HAVING SEEN:

1. That on July 15, 1988, Mr. Salvador Jorge Blanco denounced to the Inter-American Commission on Human Rights the violation of his right to due process, to judicial protection, to security and personal liberty, nondiscriminatory treatment on political grounds, to personal honor and dignity, and freedom from ex post facto laws, and freedom of movement, recognized under Articles 8, 25, 7, 11, 24, 9, and 22 of the American Convention on Human Rights. These violations were, he said, attributable to judicial authorities in the Dominican Republic.

2. The claimant further noted that the underlying motive for these trials was in fact political persecution in the guise of more than seven lawsuits, one of which involved more than 38 criminal charges against him, and especially, the decision handed down by the judicial authorities of the Dominican Republic aimed at initiating trial proceedings against him in absentia.

3. The claimant states that he tried every available recourse afforded under the law of the Dominican Republic to ensure that he would be tried by an independent and impartial court, with all the remedies required under the Constitution and the American Convention itself. The claimant further added in his account that he was not expecting the Commission to rule on the merits of the case; what he was asking for was respect for due process and the rights appurtenant to that process.

4. In brief, the claim states the following:

a. In relation to the first charge, a case file exists, arising out of the complaint by Dr. Marino Vinicio Castillo, of October 3 and 27, 1986, which concerns charges stemming from purchases made by the Armed Forces and the National Police from Juan Tomas Peca Valentin or the companies of Juan Tomas Peca Valentin, which a Military Junta considered to be overpriced. That Junta forwarded the file to the Military Tribunal, as reported textually in the national newspapers Listin Diario and Ultima Hora on January 7 and 8, 1987. Subsequently, the Government engineered to alter the published report and the case was referred to the civilian justice system, in open violation of Article 7 of the Code of Military Justice, which provides that all infractions attributed to active or retired military personnel come under the jurisdiction of the military courts; in this case, the former Secretary of the Armed Forces, the former Chief of National Police, and other officers are being accused along with myself and two businessmen.

Thus, the case was referred to the Criminal Trial Court of the Second Judicial Division of the National District. I repeatedly asked for a trial with full guarantees and that I be informed of the complaint and the determination of the Military Junta, as is mandatory in the phase prior to the secret investigative proceedings (these requests were, however, turned down). I have maintained since then that, in accordance with Article 8.2.b of the American Convention on Human Rights, every person has the right to "prior notification in detail to the accused of the charges against him."

I should note at this point that in the Dominican Republic, the preliminary criminal investigation is secret. The secrecy ends from the time that the judge of first instance is empowered to hear the case publicly. The judge of the Seventh Criminal Division, empowered to hear the case of the purchases by the Armed Forces and National Police, has yet to proceed to convey the records. Clearly, with respect to other case files that are in the investigative phase, that secrecy remains in effect. What is public are the documents of the report, complaint or of the charge that the public prosecutor receives beforehand and must make known to the accused for elementary reasons stemming from the right to defense. This has not been done in my case.

On January 28, I appealed, before the Criminal Division of the Court of Appeal of the National District, the judgment of the 4th Criminal Division of January 26, 1987, denying me that report. The Court of Appeal upheld the decision of the lower court through a Judgment dated May 4, 1987. I appealed that decision on May 5. Nonetheless, the Supreme Court of Justice has not been able to take cognizance of that appeal because the Court of Appeal has not yet given grounds for the judgment.

On August 4, 1987 and on December 14, 1987, the examining magistrate in question and the public prosecutor issued, respectively, the decision and the indictment, which alleged 38 criminal violations of the Constitution of the Republic, the Code of Criminal Law and Law 672 of July 29, 1982.

The basis for these charges is, as follows:

I. Constitution of the Republic

a. Powers of the President - Article 55.3 (collection and investment of national revenues).

b. Prohibition from granting titles of nobility or hereditary distinctions - Article 100.

c. Unlawful enrichment - Article 102.

d. Rules concerning expenditures of public funds - Article 115.

II. Code of Criminal Law

a. Complicity - Articles 59, 60, 61, 62, and 63.

b. Crimes and violations of the Constitution (infringements upon freedom) - Article 114.

c. Forgery of public documents - Articles 145, 146, 147, and 148.

d. Breach of trust - Articles 166 and 167.

e. Embezzlement - Articles 169, 170, 171, 172, and 173.

f. Extortion - Article 174.

g. Offenses by public officials involved in matters that are incompatible with their status - Articles 175 and 176.

h. Corruption or bribery - Articles 177, 178, 179, 180, 181, 182, and 183.

i. Association of malefactors - Article 265.

j. Fraud - Article 405.

k. Misuse of trust - Article 408.

l. Offenses by suppliers and providers - Articles 431, 432, and 433.

III. Morals Code, Law 672

a. Obligation to denounce acts of corruption - Article 7

Enclosed herewith is a detailed analysis of each of the charges, the legislation governing these and the defense. I might note that although my innocence and the findings of the trials are not being aired before the Commission, I am making the report to reveal to the Commission the groundless nature of the charges and the grounds for my own innocence.

I should like to state, however, that I am not, nor have I been Mr. Leonel's associate. I am completely divorced from his business dealings and his business affairs. We are old friends; he participated in, or, supported my electoral campaigns. When the examining magistrate interrogated me on April 29, 1987,

