness in the Blake Case" as a consequence of his investigation of the circumstances that led to Mr. Nicholas Blake's abduction and disappearance in the small village of "Las Majadas" and the surrounding area. Through that investigation, Mr. Martínez had established that *"years later the Guatemalan Army had ordered Mr. Blake's remains* [and those of Mr. Griffith Davis] *to be burned and hidden and had warned the villagers of El Llano not to reveal what had taken place."*

(b) That Mr. Martínez had, on prior occasions, received death threats *"from members of the civil patrols of El Llano and the surrounding areas"* for having informed U.S. Embassy officials in Guatemala of the investigation he had conducted into Mr. Nicholas Blake's disappearance.

(c) That following the hearing held at the seat of the Commission on February 14, 1995, Mr. Martínez had again received telephone threats to his life and the lives of his family.

(d) On May 3, 1995, when it gave notification of Report 5/95, the Commission requested the Government of Guatemala to take such precautionary measures as were necessary to safeguard the life, liberty and personal safety of Mr. Justo Victoriano Martínez-Morales. The Commission requested that the Government inform it, within thirty days, of the measures it had adopted to comply with the request and the results of those measures. However, at the time of the submission of this request, the Commission had not received any response from Guatemala.

37. On August 16, 1995, the President of the Court, at the request of the Commission and pursuant to Article 63(2) of the Convention and Article 24(4) of the Rules of Procedure then in force, requested that Guatemala adopt without delay any measures necessary to effectively ensure the protection and personal safety of Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López. The President also requested Guatemala to adopt any measures necessary to enable those persons to continue residing in their homes, with the guarantee that they will not be persecuted or threatened by agents of the Guatemalan State or other persons acting with the acquiescence of the State. The President further requested it to present a report to the Court on the measures it had adopted.

38. On September 6, 1995, Guatemala submitted the aforementioned report, dated September 4, 1995, to the Inter-American Court, as

requested in the Order of the President. In this report, the State claimed that it had informed to the Commission of the precautionary measures adopted on behalf of Mr. Justo Victoriano Martínez-Morales on June 2, 1995, and had submitted its Report on August 29, 1995. It added that no *"case of extreme urgency"* existed, inasmuch as Guatemala had *"complied* [with the Commission's request] *within the time indicated providing all the measures necessary for safeguarding the life and personal safety of Mr. Justo Victoriano Martínez-Morales and his family."* It further claimed in that Report that Mr. Martínez-Morales had denied being subjected to threats or attacks against his person or his family and would not agree to any personal safety measures. Because of this refusal, the National Police of Huehuetenango offered to guard his residence with a night patrol after 8 p.m., to which he agreed.

39. On September 21, 1995, the Inter-American Commission sent to the Court its observations on the report submitted by Guatemala on September 6, 1995, in which it reiterated that a case of extreme urgency did exist for the aforementioned reasons, and that the threats extended to Mr. Justo Victoriano Martínez-Morales' family.

40. Through its Order of September 22, 1995, the Court adopted provisional measures, ratified the Order of the President of August 16, 1995, and requested the State to maintain the provisional measures on behalf of Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Victor Hansel Morales-López, Edgar Ibal Martínez-López and Sylvia Patricia Martínez-López. It also required that Guatemala inform the Court every three months of the provisional measures that had been taken, and that the Inter-American Commission submit to the Court its observations on those reports within the month following their notification of them.

41. At the public hearing held at the seat of the Court on April 17, 1997, on the merits of the case, Justo Victoriano Martínez-Morales, a witness in the case and one of the persons on whose behalf provisional measures were adopted, said that he feared for his and his family's life and physical safety and that he was only protected at his place of residence.

42. On April 18, 1997, the Court, bearing in mind Mr. Martínez-Morales' statement concerning the measures adopted by Guatemala, required the State to provide those measures to the persons in whose favor they were adopted, not only while they are in their homes but also when they are away from them. Guatemala and the Inter-American Commission, respectively, presented their reports and observations, in conformity with the Order of the Court of September 22, 1995. These provisional measures will be maintained until the circumstances of extreme gravity they were originated still exist.

VI
ASSESSMENT OF EVIDENCE

43. The Inter-American Commission's application was accompanied by copies of witness statements, reports, documents, photographs, sketches, and video recordings of interviews.

44. The State, in its answer to the application, offered to produce documents, witness statements, expert reports and presumptions as evidence. On January 12, 1996, it offered to submit to the Court an attestation issued by the Second Criminal Court of First Instance of Huehuetenango, containing the judicial proceedings relating to the case, but never did so. On February 29, 1996, the State informed the Court that *"it* [would] *not use the evidence of witnesses and experts offered in its Statement of Negative Reply to the Application"*.

45. In this case, the Court will assess the value of the documents and statements submitted.

46. The statements of Mr. Richard R. Blake, Jr., Mr. Justo Victoriano Martínez-Morales, Mr. Ricardo Roberto and Mr. Samuel Blake will be evaluated together with all the evidence in this case. While none of the witnesses mentioned directly witnessed the acts alleged by the Commission concerning Mr. Nicholas Blake's detention, disappearance and death, the Court deems it necessary to evaluate their testimony in a broad sense in order to determine the effects and acts that occurred after March 9, 1987, and the possible violations of the American Convention.

47. Accordingly, the Court has stated that:

> [i]n the exercise of its judicial functions and when ascertaining and weighing the evidence necessary to decide the cases before it, the Court may, in certain circumstances, make use of both circumstantial evidence and indications or presumptions on which to base its pronouncements when they lead to consistent conclusions as regards the facts of the case... (*Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 49).

48. The Commission argued in the petition that "[d]*uring the time of Nicholas Blake's abduction, forced disappearance constituted a practice of the Guatemalan State carried out mainly by the State's security forces... against any persons suspected of involvement in subversive activities.*" As an illustration of the foregoing, the Commission cited the United Nations 1990 Report of Working Group on Enforced or Voluntary Disappearances, which refers to numerous cases of forced disappearances that occurred during the second half of the 1980s, and indicated that 2,990 cases in Guatemala remained unsolved.

49. The Court deems it possible for the disappearance of a specific individual to be demonstrated by means of indirect and circumstantial testimonial evidence, when taken together with their logical inferences, and in the context of the widespread practice of disappearances. In a case such as this, the Court has always maintained that a judgment can be based on evidence other than direct documentary and testimonial evidence. Circumstantial evidence, indications, and presumptions may also be admitted when they lead to consistent conclusions with regard to the facts. As this Court has stated previously:

> [c]ircumstantial 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. (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 131; *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, para. 137).

50. As the Court has pointed out, the criteria for evaluation of evidence before an international human rights tribunal are broader, since determination of a State's international responsibility for human rights violation bestows greater flexibility on the Tribunal in assessing evidence delivered to it on the pertinent facts, on the basis of logic and experience (*Loayza Tamayo Case,* Judgment of September 17, 1997. Series C No. 33, para. 42; *Castillo Páez Case,* Judgment of November 3, 1997. Series C No. 34, para. 39).