despite the fact that I was unfamiliar with the complaint since they repeatedly refused to convey it to me, I had this, among other things, to say to him, and I did so with utter spontaneity:
"... Mr. Leonel Almonte's assets have absolutely nothing to do with me; by the same token, the little that I own, with my wife, comes from nowhere other than my work ..." (Page 26 of the interrogation duplicated in Appendix No. 2).
My net worth is set forth in the statement I made at the end of my term on August 16, 1986. It is set forth in the minutest detail. The mortgage on my home in Santiago is with the Banco Popular Dominicano. The mortgage on my house in Santo Domingo is with the Banco Dominicano de Construccion.
I have never intervened in the purchase operations of military or police institutes, nor have I given instructions directly or indirectly in that regard. In the above-mentioned interrogation before the Examining Magistrate on April 29, 1987 (page 26), I said the following:
... and I challenge any of the military who, in the course of my government, has or have held high office involving the handling of money if at any time they have shared or given me so much as a pinhead.
That was the same conduct I observed vis-a-vis the other State institutions. The public letter of February 4, 1987, signed by the former State Secretaries, former Administrators and former General Directors offers the best example. It states the following:
The power to receive, evaluate and select price quotations from business establishments for the purchase of equipment and products was always exclusively in the hands of the State Secretaries and/or General Directors, through the respective purchase departments, of course. We the officials of the Gobierno de Concentracion Nacional exercised fully and freely, during Dr. Salvador Jorge Blanco's term, the authority conferred upon the offices we held by the Constitution of the Republic, the Organic Law of the State Secretariats and other laws and regulations in effect.
Clearly, these statements are not consistent with those of certain persons accused of violating Article 114 of the Code of Criminal Law of the Dominican Republic. By merely copying the last paragraph of that Article, the reason for this becomes clear:
Should public servants, government agents or representatives, however, justify that they have acted upon the order of superiors to whom they owed obedience by virtue of hierarchy for matters in their competence, they shall be exempt from the penalty, which shall in this case be applied to the superiors who gave the order.
The careful execution of Fund 1401 during my government's four years falls within the same category of my functions in office. That Fund totals RD$939,374,824.48, as may be seen from the table published on February 2, 1987 (Appendix # 2).

b. Prohibition to leave the country

Later, on December 23, 1986, the Office of the Attorney General of the Republic issued a decree, based on Law 200 of March 27, 1964, prohibiting me from leaving the country, without complying with even the minimum requirements that that very law lays down for decreeing the exit restriction. That law establishes in its Article 1 that the prohibition must be based on the "existence of judicially imposed penalties or on police immigration and sanitation laws" and proceeds to provide for, exceptionally, the possibility of preventing the "exit abroad of those persons subject to criminal jurisdiction, but in these cases, the representatives of the Public Prosecutor must enclose with their petition a certified copy of the complaint or denunciation. The Attorney General of the Republic, and finally, the State Secretary of Justice—a post that no longer exists—have the power to evaluate whether or not the seriousness or gravity of that charge justifies the exit restriction" (Article 3 of that Law).
In my case, not only had I not yet been submitted to criminal jurisdiction, in the strict sense, but what is more, a certified copy of the complaint or denunciation was not even enclosed. Had this been done, I would have had an opportunity to familiarize myself with and discuss it.

c. The unduly long and biased interrogation

On the occasion of the charges described in section A, I was subpoenaed to appear before the Examining Magistrate of the Second Judicial Division of the National District. I appeared before the Examining Magistrate to make my statement at 10:00 a.m. on April 29, 1987, fully aware that regardless of the findings of the interrogation, I was already a prisoner.

The incriminating and biased nature of the interrogation was clear. As an example, I cite one of the questions asked:

Let us say that you did not benefit from those operations, does it not seem to you failed to observe and violated, both Article 7 of Law 672 and Article 102 of the Constitution in that you so openly and systematically promoted the economic aggrandizement of a friend and associate or counterpart and official close to you.

When I realized, during the interrogation, after more than ten straight hours, what that Examining Magistrate's intentions were, before she issued the arrest warrant, I challenged her competence to hear the case.

This disqualification forced the Examining Magistrate to suspend the interrogation and the proceedings immediately, in accordance with Article 69 of the Code of Criminal Procedure (see Appendix #4), which imposes the prior obligation to examine her own competence and prevents her from continuing further any stage of the preliminary proceedings until the declinatory plea has been decided. Because of all of this, the Examining Magistrate was not in a position to issue the warrant for my arrest. However, this is not what happened.

d. Issuance of arrest warrant

The arrest warrant was issued on April 29, 1987, without my being informed of the grounds for that arrest, without there being any relevant grounds for that arrest (no possible repeat offence, nor real possibility of evading the action of justice). Let it not be said that my right to the presumption of innocence and to personal liberty was not violated, because other nationals of the Dominican Republic who have been charged (normally habitual offenders), are automatically turned over to temporary or preventive custody.

e. Request for asylum at the Embassy of Venezuela

On April 30, 1987, I sought refuge at the Embassy of Venezuela at which time, I requested asylum for myself, my wife, and children. Even prior to the Examining Magistrate's decision I was already subject to political persecution. In any event, I asked for asylum once the arrest warrant was issued -not before; it cannot therefore be interpreted as an attempt to flee justice but rather as an attempt to find what I have so far been unable to find in my country.

f. My illness

During my stay at the Venezuelan Embassy, I had the first signs of a heart attack, so diagnosed by Dr. Bernardo Defillo on the morning of April 30. In the days that followed, I was under the care of Dr. Amiro Perez Mera, and finally, on Friday, May 8, 1987, I left the Embassy of Venezuela for the Gomez Patico Clinic with a diagnosis from Dr. Escipion Oliveira and Dr. Jose Fernandez Caminero, who felt that I should seek treatment in Atlanta, Georgia, in the United States. A team of medical doctors appointed by the Government of the Dominican Republic and made up of doctors from the Medical Association of the Dominican Republic confirmed the diagnosis.

On May 14, 1987, with the consent of the President of the Republic, the Attorney General issued a release order (in truth and in fact, I was never incarcerated in the Dominican Republic). I was, thus, authorized to travel to Atlanta to receive medical treatment at the University Emory Hospital under Dr. Willis Hurst's care. His letter of September 30, 1987, confirmed the diagnosis, and the resulting treatment which I have been receiving up to the present time. His last letter of May 12, 1988, attests to the need for me to continue treatment here in Atlanta (see Appendix # 2).

g. Withdrawal of the release order

In the face of the release order issued in accordance with the law on May 14, 1987, the present Attorney General revoked the release order on October 12, 1987, without observing the procedures relating to due process and without having competence to do so.