51. In accordance with this critera, the Court attributes a high probatory value to the statements of the aforementioned witnesses, in the context and circumstances of a case of a forced disappearance with its attendant difficulties in which, owing to the very nature of the crime, proof essentially takes the form of indirect and circumstantial evidence.

VII
FACTS PROVEN

52. The Court now considers the following relevant facts, which it finds to be established on the basis of the arguments of the State and the Inter-American Commission and the documentary and personal evidence delivered in the instant case:

(a) On March 26, 1985, Mr. Nicholas Blake, a journalist, and Mr. Griffith Davis, a photographer, both United States citizens residing in Guatemala, set off from Huehuetenango to San Juan Ixcoy, then walked to the small village of El Llano, arriving there on March 28 or 29, 1985. There they were questioned by Mario Cano, Commander of the El Llano Civil Self-Defense Patrol, who sought instructions from officers of the Las Majadas military garrison and ordered members of the civil patrol to take them to the border with El Quiché, telling them, *"you can kill them if you wish."* Mr. Nicholas Blake and Mr. Griffith Davis were immediately taken by the patrols to a place known as Los Campamentos where they were killed and their bodies thrown into the undergrowth and covered with tree trunks (cf April 17, 1997 testimony of Justo Victoriano Martínez-Morales; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17,

1997 testimony of Samuel Blake; video recording of Mr. Samuel Miller's May 14, 1993 interview with Mr. Justo Victoriano Martínez-Morales; June 1988 statement by Justo Victoriano Martínez-Morales; statement by Justo Victoriano Martínez-Morales delivered in Huehuetenango; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; document of April 22, 1985, from the Embassy of the United States of America in Guatemala to the Secretary of State with reference to the travel of Embassy officials to Huehuetenango and El Quiché; note of February 19, 1986, from Mr. William L. Ball, III, to Senator Cohen; document of March 1990 from the Embassy of the United States of America in Guatemala addressed to the Secretary of State; letter of December 30, 1998, from Martha L. Sardiñas to Mr. Samuel Blake; and map of the road taken by Mr. Nicholas Blake and Mr. Griffith Davis in March 1985).

(b) Mr. Nicholas Blake and Mr. Griffith Davis remained disappeared from March 28 or 29, 1985, until the dates on which their remains were discovered: Mr. Griffith Davis' on March 16, 1992, and Mr. Nicholas Blake's on June 14, 1992 (*cf.* July 18, 1992, Anthropological Forensic Report issued by the Smithsonian Institute; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr. delivered in Washington, D.C.; and June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala).

(c) In April 1985, Ms. Metchtild Lindken, wife of Mr. Griffith Davis, and Ms. Lori Legator and Mr. Michael Shawcross, friends of the Blake family, established contact with U.S. Embassy officials who, in turn, communicated with Guatemalan military authorities in the Huehuetenango and El Quiché Departments informing them that Mr. Nicholas Blake and Mr. Griffith Davis were lost or disappeared, and seeking assistance in locating them (*cf.* April 17,

1997 testimony of Ricardo Roberto; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement of Richard R. Blake, Jr., delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; and note of February 19, 1986, from Mr. William L. Ball, III, to Senator Cohen).

(d) Beginning 1985, Mr. Nicholas Blake's relatives made a number of journeys to Guatemala. They met with U.S. Embassy officials and Guatemalan civilian and military authorities in an effort to discover Mr. Nicholas Blake's whereabouts. U.S. Embassy officials also investigated what had happened to Mr. Nicholas Blake and Mr. Griffith Davis (*cf.* April 17, 1997 testimony of Ricardo Roberto; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; Anthropological Forensic Report of July 18, 1992, issued by the Smithsonian Institute; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; note of February 19, 1986, from Mr. William L. Ball, III, to Senator Cohen; document of June 1988 from the U.S. Embassy in Guatemala addressed to the Secretary of State; document of April 18, 1989, from the United States Consulate in Guatemala to the Ambassador to Guatemala; March 1990 documents from the U.S. Embassy in Guatemala to the Secretary of State; November 1989 documents from the U.S. Embassy in Guatemala to the Secretary of State; April 1985 document from the U.S. Embassy in Guatemala addressed to the Secretary of State; and December 30, 1988 letter from Martha L. Sardiñas to Mr. Samuel Blake).

(e) In August 1987, Felipe Alva, Army Commandant and Chief of the Civil Patrols in the area, according to statements not refuted by the State, issued instructions, which were carried out by members of the El Llano Civil Patrol, to burn and bury the bodies of Mr. Nicholas Blake and Mr. Griffith Davis (*cf.* April 17, 1997 testi-

mony of Justo Victoriano Martínez-Morales; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; June 1988 statement by Justo Victoriano Martínez-Morales; statement by Justo Victoriano Martínez-Morales delivered in Huehuetenango; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; October 1993 statement by Samuel Blake delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; and January 1986 document from the U.S. Embassy in Guatemala to the Secretary of State).

(f) Mr. Justo Victoriano Martínez-Morales conducted a private investigation of the facts relating to the detention, disappearance and death of Mr. Nicholas Blake and Mr. Griffith Davis. During the investigation, around September 1987, he discovered the place where Mr. Nicholas Blake's and Mr. Griffith Davis' remains had been concealed. He also discovered that during August of that year that the persons responsible for the murders had disinterred the remains and taken them to be cremated (*cf.* April 17, 1997 testimony of Justo Victoriano Martínez-Morales; April 17, 1997 of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; June 1988 statement by Justo Victoriano Martínez-Morales; video recording of Mr. Samuel Miller's May 14, 1993 interview with Justo Victoriano Martínez-Morales; statement by James Ellisen; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; and June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala).

(g) In May 1988, Samuel and Richard R. Blake, Nicholas Blake's brothers, met with Mr. Justo Victoriano Martínez-Morales, who informed them that the El Llano Civil Patrol had murdered Mr. Nicholas Blake and Mr. Griffith Davis and been ordered by the Army to burn and conceal their bodies. Later, in May 1989, Mr. Martínez-Morales photographed two of the Civil Patrol members who had allegedly killed Mr. Nicholas Blake and Mr. Griffith Davis (*cf.* April 17, 1997 testimony of Justo Victoriano Martínez-Morales;

April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; April 17, 1997 testimony of Ricardo Roberto; June 1988 statement by Justo Victoriano Martínez-Morales; video recording of Mr. Samuel Miller's May 14, 1993 interview with Justo Victoriano Martínez-Morales; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; photographs of Candelario López-Herrera and Mario Cano taken by Justo Victoriano Martínez-Morales in May 1989; June 1989 document from the U.S. Embassy in Guatemala to the Secretary of State; August 1989 document from the U.S. Embassy in Guatemala to the Secretary of State; September 1989 document from the U.S. Embassy in Guatemala to the Secretary of State).