Without even bothering to hear me through a commission rogatory, or addressing the medical doctors supervising me or hearing the report of the doctors from the Dominican Republic, including the Medical Association of the Dominican Republic, which unanimously agreed on the need for me to travel to the United States, the Attorney General decided—without authority to do so—that "the reasons giving rise (to it) had ceased to exist," and accordingly revoked the release order of May 14, 1987.

h. Trial in absentia

By decree dated June 28, 1988, the judge of the Seventh Criminal Division, under the threat of trial in absentia, and mindless of the fact that on medical advice, it was impossible for me to be in the Dominican Republic, ordered me to appear before him in court in 15 days, without even fulfilling the formalities of the Code of Criminal Procedures (especially Articles 337 and 338).

This inordinate application of the very Code of Criminal Procedures (Article 334) raises the possibility of trial in absentia, even though my place of domicile in Atlanta and the circumstances of my illness were a matter of record. It also raises the possibility of their applying to me severe penalties, for as long as the trial lasts, such as not being heard at trial, suspension of my civil, and hence, political rights (see Articles 13, 14 and 15 of the Constitution of the Dominican Republic relating to Article 23 of the American Convention) and sequestration of my property (in general, and in violation of Article 21 of the American Convention relating to Article 8.13 of the Constitution of the Dominican Republic prohibiting the general sequestration of property).

In the face of that decision, and to make things worse, the accused does not even have the right of appeal. [FN1]

[FN1] In point of fact, Article 342 of the Code of Criminal Procedure established: "The remedy of appeal against in absentia judgments are only open to the public prosecutor and to the plaintiff insofar as he is concerned."

Notwithstanding that violation, under the terms of Articles 337 and 338 of the Code of Criminal Procedures and of the jurisprudence that develop them—in particular the resolution of January 27, 1969 (B. 698, page 166), my family and attorneys explained on my behalf that I "was ill and outside the country." The judge of the Seventh Criminal Division, Dr. Juan Maria Severino, simply refused to accept the medical explanation, without giving any reason for the refusal (I am enclosing the instrument and press clippings attesting to this - see Appendix #4).

Should this situation continue, I shall be forced to choose between my health (recognized as a right by Article 5 of the Convention in the form of physical, mental and moral integrity) and obeying the court order. Hence, to protect my physical well-being (as the competent medical doctors have prescribed), I shall be tried in absentia and be subject to severe penalties as regards my right to defense, my civic and property rights.

i. Other charges

The following matters are in the investigative stage before the Examining Magistrate in various criminal jurisdictions. No determination has been made in any of these cases.

- Case of the abduction and murder of Hector Mendez and Napoleon Reyes and of the Cruz Galvez brothers. These events took place on January 4 and June 10, 1985.
- Case of the canteens. Charge of overpricing of merchandise in this branch of the Forces (complaint of October 3 and 27, 1986).
- Case of the Social Security Institute of the Armed Forces and National Police (Instituto de Seguridad Social de las Fuerzas Armadas y la Policia Nacional - ISSFAPOL). Charge of overpricing of merchandise.
- Closing of University CETEC, charge of violating Article 114 of the Code of Criminal Law (abuse of authority).
- Deaths and violence occurring on April 24, 1984 during confrontations between the Armed Forces and citizens during an attempt to maintain law and order.
- Case of the complaint of Miguel Angel Velazquez Mainardi presented on September 2, 1986, for libel and slander and conspiracy against Representatives Hatuey De Camps Jimenez, Rafael Vazquez and myself.

Under the terms of Article 67 of the Constitution in effect, I asked the Supreme Court of Justice to hear

all of the charges brought against me as one lawsuit. Unfortunately, the Supreme Court of Justice turned down my petition in a ruling dated November 18, 1987.
It should be noted that Magistrate Nestor Contin Aybar, President of the Supreme Court of Justice, is a partner of Dr. Ramon Tapia Espinal, who is the State attorney in the cases in which I am charged with purchases by the Armed Forces and the National Police, the canteens, and ISSFAPOL. This is why, from the very outset, I proposed barring him from hearing the proceedings presented to this Court following the charges made against me.

VIOLATIONS COMMITTED

a. The Government of the Dominican Republic has violated the right to due process in general (Article 8 relating to Articles 7 and 25 of the American Convention) by not allowing me to be "heard, with due process guarantees and within a reasonable time, by a competent, independent and impartial judge or tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against (me)..."
b. The Government of the Dominican Republic has violated the right to personal liberty (Article 7 of the American Convention on Human Rights) by not informing me of the "reasons for (my) detention and notifying me promptly of the charge or charges" against me (Article 7.4) and by not respecting my right to "due process guarantees" of "prior notification in detail to the accused of the charges against him" (Article 8.2.b of the American Convention on Human Rights).
c. The Government of the Dominican Republic has violated the right to appeal the judgment to a higher judge or tribunal (Article 8.2.h of the American Convention on Human Rights) relating to the in absentia trial and the penalties it carries, including not being heard, the sequestration of property (clear violation of Article 21 of the American Convention), and the suspension of my political and civil rights.
d. The Government of the Dominican Republic has violated the right to personal security (Article 7.1 of the American Convention on Human Rights) by leaving me in a state of legal limbo as regards the number of accusations and the decision concerning them.
e. The Government of the Dominican Republic has violated the right to nondiscrimination on political grounds (Articles 1.1 and 24 of the American Convention on Human Rights).
f. The Government of the Dominican Republic has violated the right to my personal honor and dignity (Article 11 of the American Convention on Human Rights). The same political persecution, the mere accumulation of intermittent charges, the way in which the authorities of the Republic have expressed themselves, the absence of effective means of protection constitute violations of my human right to respect for my honor and dignity.
g. The Government of the Dominican Republic has violated the right to simple and prompt recourse, in accordance with Article 25 of the American Convention on Human Rights. The absence of the remedy of amparo to protect all my rights (and not only my right to personal liberty when incarcerated, a right that is protected by the remedy of habeas corpus) constitutes a violation, albeit general, of Article 25 of the American Convention.
h. The Government of the Dominican Republic has violated the right to freedom from ex post facto laws recognized by Article 9 of the American Convention. The principle of the legal pre-existing classification of the crime is precisely part and parcel of the principle of lawfulness. In all open trials and in almost all the criminal allegations against me, this classification is absent (the element of the type of, or the crime, either does not exist, or if it does, it is so vaguely defined that it is impossible to ascertain at what point one is the offender and at what point the honest man).
i. The Government of the Dominican Republic has violated the right to the free movement of persons within and outside the national borders (recognized by Article 22 of the American Convention).
j. The Government of the Dominican Republic has violated the right to property and to nonconfiscation (recognized in Article 21 of the American Convention relating to Article 8.13 of the Constitution of the Dominican Republic), in connection with the right to due process by applying the in absentia penalties; it has also violated Article 23 of the American Convention relating to Articles 13, 14,

and 15 of the Constitution of the Dominican Republic, as explained in paragraph c) under violations committed. Also in regard to the in absentia attributed to me without recognition of the medical explanation provided (Fact f), the Government of the Dominican Republic has also violated my right to humane treatment recognized under Article 5 of the American Convention, upon which an attempt is clearly made when, to exercise it, I am judged in absentia and I am subject to severe penalties (deriving from in absentia) in terms of my right to be heard by the courts,--through my attorneys or representatives—and my civil rights.

Exhaustion of the remedies under domestic jurisdiction

I. In accordance with the principles of international law, I filed all of the domestic remedies open to me that were appropriate for the defense of the rights I allege to have been violated. Among those remedies, I note the following:

a. Judgment of November 18, 1987, of the Supreme Court of Justice which flatly denies the appeal filed by Salvador Jorge Blanco for annulment of that decision by the Criminal Division (Camara de Calificacion) of the National District, as regards the alleged violation of Articles 8.j., 46 and 87 of the Constitution of the Republic.

This judgment, which may not be appealed, nor has it been communicated after more than six months, turned down my appeal based on violations of due process and my constitutional rights (filed on August 26) concerning the determination made by the Criminal Division of the National District.

b. Judgment of June 21, 1988, of the Supreme Court of Justice declaring "inadmissible the remedy of appeal, filed by Dr. Salvador Jorge Blanco, concerning the judgment handed down by the Criminal Division of the Court of Appeal of Santo Domingo dated May 25, 1988." (see first operative part, page 3, of judgment enclosed in Appendix 4).

This appeal, declared inadmissible by the Supreme Court as the Appellate Court of last instance, was filed by my attorneys for the purpose of disqualifying the Judge of the Seventh Criminal Division (Septima Camara Penal), Magistrate Juan Maria Severino, given his actions at odds with impartiality and due process with regard to the in absentia procedure summarized in Fact 12.

c. Nonacceptance, by the presiding judge of the Seventh Criminal Division of the court of original jurisdiction of the National District, of the medical explanations presented, under Articles 337 and 338 of the Code of Criminal Procedures, on July 11, 1988, by my attorneys and family, in relation to the trial in absentia.

d. Denial, in last instance, by the Supreme Court of Justice of my request for disqualification of its President, Magistrate Nestor Contin Aybar. Concerns the "partiality" of that Magistrate in the matter of due process and the political persecution to which I am being subjected.

II. With regard to the exceptions to the rule of the exhaustion of the remedies under domestic law (Article 46.2 of the American Convention), I note the circumstances affected by the absence of legal due process under domestic jurisdiction, by an unjustified delay in the decision concerning those remedies and by the lack of access I have had to these remedies.

1. Legal due process for the protection of the rights I allege to have been violated does not exist in domestic legislation. I note some of those legal impediments:

a. The accused does not have the "right to appeal in absentia judgments." The inability to do so is expressly imposed by Article 342 of the Code of Criminal Procedure.

b. The arrest warrant against me (see Fact d) and the withdrawal of the release order (see Fact g) may not be appealed on legal grounds, through the writ of habeas corpus or through direct recourse, in accordance with the requirements of Article 25 of the American Convention. The law on habeas corpus recognizes this right, in Article l, exclusively for those who have been "deprived of their freedom in the Dominican Republic... when such persons have been detained by a judgment of the competent judge or tribunal..." What is more, the jurisprudence of the courts of the Dominican Republic has repeatedly denied the remedy when the person interested in the remedy has not been "deprived of his or her freedom in a prison or at a place in the national territory under the jurisdiction of the courts of the Dominican