(h) In January 1992, Felipe Alva, Army Commandant of Huehuetenango and Chief of the area's Civil Patrols, met with Michael Shawcross and members of the Blake family and told them that he could recover the remains of Mr. Nicholas Blake and Mr. Griffith Davis for a fee. On March 16, 1992, Army Commandant Felipe Alva delivered two boxes containing earth and fragments of bone and teeth to Michael Shawcross in exchange for money. The boxes were subsequently delivered to members of the Blake family (*cf.* April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; Anthropological Forensic Report of July 18, 1992 issued by the Smithsonian Institute; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; March 1990 document from the U.S. Embassy in Guatemala to the Secretary of State; April 3, 1990 letter from the U.S. Embassy in Guatemala to Samuel Blake; June 1990 document from the U.S. Embassy in Guatemala to the Secretary of State).

(i) Subsequently, forensic experts Douglas Owsley and John Verano, of the Smithsonian Institute in Washington, D.C., issued a report on the investigation, entitled "Forensic Case SI923", indi-

cating that the boxes delivered by Army Commandant Felipe Alva contained the partial remains of two persons, but only Mr. Griffith Davis' were identified (*cf.* Forensic Report of July 18, 1992, issued by the Smithsonian Institute; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr. delivered in Washington, D.C.; and June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala).

(j) On May 19, 1992, Army Commandant Felipe Alva signed a "contract" under which members of the Blake family would pay him U.S. $10,000 (ten thousand United States dollars) in total after the remains obtained had been identified as those of Mr. Nicholas Blake and Mr. Griffith Davis. He also stipulated that neither the Blake family nor the Davis family could take any action to prosecute the El Llano Civil Patrols who had killed Nicholas Blake and Griffith Davis (*cf.* contract of May 19, 1992 signed by Felipe Alva, Army Commandant, Chiantla region, Huehuetenango, Guatemala; April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; and June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala).

(k) On June 11 and 12, 1992, Army Commandant Felipe Alva, Mr. Michael Shawcross, members of the Blake family, forensic experts, diplomatic observers, and an officer of the Guatemalan Army went to various places in the area around El Llano, where Army Commandant Felipe Alva claimed the remains of Mr. Nicholas Blake and Mr. Griffith Davis were located, but they were not found (*cf.* April 17, 1997 testimony of Richard R. Blake, Jr.; Anthropological Forensic Report of July 18, 1992, issued by the Smithsonian Institute; October 1993 statement of Samuel Blake delivered in Washington, D.C.; October 1993 statement of Richard R. Blake, Jr., delivered in Washington, D.C.; and June 14, 1993 statement of Michael Shawcross delivered in Antigua, Guatemala).

(l) On June 14, 1992, the same group of persons traveled, accompanied by Lieutenant Colonel Otto Noack-Sierra, who was assisting with the investigation, to a place where Army Commandant Felipe Alva claimed the remains of Mr. Nicholas Blake could be found. However, they were not located. That same day, Lieutenant Colonel Noack went to El Llano and returned with a member of the civil patrol from the area, who indicated the site where the remains were actually found. The remains were subsequently identified by forensic experts Douglas Owsley and John Verano of the Smithsonian Institute as those of Mr. Nicholas Blake (*cf.* April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; Anthropological Forensic Report of July 18, 1992, issued by the Smithsonian Institute, photographs of the site where the remains of Mr. Nicholas Blake and Mr. Griffith Davis were buried; photograph of the patrol member who indicated the spot where the remains were found; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; and June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala).

(m) On August 21, 1992, the Registrar General of the Village of Chiantla in the Department of Huehuetenango issued Mr. Nicholas Blake's death certificate establishing March 29, 1985, as the date of death (*cf.* August 21, 1992 death certificate of Nicholas Blake; April 17, 1997 testimony of Richard R. Blake, Jr., October 1993 statement by Samuel Blake delivered in Washington, D.C.; and October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.).

(n) As of the date of this judgment, the State has not yet completed the investigation of the facts, which began on June 26, 1985, nor has it punished those responsible for Mr. Nicholas Blake's death (*cf.* April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; April 17, 1997 testimony of Ricardo Roberto; April 17, 1997 testimony of Justo Victoriano Martínez-Morales; March 1990 document from the U.S. Embassy

in Guatemala to the Secretary of State; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; statement by Justo Victoriano Martínez-Morales delivered in Huehuetenango; photographs of Candelario López-Herrera and Mario Cano taken by Justo Victoriano Martínez-Morales in May 1989; June 1988 document from the U.S. Embassy in Guatemala to the Secretary of State; August 1989 document from the U.S. Embassy in Guatemala to the Secretary of State; March 1990 document from the U.S. Embassy in Guatemala to the Secretary of State; November 1989 document from the U.S. Embassy in Guatemala to the Secretary of State; April 1990 document from the U.S. Embassy in Guatemala to the Secretary of State; and the note of April 3, 1990, from the U.S. Embassy in Guatemala to Samuel Blake).

(o) Over more than a seven year period, from 1985 to 1992, members of the Blake family made numerous attempts to investigate the facts surrounding Mr. Nicholas Blake's detention, disappearance, death and whereabouts. They met with officials of the U.S. Embassy in Guatemala, with Guatemalan civil and military officials, including the President of the Republic of Guatemala, the President's National Security Adviser, the Guatemalan Human Rights Ombudsman, the Chairman of the Joint Chiefs of Staff, the Head of Military Intelligence, the Commander of Military Zone 19, the Commander of Military Zone 20, the Commander of the Las Majadas Garrison, army colonels and generals, and chiefs and members of the Huehuetenango and El Quiché Civil Patrols. The State concealed Mr. Nicholas Blake's whereabouts and hindered his family's investigation; the patrolmen attempted to conceal the fact that they were members of the civil patrols, contradicted each other's statements about their actions, and concealed Mr. Nicholas Blake's remains after the discovery of those of Mr. Griffith Davis; military authorities refused to take up the case, claiming that Mr. Nicholas Blake had been seized by guerrillas; the Army was aware of the deaths shortly after they occurred and ordered the civil patrolmen allegedly responsible to be questioned, but patrol offi-

cials said that *"they* [could not] *locate the men or that they did not exist"*; one soldier, who had been assisting with the investigation and had claimed that civil patrols had been responsible, refused to continue cooperate after receiving threats; on several occasions army officials promised to issue a list of the civil patrolmen to the U.S. Embassy in Guatemala, but never did so; the U.S. Embassy in Guatemala gave photographs of the civil patrolmen allegedly responsible for the acts to army officials who promised to detain them, but they later denied ever receiving the photographs. These officials also claimed that they had searched the area; however, it was later discovered that the purpose of the search was not to locate Mr. Nicholas Blake's and Mr. Griffith Davis' remains (*cf.* April 17, 1997 testimony of Richard R. Blake, Jr.; April 17, 1997 testimony of Samuel Blake; April 17, 1997 testimony of Ricardo Roberto; April 17, 1997 testimony of Justo Victoriano Martínez-Morales; Anthropological Forensic Report of July 18, 1992, issued by the Smithsonian Institution; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; statement by Justo Victoriano Martínez-Morales delivered in Huehuetenango; June 14, 1993 statement by Michael Shawcross delivered in Antigua, Guatemala; photograph of the patrolman who indicated the place where the remains were found; April 1985 document from the U.S. Embassy in Guatemala to the Secretary of State; April 18, 1989 document from the Consulate to the United States Ambassador in Guatemala; June 1989 document from the U.S. Embassy in Guatemala to the Secretary of State; and March 1990 document from the U.S. Embassy in Guatemala to the Secretary of State).

(p) The Civil Defense Patrols (PACs) or Civil Defense Committees (hereinafter "the civil patrols") had an institutional relationship with the Army, were assisted and coordinated by the Ministry of National Defense, received funds, weapons, training and direct orders from the Army regarding their actions, and operated under its supervision (*cf.* Decree-Law 1986 of January 10, 1986, of the Head of State; Decree No. 143-96 of the Congress of the Republic of Guatemala of November 28, 1996; Peace

Agreements, 1996-1998; Agreement on the Strengthening of the Civil Authorities and Function of the Army in a Democratic Society of September 19, 1996; April 17, 1997 testimony of Ricardo Roberto; May 1984 article, "Self-Defense Patrols"; October 1993 statement by Samuel Blake delivered in Washington, D.C.; October 1993 statement by Richard R. Blake, Jr., delivered in Washington, D.C.; June 1988 statement by Justo Victoriano Martínez-Morales; and August 12, 1993 statement by Jennifer Schiemer delivered in Boston (*infra* paras. 75, 76, 77 and 78).

VIII
PRELIMINARY CONSIDERATION ON THE MERITS

53. Before embarking on the merits of the instant case, the Court deems it necessary to resume examination of the previous question of limitation of competence *ratione temporis*. In the judgment on the preliminary objections rendered on July 2, 1996, the Court decided that the acts of deprivation of Mr. Blake's freedom and his assassination were completed in March 1985, that those events could not *per se* be considered to be of a continuing nature, and that the Court was incompetent to decide on the State's responsibility for those acts.

54. In the aforementioned judgment, the Court also pointed out that, although some of the acts had been completed, their effects could be deemed to be continuing until such time as the victims' fate or whereabouts were determined. Inasmuch as in this case Mr. Nicholas Blake's fate or whereabouts were not known until June 14, 1992, after the date on which Guatemala accepted the contentious jurisdiction of this Tribunal, the Court considers itself competent to hear the case with regard to the possible violations which the Commission imputes to the State in connection with those effects and actions.

55. In the brief containing its final arguments, the Commission pointed out that the Court had decided in its judgment on preliminary objections - that in a forced disappearance case - the effects extend until such time as the disappearance is entirely solved and that the crime of forced disappearance is an indivisible whole inasmuch as it is a continuing or perma-

nent crime, which extends beyond the date on which the actual death occurred, provided that the death took place in the context of the disappearance. In the present case, the Guatemalan authorities, in addition to knowing that Mr. Nicholas Blake had been abducted and disappeared, also knew that he had been murdered. The Commission added that the obstruction of justice was aimed not only at hindering an investigation and affecting due process, but also at concealing Mr. Nicholas Blake's whereabouts and that, consequently, such conduct affected the right to life enshrined in Article 4 of the American Convention.

56. The Commission further alleged that if the Court maintained in its judgment that the right to life was not violated in a case such as this, it would be setting a precedent contrary to international human rights law and, moreover, would imply that in cases where detainees were disappeared, it would be wiser for the families not to investigate the whereabouts of their relatives.

57. The Commission also stated that the forced disappearance was corroborated by the testimonies and documents submitted; that in the *sub judice* case the Court is competent, *ratione temporis*, to decide on Mr. Nicholas Blake's forced disappearance which, although initiated before the date on which Guatemala accepted the contentious jurisdiction of the Court, extended in time beyond that recognition. It further pointed out that, with regard to the evidence, a great deal of direct evidence concerning the events had been submitted. According to the Commission, this evidence proved the participation of specific persons in the crime and, moreover, that these persons were agents of the State and members of the Army and civil patrols; that the civil patrols acted in direct coordination with military personnel and were institutionally dependent on the Army; and acted directly as State agents, both in the initial execution of the crime and in the actions to cover up the forced disappearance and encourage impunity.

58. The Commission pointed out in its application that, with regard to Mr. Nicholas Blake's disappearance, *"the continuous inaction on the part of the Government of Guatemala, which in the instant case continue*[d] *for more than ten years, involve*[d] *violations of many rights"* and that there were subsequent acts

which constituted specific violations, independent of those deriving from the forced disappearance.

59. In that connection, the State argued in the answer to the application that during a brief period on March 28, 1985, an ordinary, finite crime was committed. It therefore rejected the Commission's introduction into the field of international protection of human rights, aspects specific to criminal law, such as the concepts of sequence of crimes and continuing crimes. It considered out of order the Commission's argument that the effects of a completed crime continued and extended until such time as the *corpus delicti* was located.

60. The State also argued that the detention of Mr. Nicholas Blake and Mr. Griffith Davis, their transfer by the perpetrators to a remote spot for the crime to be committed, and the concealment of their bodies to hide material evidence are typical elements of common criminal acts such as aggravated homicide or murder, and not of human rights violations. Nor did it accept that the perpetrators' concealment of the bodies in order to hide material evidence, clues and traces of the crime should be considered a forced disappearance of persons, as the Inter-American Commission claims.

61. Guatemala also maintained that Mr. Nicholas Blake had not been intercepted by any agent of the State, taken to a place of detention, nor subjected there to cruel, inhuman or degrading treatment or torture, and, further, that he was not interrogated by any authority, nor forcibly or involuntarily disappeared or executed by the State.

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62. The Court notes that Article II of the Inter-American Convention on Forced Disappearance of Persons defines forced disappearance in the following terms:

> the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or

> groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

63. Article 17(1) of the United Nations Declaration on the Protection of All Persons from Forced Disappearance, of December 18, 1992, establishes that:

> [a]cts constituting enforced disappearance shall be considered a continuing offence as long as its perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

64. Article 201 TER of the Guatemalan Penal Code, as amended by Decree 33-96 of the Congress of the Republic, approved on May 22, 1996, stipulates that:

> [t]he crime of forced disappearance is committed by anyone who, by order or with authorization or support of State authorities, in any way deprives a person or persons of their liberty, for political reasons, concealing their whereabouts, refusing to reveal their fate or recognize their detention, as well as any public official or employee, whether or not they are members of the State security forces, who orders, authorizes, supports or acquiesces in such actions.