Republic."
In this context, the Commission has established that when jurisprudence demonstrates the uselessness of a remedy against acts involving restraint, the remedies of internal jurisdiction should not be exhausted. (See case #8095, Res. 10/85 of March 5, 1985, IACHR, Annual Report 1984-1985, page 35).
Let it be borne in mind that in the circumstances surrounding my case, the fact that I was not incarcerated in the Dominican Republic because of health problems outlined in Fact e and my rights to personal liberty as a citizen and human being, it was useless to have recourse to the remedy of habeas corpus to guarantee the validity of my human rights that were violated as reported in this petition.
What is more, I repeat, the remedy of amparo for the protection of constitutional, international and legal rights does not exist in the Dominican Republic. Added to this is the restrictive tradition in the interpretation of pleas of unconstitutionality provided for in the laws of the Dominican Republic in the face of which it becomes impossible, in any event, to allege direct violations of the actual Convention. There is, in this sense, no direct, prompt, simple and effective remedy, in accordance with Article 25 of the American Convention.
c. "The decisions of the Camara de Calificacion are not subject to any remedy" as established textually in Article 127 of the Code of Criminal Procedure. It is true that the jurisprudence of the Supreme Court of Justice admits the remedy on alleged grounds of unconstitutionality (see judgment of November 18, 1987). In any event, I exhausted that means as documented above.
d. The prohibition from leaving the country issued in my case under the Law #200 by the 1964 Triumvirate (see fact b and Appendix #3) may not be appealed by means of habeas corpus (see section 2 above), and although that Law #200 allows for the possibility of appealing the impediment decreed, it also specifically calls for proof of innocence (reversing the burden of proof to the detriment of the principle of freedom and the right recognized in Article 8.2 of the American Convention). Article 7 of that Law states the following:
Any person whose departure abroad is prohibited shall have the right to present evidence justifying the illegality of the measure taken to his detriment.
2. There is no access to domestic remedies or I am prevented from exhausting them in the cases I cite below:
a. With regard to the medical report submitted by my attorneys and family on July 11, 1988 in connection with the trial in absentia, the judge empowered to hear the trial simply refused to accept that report, counter to the provisions of Articles 337 and 338 of the Code of Criminal Procedures.
b. From the time that the in absentia decree by the Judge of the Seventh Criminal Division becomes effective (decision issued on June 28, 1988, and in which I am given a period of 15 days to appear before that Judge), "any legal action before the justice system (on my part) will be prohibited" (the words in quotation marks are taken from both Article 334 of the Code of Criminal Procedure and operative paragraph 2 of that ruling - see Fact h and Appendix # 4).
c. Impossibility of naming lawyers for my defense before the Judge of the Seventh Criminal Division (concerns the case summarized in Fact a). By virtue of the decision in the writ of March 10, 1988, I cannot appoint attorneys in the criminal proceedings being pursued before that Criminal Division, because I have not appeared "personally," and I have not done so, I repeat, because in addition to the absence of judicial guarantees, health reasons summarized in Fact f prevent me from doing so.
3. There is an unjustified delay in the decision on certain remedies. This is particularly visible in view of my persistent request to be informed of the incriminating elements of the complaint. This is especially relevant since by not knowing beforehand and in detail the charges made, and by not being notified, without delay, of the charge or charges made against me, my right to judicial guarantees (personal freedom under the terms of Articles 8.2.b and 7.4 of the American Convention) has been violated.
I was denied that communication by the Fourth Criminal Division in a judgment of January 26, 1987. I appealed that judgment on January 28, 1987, before the Criminal Division of the Court of Appeal, which ruled on May 4, 1987. In the face of that decision, on May 5, 1987, I filed an appeal for annulment before the Supreme Court of Justice. However, that Court has not been able to take cognizance of that appeal,

because the Division of the Court of Appeal has not given grounds for the judgment (legislation in the Dominican Republic requires that this be done 15 days after the decision has been handed down).
From all that has been said in this section, it can be seen that I have more than fulfilled the requirements of Article 46 of the American Convention concerning exhaustion of the remedies under domestic law in the Dominican Republic. It is also clear that I am presenting this denunciation within the six-month time frame (in so far as applicable), or in a reasonable period (in relation to the exceptions provided for in Article 46.2). The other rules of procedure are fully met hereby.
In the event that the Government of the Dominican Republic pleads failure to exhaust the remedies under domestic law to prevent the Commission from taking cognizance of this denunciation, I am asking that Inter-American Commission to decide in that regard at the same time that it decides on the merits.

PRECAUTIONARY MEASURES

I. respectfully ask that Commission, and/or if need be, the Inter-American Court to take the appropriate interim measures to guarantee the ultimate effectiveness of this trial and avoid irreparable damage, or damage that could only repaired at great cost, to my human rights. I am, therefore, asking that by virtue of the validity of the present denunciation and the serious damage I stand to suffer, that you order the suspension of the pending trial until the violations of due process are rectified, and that you order the discontinuance of the political persecution against me. Additionally, I am asking that the application of the penalties relating to trial in absentia be lifted and my right to physical integrity and to medical protection consistent with the medical grounds provided for in the very laws of the Dominican Republic be recognized.

PETITION

I respectfully ask that Commission:
i. To consider as having been exhausted the remedies of domestic jurisdiction, admit, and process accordingly the present denunciation, including the possibility of offering any documentary evidence or proof by witness that might be relevant before that international body.
ii. To adopt -prima facie- the corresponding precautionary measures for the duration of the trial, declare the existence of the violations reported and order the authorities in the Dominican Republic to reinstate the full exercise of the rights that have been transgressed.
iii. To order the government authorities to cease the judicially disguised political persecutions and establish the minimum requirements for due process so that they may be fulfilled by the authorities in the Dominican Republic, particularly with regard to trials for the charges leveled against me. This should include, at least, the communication of all charges and supporting elements, the consolidation of all charges against me in one single trial before an independent court, or the resumption of all pending trials invalidated because of the violation of my human rights and judicial guarantees.
iv. To reinstate my civil rights to presumed innocence until such time that my guilt might be proven in a fair trial, and to order the disqualification of the judges or administrative authorities who, by their actions, have prejudged, have failed in their impartial view, or have not guaranteed rightful due process.
v. To order my release during the trial proceedings and guarantee proper medical treatment needed.
vi. To bar any trial pursued in absentia and the penalties it carries as being invalid, in accordance with the American Convention.
vii. To impose the right to prompt, simple and effective recourse, in accordance with the requirements established in Article 25 of the American Convention, the right to appeal the decisions to be tried in absentia and to request the repeal of legislation giving power to the administrative authorities to decree preventive custody and to bar the exit of the citizens from the country.
viii. Eventually, should a solution not be reached, in accordance with Articles 48.1.f and 49 of the American Convention, or should the Government of the Dominican Republic not heed the recommendations deriving from the report of the Commission (Articles 50 and 51 of the American

Convention on Human Rights), I am specifically requesting that my case be brought before the Inter-American Court, assuming that the Dominican Republic recognizes the Court's jurisdiction, in accordance with Article 62 of the Convention. In this latter eventuality, I am also specifically requesting that the pertinent provisional measures be taken at the request of the Commission or the Court itself, to guarantee enjoyment of my rights that have been violated, that reparation and compensation be made for injuries suffered and fees pertaining to the domestic and international suit be paid, all in conformity with Article 63 of the American Convention on Human Rights and 45.1.l of the Rules of Procedure of the Inter-American Court concerning the costs of the proceedings.