65. In other cases, the Court has stated that forced the disappearance of persons constitutes a multiple and continuing violation of a number of rights protected by the Convention. Forced disappearance also evinces a disregard of the duty to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention. (*Velásquez Rodríguez Case, supra* 49, paras. 155 and 158, and *Godínez Cruz Case, supra* 49 and paras. 163 and 166).

66. Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.

67. The Court considers Mr. Nicholas Blake's disappearance as marking the beginning of a continuing situation, and will decide about the actions and effects subsequent to the date on which Guatemala accepted the competence of the Court. At this point, the Court will first examine the question of imputability, in the context of the aforementioned continuing situation, and then will consider the various points concerning the merits raised in the application.

IX
IMPUTABILITY

68. In the judgment on preliminary objections, the Court decided that, as far as the merits of the case were concerned, it would determine whether the civil patrols should or should not be considered to be agents of the State and, consequently, to determine whether the acts indicated by the Commission could or could not be imputed to the State, or whether, on the contrary, they were common criminal acts.

69. During this proceeding, the Commission argued that the civil patrols acted as agents of the State and that they were involved in forced disappearances.

70. Concerning the nature of the civil patrols, the Commission pointed out that, under the law by which they were regulated, they were hierarchically subordinate to the Guatemalan Ministry of National Defense, and that such subordination to the armed forces was not merely statutory, but

de facto as well. The civil patrols *"received the training needed to perform their duties from the Army... the weapons they* [bore were] *the property of the Army... and weapons and munitions alike* [were] *controlled by the Army."*

71. The Commission adduced *"the close connection"* between the civil patrols and the State, highlighting a series of shared characteristics. It pointed out, first of all, that the State had indeed created the patrols as part of its counter-insurgency strategy, a fact corroborated by the studies prepared by the Commission, in particular its Annual Report for 1984-1985, and that they involved the rural and indigenous population in the armed conflict. Moreover, it indicated that they were supervised, trained and armed by the State and that Decree-Law 19-86 of January 10, 1986, had legally recognized the civil patrols after years of operation and described them as *"auxiliary forces coordinated by the Ministry of Defense."*

72. In this case, the Commission maintained that the El Llano Civil Patrol took orders directly from Guatemalan Army personnel, since the patrolmen sought and received instructions from the military personnel of the Las Majadas garrison when they detained Nicholas Blake (*supra* 52(a)).

73. The State rejected the argument that the members of the civil patrols were agents of the State and that it was responsible on the basis of that premise. It further stated that the civil patrols were voluntary community organizations that had sprung up in areas of conflict and that they were composed of inhabitants of those areas who wished to defend their lives, those of their families and their belongings from subversive elements. It pointed out that it was natural for those patrols to have close links with the Army in connection with the anti-subversion struggle, but that this did not imply that *"its members belong*[ed], *or* [performed] *the same functions as the Armed Forces and that they* [were] *agents of the Guatemalan State."*

74. The State declared that it did not grant members of the patrols any remuneration or social security benefits as it did to regular troops. It further stated that its members were not subject to military discipline and performed their patrol duties in their free time, when not engaged in their own work.

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75. The Court considers that, contrary to Guatemala's claims, the civil patrols in fact acted as agents of the State during the period in which the acts pertaining to the instant case occurred (*supra* 52. (p)). That view was confirmed by a mass of information and documentation available from various bodies, including international human rights oversight organs (Decree-Law 19-86 of January 10, 1986; Decree 143-96 of the Congress of the Republic of Guatemala of November 28, 1996; Peace Agreements, 1996-1998; Agreement on the Strengthening of the Civil Authority and Function of the Army in a Democratic Society, of September 19, 1996; *Persecution by Proxy: The Civil Patrols in Guatemala*, the Robert F. Kennedy Memorial Center for Human Rights, 1993; *Institutional Violence: The Civil Self-Defense Patrols in Guatemala*, the Robert F. Kennedy Memorial Center for Human Rights, 1994; *Civil Patrols in Guatemala*, an Americas Watch Report, 1988; *Closing the Space: Country Reports on Human Rights Practices*, U.S. Department of State, 1984-1985 and 1986; *Human Rights in Guatemala, May 1987-October 1988,* an Americas Watch Report, 1988, Chapter VI; *Amnesty International* Reports of 1984, 1985 and 1986; 1993 *Report of the Working Group on Enforced or Voluntary Disappearances*, United Nations Human Rights Committee; 1991 *Report of the Working Group on Enforced or Voluntary Disappearances*, United Nations Commission on Human Rights).

76. On the basis of the evidence examined and bearing in mind the arguments of the parties, the Court considers it proven that, at the time the events in this case occurred, the civil patrols enjoyed an institutional relationship with the Army, performed activities in support of the armed forces' functions, and, moreover, received resources, weapons, training and direct orders from the Guatemalan Army and operated under its supervision. A number of human rights violations, including summary and extrajudicial executions and forced disappearances of persons, have been attributed to those patrols (*supra* 52.(p)).

77. This institutional relationship was visible in the very decree creating these Civil Defense Committees (CDC), and in the 1996 Guatemala Peace Agreements, which established that the CDCs, *"including those previ-*

ously demobilized, would cease all institutional relations with the Guatemalan Army and would not be reassembled in a way that would restore that relationship" (not underlined in the original) (Agreement on the Strengthening of the Civil Authority and Function of the Army in a Democratic Society, para. 61). More particularly, Decree 143-96 of the Congress of the Republic of Guatemala of November 28, 1996, which rescinded Decree-Law 19-86, which had legally established the Civil Defense Committees, stated in one of its "Considering" that:

> the function of some civil self-defense patrols, now known as Voluntary Civil Defense Committees, had been perverted over the years... and that they had fulfilled missions belonging to the regular State organs, provoking repeated human rights violations by members of those committees (no underlining in the original).

78. As a consequence, the Court declares that the acquiescence of the State of Guatemala in the perpetration of such activities by the civil patrols indicates that those patrols should be deemed to be agents of the State and that the actions they perpetrated should therefore be imputable to the State.

X
CONCERNING ARTICLE 7

79. In its application the Commission claimed that Mr. Nicholas Blake had been arbitrarily abducted by the El Llano Civil Patrol. His detention had been effected without a warrant issued by a competent authority and without fulfillment the procedures enshrined in the domestic laws. Mr. Nicholas Blake had neither been told the reasons for his detention nor was he immediately taken before the competent authority to be tried within a reasonable time.