5. In a note dated July 18, 1988, the Committee transmitted the denunciation to the Government of the Dominican Republic, requesting the corresponding information, in accordance with Article 34 of the Regulations. The claimant was so informed on the same date.

6. On August 16, 1988, the claimant's legal representative, Mr. Rodolfo Piza Rocafort, asked this Commission for a hearing during its next session to explain verbally the basic facts in Mr. Salvador Jorge Blanco's denunciation.

7. The Government was advised of the request for a hearing so that a representative of the Government of the Dominican Republic might attend. The date set for that hearing was September 15, 1988, at 12:30 p.m.

8. By cable dated September 14, 1988, the Government of the Dominican Republic acknowledged receipt of the communication, expressing surprise at the unscheduled hearing, which was not provided for in the Commission's Rules of Procedure, and noted, that it would be physically impossible to be present at the headquarters of the Inter-American Commission on Human Rights since there were only a few hours between the date of receipt of the communication and the date set for the hearing. It requested the suspension of the hearing set at that time.

9. At its 74th session on September 15, 1988, the Commission gave a hearing to the legal representative of Mr. Salvador Jorge Blanco. No government representative was present.

10. In a note dated September 30, 1988, the Dominican Government replied to the Commission's request for information, stating the following:

I. Article 8 of the Convention on Judicial Guarantees

a. With respect to the alleged violation of the right to due process (Article 8 in connection with Articles 7 and 25 of the IACHR). In the judicial proceedings against the petitioner and other co-defendants, no special procedure or jurisdiction was instituted. The Government points out that it is this and only this that the above-mentioned subparagraph 1 of Article 8 of the Convention is intended to prevent i.e., that the defendants not be tried by procedures or by judges and courts other than those established by law.

b. The Recusal

In his complaint, the petitioner states that at the end of the questioning by the Examining Judge of the Second Judicial District, the petitioner called for the judge's "recusal and declaration of lack of jurisdiction". The petitioner adds: "recusal requires the examining judge to immediately suspend the questioning and the proceedings, in accordance with Article 69 of the Code of Criminal Procedure". Article 69, to which the petitioner refers, establishes the competence of the examining judge on the grounds of place. It is agreed that it is also valid by reason of the person and the matter.

With respect to the proposed recusal, Article 378 of the Dominican Code of Civil Procedure lists the nine grounds on which "any judge may be refused". A reading of this article indicates that none of these justifies the injury argued by the petitioner in calling for recusal of the examining judge, i.e.,: "throughout

this questioning you have been accusing me rather than investigating me and you force me to immediately and formally request that you recuse yourself".
Moreover, the law establishes a precise procedure for the recusal of a judge, which was not followed by the petitioner (Article 382 Code of Civil Procedure).
It is possible that the petitioner, when referring to the recusal and lack of jurisdiction of the examining judge, in fact intended to enter a plea of objection to the jurisdiction (stipulated in Articles 398 to 408 of the Code of Criminal Procedure). A demurrer of an examining judge may be requested from another examining judge on the grounds of public safety or legitimate suspicion. Both the prosecutor and the interested party have authority to invoke this, but the interested party may do so only in the case of legitimate suspicion (Article 398, Code of Criminal Procedure).
In conclusion, the petitioner had no grounds for requesting the recusal of the examining judge, who was competent on grounds of place and matter to hear the criminal case brought before him; and if the intention of Dr. Salvador Jorge Blanco were to request the demurrer of that examining judge, it should be noted that he did not follow the procedure established by law for that purpose, nor did he follow the rules that allow and regulate recusal.

c. Arrest warrant

The petitioner argues that having requested the recusal and declaration of lack of jurisdiction of the examining judge, the latter could not issue a warrant for his arrest. This argument of the petitioner is ungrounded, since the examining judge, in issuing the arrest warrant for Salvador Jorge Blanco, was acting within the competence defined under the Code of Criminal Procedure, Articles 91 to 136. Under these articles, the magistrate has competence to issue an order to appear (Article 91, Code of Criminal Procedure), and should the accused not obey this order, is competent to convert it to an order of committal for trial (Article 92, Code of Criminal Procedure). In the case of the petitioner, the Examining Judge of the Second Judicial District issued an order to appear on April 27, 1987, which he received, on the same date, at his domicile, delivered by Constable Jose Antonio Payano Martinez. After questioning him on April 29, 1987, and apparently having found serious indication of culpability, the examining judge issued an order of preventive detention. On July 9, 1987, the examining judge asked the Prosecuting Attorney for his opinion on the temporary detention of Dr. Salvador Jorge Blanco and co-litigants, and that opinion was submitted on July 14, 1987, to the effect that it was justified; the following day, arrest order No. 116-87 was issued against the petitioner. [FN2] It is, then, an irrefutable fact that Salvador Jorge Blanco disobeyed the arrest warrant by fleeing quite shamelessly, on the pretext of political persecution, and later, in response to the rowdy and complete failure of his quest for diplomatic asylum, and by invoking a heart condition under the cover of which he fled abroad with his entire family.

[FN2] Article 94 of the Code of Criminal Procedure. "After questioning, or in the case of disappearance of the suspect, the examining judge may issue, according to the seriousness of the case, an order for preventive or temporary detention. The examining judge may not release the suspect without consulting the Prosecuting Attorney. In the course of examination, and with the consent of the Prosecuting Attorney, and whatever the nature of the accusation, the examining judge may suspend the order for preventive or temporary detention. on condition that there are no serious indications of the culpability of the accused, and on condition that the accused undertakes to appear at all of the proceedings and for the execution of judgment as soon as so required."