80. In its answer to the application, the State maintained that both Mr. Nicholas Blake and Mr. Griffith Davis had freely and voluntarily travelled to an area of conflict, despite the risks inherent in the lack of security in those areas. It affirmed that Mr. Nicholas Blake had not been intercepted by any State agent; taken to a place of detention; subjected to cruel, inhu-

man or degrading treatment or torture; questioned by any authority; nor forcibly or involuntarily disappeared or executed by the State.

81. In the brief containing its final arguments, the Commission maintained that Guatemala had violated the right to personal liberty to the detriment of Mr. Nicholas Blake, and that the violation continued until 1992, when he ceased to be disappeared.

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82. The Court points out that Mr. Nicholas Blake's detention, which led to his forced disappearance, was an act concluded on March 28 or 29, 1985, that is, before the date on which Guatemala accepted the jurisdiction of the Court. Inasmuch as the Court, in its July 2, 1996 judgment on preliminary objections, decided that it was only competent to decide on the effects and actions that occurred after the date on which Guatemala recognized its jurisdiction (March 9, 1987), it pronounces itself incompetent to decide on Mr. Nicholas Blake's detention pursuant to Article 7 of the American Convention.

XI
CONCERNING ARTICLE 4

83. With regard to the right to life, the Commission claimed that Mr. Nicholas Blake was a disappeared person from the time of his arrest by the El Llano Civil Patrol on March 28, 1985 until June 14, 1992, the date on which his remains were found. It also pointed out that Guatemala officially recognized Mr. Nicholas Blake's death on March 29, 1985, according to the certificate issued by the Registrar General of the Villa de Chiantla in the Department of Huehuetenango. According to the Commission, the State is responsible for Mr. Nicholas Blake's death, owing to the fact that

> the Commander of the El Llano Civil-Defense Patrol twice consulted the Las Majadas garrison before having the journalists escorted and his instruction was that "you can kill them if you wish" is con-

sistent with the Army's practice of having the patrol act as a strong-arm force and subsequently attributing to them responsibility for abuses in order to avoid international criticism of the Army.

84. According to the State's the answer to the application, Mr. Nicholas Blake's death was the result of a finite common crime, which cannot be imputed to the State and does not constitute a forced disappearance. It added that the arrest of Mr. Nicholas Blake and Mr. Griffith Davis, their transfer to an isolated spot to be murdered, and the concealment of their bodies to hide material evidence are typical of a common crime such as aggravated homicide or murder, and not the violation of human rights like the rights to life and personal liberty protected by the Convention, nor a violation of the general obligation of States under the Convention to respect the human rights recognized therein.

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85. This Court observes that, as shown in the above narration of proven acts, (*supra*, 52. (a) and (b)), there were two people who disappeared in the same circumstances, Mr. Nicholas Blake and Mr. Griffith Davis. Given that the remains of two people were found and that those of Mr. Griffith Davis were identified before Mr. Nicholas Blake's, the Court is surprised that the Commission did not use its authority to include Mr. Griffith Davis as an alleged victim in the application. Moreover, at the public hearing held before this Court on April 17, 1997, the Commission, in reply to a question from Judge Cançado Trindade, merely declared that Mr. Griffith Davis' relatives had not shown any interest in bringing an action before the Commission. Since the Commission did not use the authority established in Article 26(2) of its Rules of Procedure which enabled it to act *motu proprio* on the basis of any available information, even without an explicit petition by Mr. Griffith Davis' relatives, the Court concludes that it may rule only on the events that occurred in connection with Mr. Nicholas Blake.

86. The Court observes that Mr. Nicholas Blake's death, which occurred during his forced disappearance, was an act that was completed,

according to testimonial evidence and the death certificate (*supra* 52 (a) and (m)), on March 28 or 29, 1985, that is, before the date on which Guatemala accepted the competence of the Court. Since in its July 2, 1996 judgment on preliminary objections this Court decided that it only had the competence to rule on the effects and acts subsequent to the date of recognition of its jurisdiction (March 9, 1987), this Tribunal considers that it may not rule on Mr. Nicholas Blake's death pursuant to Article 4 of the American Convention.

XII
VIOLATION OF ARTICLE 8(1)

87. On April 16, 1997, Guatemala submitted a brief in which it accepted human rights responsibility deriving from the unwarranted delay in the administration of justice until 1995. It went on to say that its acceptance was independent of the outcome of the case in the domestic courts (*supra* 27).

88. According to the Commission, the denial of justice in this case derives, *inter alia,* from the violation of the right to effective remedy, from the obstruction and delay of the relevant criminal process, since more than ten years have elapsed since Mr. Nicholas Blake's death and the case is still pending in the domestic courts.

89. The Court considers that, given the Guatemalan State's partial acceptance of responsibility until 1995 in this case, all the facts relating to the delay of justice until that time are presumed to be true. Moreover, the Court has no reason to restrict itself to that year, because the obstruction of justice has effects up to the present time since Mr. Nicholas Blake's murder and the case are still pending in the domestic courts. Therefore, Guatemala's responsibility continues and cannot be restricted to the aforementioned year.

90. The Court now examines the question of merits raised by the Commission in connection with Article 8(1) of the American Convention, which provides that

> Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

And Article 1(1) of the Convention establishes that

> 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.

91. The Commission pointed out that Guatemala's delay violated the rights recognized in Articles 25 and 8(1). The Convention bases the right to a trial *"within a reasonable time"* on the need to avoid unwarranted delays that translate into deprivation or denial of justice. In the specific case, Guatemala failed to fulfill the obligation to provide simple, prompt and effective judicial recourse to Mr. Nicholas Blake's relatives. This was due to the fact that as the Guatemalan authorities impeded the clarification of the cause of Mr. Nicholas Blake's death and disappearance, and delayed the investigation of the facts and the institution of any judicial proceedings. At the same time, army officers denied to the family and to diplomatic officials of the Government of the United States of America that the Army was aware of the circumstances of the case. Mr. Nicholas Blake's relatives were deprived of the right to an independent judicial process within a reasonable time and were consequently prevented from obtaining fair compensation. The Commission observed that in Guatemala the possibility of initiating a compensatory action was not necessarily linked to the criminal process but that, however, such action must be filed against a specific person or body in order to establish responsibility for the alleged facts and the payment of the appropriate indemnities. The State's obstruction and delay of the investigation made it impossible for such a liability action to be brought in the case.

92. The Commission argued that, as had been decided in the Velásquez Rodríguez Case, it is the responsibility of the State to conduct serious judicial investigations into human rights violations committed on its territory and not the responsibility of private persons. In the instant case, the actions of Mr. Nicholas Blake's relatives in the investigation were essential in given State's failure to investigate it. Making the situation even more serious was the fact that the investigation was hampered by State agents. Mr. Nicholas Blake's relatives spoke to Guatemalan civilian and military officials for the specific purpose of discovering what had occurred; however, no serious judicial investigation was conducted into the facts surrounding the disappearance.

93. The Commission maintained that in this case there was a failure to comply with the provision of the Convention that established that a hearing must take place within a reasonable time, as recognized by Guatemala on April 16, 1997. According to the Commission, Mr. Nicholas Blake's forced disappearance began twelve years ago, no judgment has yet been issued, and it was only in 1997 that a person allegedly implicated in the events was detained, although the Guatemalan authorities were in possession of the pertinent information since the previous decade. It further stated that the violation of Article 8 of the Convention goes beyond the problem of reasonable time, inasmuch as justice was also obstructed by the State authorities, who deliberately concealed the information they had received.

94. The Commission pointed out that the ordinary courts in Guatemala lacked competence to try army personnel and that *habeas corpus* proceedings were ineffective. The prosecutors and judges who were investigating grave human rights violations received constant threats against their lives and those of their relatives. Moreover, it pointed out that as a result of the climate of impunity generated by the deficiencies of the judicial system that existed in Guatemala at the time of Mr. Nicholas Blake's disappearance, the victims' relatives lacked access to prompt and effective judicial recourse since Guatemala, through its agents' repeated actions, abducted and disappeared Mr. Blake to allow the crime committed to go unpunished. The Guatemalan authorities obstructed the investigations which sought to shed light on the victim's death and disappearance.

95. The State denied statements to the effect that Mr. Nicholas Blake was intercepted by agents of the State, taken to a place of detention, subjected to cruel, inhuman or degrading treatment or torture, interrogated by any authority, forcibly or involuntarily disappeared or executed in secret by the State.

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96. This Tribunal considers that Article 8(1) of the Convention must be given a broad interpretation based on both the letter and the spirit of this provision, and must be appreciated in accordance with Article 29 (c) of the Convention, whereby none of its provisions shall be interpreted as precluding other rights or guarantees that are inherent in the human personality or derived from representative, democratic form of government.

97. Thus interpreted, the aforementioned Article 8(1) of the Convention also includes the rights of the victim's relatives to judicial guarantees, whereby "[a]*ny act of forced disappearance places the victim outside the protection of the law and causes grave suffering to him and to his family*" (no underlining in the original) (United Nations Declaration on the Protection of All Persons Against Enforced Disappearance, Article 1(2)). Consequently, Article 8(1) of the American Convention recognizes the right of Mr. Nicholas Blake's relatives to have his disappearance and death to effectively investigated by the Guatemalan authorities to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment, where appropriate, meted out; and to be compensated for the damages and injuries they sustained. Accordingly, the Court declares that Guatemala violated Article 8(1) of the American Convention, to the detriment of Mr. Nicholas Blake's relatives, in relation to Article 1(1) of the Convention.

XIII
CONCERNING ARTICLE 25

98. According to the Commission, Mr. Nicholas Blake's relatives *"were prevented from making use of* [the judicial guarantees enshrined in Article 25 of the Convention] owing to the inoperative of the courts of justice...",

inasmuch as those guarantees *"were completely ineffective"* even though they are established in Guatemalan legislation.

99. The State noted that a criminal trial initiated on June 26, 1985 was pending in the Justice of Peace of the Municipality of San Juan Ixcoy, and was based on the National Police report at the time of Mr. Nicholas Blake's and Mr. Griffith Davis' disappearance; that on July 10, 1985, the file of the case had been referred to the Magistrates' Court of Chiantla, which, in its turn, referred it to the Second Court of First Criminal Instance of the Department of Huehuetenango, and that on August 22, 1995, that Court had issued a warrant for the arrest of Mario Cano, Daniel Velásquez, Hipólito Ramón García, Vicente Cifuentes, Candelario López-Herrera, Emeterio López and Ezequiel Alvarado in connection with this case. It further pointed out that Mr. Vicente Cifuentes-López, considered to be the main material author of the act, had been arrested on March 12, 1997 (*supra* 27).

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100. The Court observes that during the public hearing held at its seat, Justo Victoriano Martínez-Morales testified that it was not until 1995 that he was summoned to testify in this case before the Department of the District Attorney ("Ministerio Público"). Mr. Richard R. Blake, Jr., also testified that no one had been investigated or detained for the acts and that those involved had not been interrogated by the State. Moreover, in response to Judge *ad hoc* Novales-Aguirre, Mr. Richard R. Blake, Jr., declared that they had never met with or talked to a representative of the Judiciary about this case, because the State alleged that the area in question was controlled by the army and that it was better to deal directly with the military officials.

101. Article 25(1) of the Convention provides that everyone has the right to simple, prompt and effective recourse to a competent court or tribunal for protection against acts that violate his or her fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

102. The Court has stated out that this provision

> is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.
>
> Article 25 is closely linked to the general obligation contained in Article 1(1) of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation. The purpose of habeas corpus is not only to guarantee personal liberty and humane treatment, but also to prevent disappearance or failure to determine the place of detention, and, ultimately, to ensure the right to life (*Castillo Páez Case, supra* 50, paras. 82 and 83; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, para. 65).

103. Moreover, that article, which embodies the duty of the State to provide effective internal remedies, is an important means of determining the whereabouts of persons deprived of their liberty and of preventing forced disappearance in any circumstances (United Nations Declaration on the Protection of All Persons Against Enforced Disappearance, Article 9).

104. However, this Court considers that in the instant case, as Mr. Richard R. Blake, Jr., explicitly acknowledged, Mr. Nicholas Blake's relatives did not initiate any judicial action, such as the remedy of habeas corpus, to establish the disappearance and secure, if possible, Mr. Nicholas Blake's freedom. That being the case, this Tribunal cannot rule that the victim's relatives were deprived of the judicial protection referred to in this provision, because the requirement necessary for the application of Article 25 of the Convention was not met.

XIV
CONCERNING ARTICLES 13 AND 22

105. The Commission alleged the violation, to the detriment of Mr. Nicholas Blake, of the rights enshrined in Articles 13 (Freedom of

Thought and Expression) and 22 (Freedom of Movement and Residence) of the Convention. The Court deems the alleged violations to be an indirect consequence of Mr. Nicholas Blake's proven disappearance and death, in accordance with the criterion established in previous cases (*Castillo Páez Case, supra* 50, para. 86; *Suárez Rosero Case, supra* 102, para. 102). The Court further considers the reasons adduced for the existence of the violations denounced to be unfounded.

XV
CONCERNING ARTICLE 51(2)

106. The Commission requested that the Court rule that Guatemala violated Article 51(2) of the Convention by refusing to *"comply with the Commission's recommendations contained in the Report 5/95"*.