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d. On the lack of independence and impartiality"

The petitioner several times in his complaint claimed that the questioning by the examining judge was "excessive, discriminatory and prejudiced." If the questioning in reference is read, we find the ordinary questions that would be put to any defendant; the function of an examining judge is none other than to inquire into the facts, compile information and evidence, question witnesses and defendants in order to establish the connections of place and possible indications of culpability. How can the question of the

commission of a crime be investigated without the direct questioning of the accused?

e. With due guarantees

The petitioner alleges that his right to due process was violated, claiming "alleged" political persecution against him and that the purpose was "to destroy me as a citizen and public figure", implying that the open proceedings against him were carried out in an arbitrary procedural fashion, in proceedings that did not afford the petitioner the most minimal "personal guarantees." And this is not the case. Because allegations and complaints of irregularities committed during his administration have been brought against the petitioner, several judicial proceedings have been instituted, and in the course thereof, when justice has so required, they have been pursued in strict adherence to the law.

f. Within a reasonable period

This refers to the right of every person accused of a criminal offense to be heard by a judge, with no further delay than that arising from administrative processing and prior investigation.

The prosecuting attorney appointed the examining judge in the proceedings against the petitioner and co-litigants on January 22, 1987. In the course of the examination and investigation indications emerged of the culpability of five other persons, in addition to the originally accused six. On April 29, 1987, the examining judge questioned Dr. Salvador Jorge Blanco, after having questioned previously all of the other accused, and 42 witnesses, and after having also compiled documentary evidence in excess of 10,000 pages, according to the case record. Can the petitioner claim that he was not heard within a reasonable period?

If the substance of the charges has not yet been heard, it is because the petitioner has availed himself of all of the delaying tactics allowed under the law itself.

g. The right to be presumed innocent until proven guilty

The petitioner claims that Article 8.2 of the ACHR was violated by Dominican authorities, and as evidence, offers information provided by a journalist in recent months in a Dominican newspaper, twisting its meaning. We state that no judicial authority, in the course of the proceedings, has characterized or distorted the burden of proof in the sense indicated. In the record of the examination, it can be seen that it was the examining judge who, through questioning, has gathered sufficient evidence to involve him in the criminal acts being examined by the judge. No judicial authority has dared to state in the purely procedural steps, and despite the accumulation of existing evidence, that Salvador Jorge Blanco and other co-litigants committed the acts imputed to him. In this regard, the records show the phrase: alleged perpetrators.

The petitioner seeks to ignore the fact that when an accusation or charge is presented in which persons are charged by name, although they benefit from the presumption of innocence until there is a final judgment, there is on the other hand the imputation of the commission of offenses brought against persons or against things.

The presumption of innocence does not mean that judicial authorities are barred from investigating the offense, prosecuting the presumed perpetrators, and punishing those proven guilty.

h. Prior notification in detail of the charges

The petitioner states that he was not notified of "the accusation charge or the documents relative to the charges, prior or subsequent to the secret preliminary examination."

Subparagraph 2 of Article 8 of the Convention makes a general statement to the effect that: "During the proceedings", and by this is meant the part of penal proceedings directly linked to hearing the substance of the alleged crime. In addition, subsection "b" of the paragraph and article cited above specifically states: "prior notification in detail to the accused of the charges against him". The question to be answered is when the charges are brought in our criminal procedure and if the law was followed in the case of Salvador Jorge Blanco.

In a criminal examination the terms "accusation" and "accused" may not be used. What is verified is the occurrence of certain punishable acts and the indication of the names of certain suspects. It is in fact as a result of the investigation conducted by the examining judge that such criminal acts, when there are serious indications, will be imputed to the persons charged and sent, as such, to a criminal court, so that the substance of the criminal act may be heard in trial. (Art. 133 Code of Criminal Procedure).

It is then that our law prescribes that the prosecuting attorney should proceed to formulate "formal statement of charges", of which the accused must be notified. (Articles 217 and 218, Code of Criminal Procedure).
Our law stipulates that the accused be informed of the formal charges when the examination has been concluded; until then, it is not juridically possible to speak, much less give notice, of a charge that does not yet exist.
At this stage, and in observance of the right to defense, the legislator does impose an obligation to notify the accused of the decision that would refer him to a criminal court, so that the defendant, with knowledge of the charges brought against him, "may prepare his defense", which is the purpose of the notification under discussion.
Salvador Jorge Blanco was notified, through his attorneys, of Order No. 116-87 of August 4, 1987, and he brought a remedy of appeal before the Court of Appeals, which gave its decision upholding the order on August 26, 1987. Notification of this decision was delivered by hand to the legal representatives of the petitioner, who applied for its annulment.
The petitioner was notified of the charge in three ways: at his domicile in the country (Article 334 Code of Criminal Procedure), through his attorneys in Dominican territory and to the accused himself at his residence in Atlanta, Georgia, United States of America, through the Dominican Consulate in Miami, through the Office of the Attorney General of the Republic and Ministry of Foreign Relations, as stipulated by our laws (Article 69, subparagraph 8 of the Code of Civil Procedure), and by these actions he was enabled to exercise his legitimate right to defense.

II. Other procedural guarantees and judgment in contempt of court

a. The petitioner claims that by being found in contempt his procedural guarantees had been violated. It is relevant to determine when he was found in contempt of court and to what extent this exceptional judgment is in violation of the law and of procedural guarantees.
Salvador Jorge Blanco was found in contempt of court because he has evaded the Dominican judicial system. The examining judge, after questioning the petitioner, issued a warrant of preventive detention against him, on April 29, 1988. Mr. Jorge Blanco succeeded in escaping, and in the early morning of April 30, entered the Embassy of Venezuela requesting political asylum, which was denied to him.
Claiming to have suffered a heart attack, and with the authorization of Dominican authorities, he left the Embassy and entered the "Gomez Patico Clinic" where he remained under police guard. At that time, his admission card was prepared at one of the temporary holding facilities in Santo Domingo.
At the suggestion of some doctors, and as authorized under Article 419 of the Code of Criminal Procedure, the Attorney General of the Republic issued a writ of release for the petitioner, which allowed him to travel to Atlanta, Georgia, "until the justifying grounds therefor ceased".
Mr. Salvador Jorge Blanco left the Dominican Republic on May 14, 1987, and on the same day entered Emory Hospital in Atlanta. He was released on May 26, 1987, and has resided since that time in Atlanta.
On October 12, 1987, the Attorney General revoked the writ of release and gave the defendant fifteen days as of the date of notification to return to the country and to surrender to the Dominican police and appear in public trial. The petitioner refused to return to the country.
The petitioner has questioned the validity of the revocation of the writ issued by the Attorney General of the Republic. In this regard, it should be taken into account that Salvador Jorge Blanco was being detained by virtue of an order for preventive custody, which was converted on July 15, 1987, to an order for temporary detention, issued by an examining judge, i.e., the detention of the petitioner derives from a jurisdictional decision subject to appeal, and in fact the petitioner appealed before the Court of Appeals. The latter upheld the order, since the writ of release is an administrative measure, issued by the official who is responsible for the management, control and general administration of the prisoners in the country. This means that the writ of release did not and could not alter the petitioner's status under temporary detention.
Article 419, paragraph I, refers to "temporary prison release", "until the justification for prison release

expires". Has this requirement been met? There is tangible evidence. The claimant's own family doctor, Dr. Amiro Perez Mera, in a letter addressed to the Office of the Attorney General of the Republic, on September 1, 1987, reports that Salvador Jorge Blanco is continuing "outpatient" treatment, that his condition has been satisfactory, and that he is making progress toward recovery.

It should be clear that the judicial system waited in vain for over five months for his voluntary return to the country and for him to keep his word that he would return without any judicial measures to deal with Dominican society, which asserts its right to try him in its own courts.

b. The Government poses another question: To what extent and under what conditions does the finding of contempt violate the procedural guarantees established by law and the Convention?

These guarantees are upheld for all those defendants who accept and submit to the jurisdictional authority of the State and the rule of law. A person who disobeys the law and evades it cannot invoke its benefits, above all when that person continues to refuse to comply with the requirements of the officers and authorities who enforce the law.

It is the claimant himself who has renounced the exercise and enjoyment of these rights and guarantees, which have been exercised by the other co-defendants, all of whom are currently free on bail. It is absurd and improper to interpret as a violation of human rights the provisions by which legislators in all civilized countries, for understandable motives, deny the exercise of certain procedural guarantees.

Contempt of court is governed by Articles 334 and following of our Code of Criminal Procedure. Article 334 of the Code of Criminal Procedure establishes several time periods and means by which a fugitive from justice is informed of the trial, and these have been carried out in the case of the claimant. Thus, through a writ dated February 26, 1988 from the Judge of the Seventh Penal Court, the claimant was summoned regarding his appointment of attorneys, and he was given 15 days to appear, as of the date of notification. A writ of June 28, 1988 granted an additional 15 days as of the date of notification in the United States to appear for trial, and the claimant was informed that if he did not appear he would be found in contempt.

c. "Separation of offenses" [SIC]

The claimant makes reference in his denunciation to violation of the "rule of separation of offenses" which applies in the Dominican Republic, through separate prosecution of all alleged crimes charged to the defendant.

There seems to be a confusion of terminology, as the claimant mixes up two institutions: 1. The concurrence of offenses and 2. The nonaccumulation of sentences, which are subject to different, although complementary rules.

In domestic Dominican law, the concurrence of offenses is governed by rules, and occurs "when several offenses have been committed by the same person, and have not been separated from one another by a final judgment."

The concurrence of offenses arises whenever a defendant or accused person, prior to trial for the first offense committed, is then charged with other criminally punishable offense or offenses. The purpose of the law is simply to prevent an accused person from being subject to successive sentences, and to lessen his punishment. All of the offenses committed are lumped together, so that he may be prosecuted and tried for the offense that entails the most severe penalty.

No part of the Code of Criminal Procedure institutes the rule of nonaccumulation of sentences, thus making irrelevant the concurrence of offenses, although the jurisprudence applies the rule upheld in France, "considering it to be implicitly adopted by the Dominican legislature with respect to the provisions of Article 304 of the Code of Criminal Procedure."

When in the course of a trial before a criminal court, it is discovered that the accused is charged with a second and more serious crime, the court itself (Article 379) shall order a new prosecution for the second crime. While awaiting the outcome of the new trial, the trial underway continues; if relevant, a sentence is passed, and the prosecuting attorney must stay its execution, while awaiting the outcome of the second trial. When the latter has been completed, the more serious sentence will be the only sentence served by the defendant.

The concurrence of offenses and consequent relevance to the nonaccumulation of sentences have been

instituted to be invoked in the jurisdiction of trial, i.e., both in a correctional court and a criminal court, but not before a judge in a preliminary hearing.
The examining judge is empowered to receive and record all information relevant to the existence of punishable offenses discovered in the course of its investigations which are not included in the initial statement of charges brought by the prosecuting attorney, subject to two conditions: 1. The judge may not hear these new facts without the prior intervention of the prosecuting attorney (Public Ministry) and 2. It is ESSENTIAL that the new facts discovered bear relation to the fact which is the subject of the examination or be of the same nature.
Since the Examining Judge lacks jurisdiction to hear other criminal facts, even though alleged to the same perpetrator, without prior consultation with the prosecuting attorney, there is no relevance to "consolidated prosecutions" or violation of the principle of concurrence of offenses.
d. Violation of the human right to appeal judgments before a higher judge or court
The claimant denounces violation of Article 8, subparagraph 2, section n) of the ACHR, stating that by being found in contempt, 1) he is denied the right to appeal the verdict of guilty, 2) because decisions of the Court of Appeals are not susceptible to appeals for annulment.
The first statement is false. Article 345 of the same Code empowers the person found in contempt to interpose a remedy of opposition within 30 days of the time he is detained or apprehended. Moreover, after the guilty verdict is passed, and if upheld, the convicted person may interpose a remedy of appeal and annulment. But as the article clearly states, the convicted person must first be detained in prison, and Salvador Jorge Blanco refuses to accept this.
On the second point, the law seeks