107. The State pointed out that the Commission submitted this case for a decision by the Court and that, consequently, it did not prepare the second report referred to in Article 51 of the American Convention, so that it cannot accuse Guatemala of violating Article 51(2) of the Convention.

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108. On this point, the Court, in application of the criterion already established (*Loayza Tamayo Case, supra* 50, para. 82), concludes that violation of Article 51(2) of the Convention may not be raised in a case which, like this one, has been submitted for the consideration of the Court, in as much as the report referred to in that article does not exist. However, in connection with Article 50, the Court has already indicated that

> Article 33 of the American Convention provides that the Inter-American Commission is an organ which is competent, together with the Court, *"to hear cases relating to the fulfillment of the commitments undertaken by the States Parties"*, so that, with ratification of that Convention the States Parties undertake to heed the recommendations approved by the Commission in its reports (*Loayza Tamayo Case, supra* 50, paras. 80 and 81).

XVI
VIOLATION OF ARTICLE 5

109. Article 5 of the American Convention establishes that:

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
>
> 2. No one should 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.
>
> 3. Punishment shall not be extended to any person other than the criminal.
>
> 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
>
> 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
>
> 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

110. In the brief containing its final arguments, the Commission claimed that the forced disappearance directly impaired Mr. Nicholas Blake's physical integrity and the mental integrity of his relatives, who lived through a tragic and protracted experience caused by his disappearance. The family made more than twenty-one trips to Guatemala, more than half of them after March 1987. During those visits they did not receive any cooperation from the Guatemalan authorities.

111. In its brief of November 26, 1997, the Commission invoked the violation of Article 5 of the Convention (*supra* 34). The Government, in

its brief of December 10, 1997, replied to that allegation that it had already been settled in the judgment on preliminary objections (operative paragraph 1) of the Court (*supra* 35).

*
* *

112. The Court considers that the fact that the allegation of violation of Article 5 of the Convention was not included in the brief containing the Commission's application, but only in its final pleading, does not prevent this Tribunal from considering that allegation in the merits of this case, in accordance with the principle of *jura novit curia.*

113. In the course of the public hearing held at the seat of the Court on April 17, 1997, Mr. Samuel Blake testified that ever since his brother's disappearance he has had a serious depression, from which he was still suffering, and had spent a great deal of money on psychiatric consultations and on medication; he went on to say that every day of his life was a veritable struggle and that he has had great difficulty in overcoming the situation. He said that his brother's disappearance had seriously affected the lives of the entire family.

114. This matter raised by the Commission may only be examined in connection with Mr. Nicholas Blake's relatives, since the violation of those relatives' mental and moral integrity is a direct consequence of his forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate.

115. Moreover, the burning of Mr. Nicholas Blake's mortal remains to destroy all traces that could reveal his whereabouts is an assault on the cultural values prevailing in Guatemalan society, which are handed down from generation to generation, with regard to respecting the dead. The burning of the victim's remains by members of the civil patrol on the orders of a member of the Guatemalan army (*supra* para. 57 (e), (f) and (g)) increased the suffering of Mr. Nicholas Blake's relatives.

116. Consequently, the Court considers that such suffering, to the detriment of the mental and moral integrity of Mr. Nicholas Blake's relatives, constitutes a violation by the State of Article 5 of the Convention in relation to its Article 1(1).

XVII
APPLICATION OF ARTICLE 63(1)

117. Article 63(1) of the American Convention establishes that

> [i]f 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 shall 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.

118. The Commission requested the Court to determine that Guatemala *"must pay full compensation to Nicholas Chapman Blake's relatives for the grave material, and moral, damage sustained as a consequence of the multiple violations of rights protected by the Convention, and for the enormous costs incurred by his relatives to establish the victim's whereabouts"*.

119. In its final pleadings, the Commission repeated that compensation for Mr. Nicholas Blake's disappearance and death must be fixed by the Court, taking into account the suffering caused to his relatives by the events.

120. In its final pleadings, Guatemala, in consideration of the testimony of Richard R. Blake, Jr., Justo Victoriano Martínez Morales, Ricardo Roberto and Samuel Blake and of its recognition of its delay of justice in this case, requested the Court to render the judgment on the merits and to expedite the reparations proceeding in the case, an agreement on reparations which it had previously sought to establish with the victim's relatives or with the Commission when it accepted partial responsibility (*supra* para. 27).

*
* *

121. The Court considers that Guatemala must use all the means at its disposal to investigate the facts denounced and to punish those responsible for what happened to Mr. Nicholas Blake.

122. It is obvious that in the instant case the Court cannot rule that the injured parties be guaranteed enjoyment of their rights that were breached. However, it is proper for reparation to be made for the consequences of the situation that constituted violations of specific rights in this case, which must include fair compensation and reimbursement of the costs incurred by the relatives in their representations in connection with this case.

123. In order to determine the reparations, the Court will need sufficient information and probative evidence, for which purpose it orders that the appropriate procedural phase be opened, and empowers its President to adopt in due course such measures as may be necessary to that end.

XVIII

124. Now, therefore

THE COURT,

by seven votes to one,

1. declares that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the judicial guarantees set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 96 and 97 of the present judgment,

Judge Montiel-Argüello dissenting;

unanimously,

2. declares that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the right to humane treatment enshrined in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 112, 114, 115 and 116 of this judgment;

unanimously,

3. declares that the State of Guatemala is obliged to use all the means at its disposal to investigate the acts denounced and punish those responsible for the disappearance and death of Mr. Nicholas Chapman Blake;

unanimously,

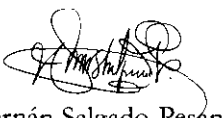
4. declares that the State of Guatemala is obliged to pay a fair compensation to the relatives of Mr. Nicholas Chapman Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process;

unanimously,

5. orders that the reparations stage be opened.

Judge Montiel-Argüello informed the Court of his Dissenting Opinion, Judge Cançado Trindade of his Separate Vote, and Judge Novales-Aguirre of his Concurring Opinion, all of which are attached to this judgment.

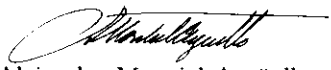
Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, this twenty-fourth day of January 1998.



Hernán Salgado-Pesántes
President

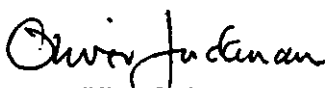
Antônio A. Cançado Trindade

Héctor Fix-Zamudio

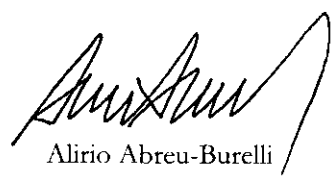


Alejandro Montiel-Argüello

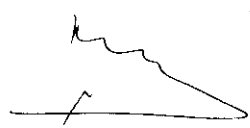
Máximo Pacheco-Gómez



Oliver Jackman



Alirio Abreu-Burelli



Alfonso Novales-Aguirre
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary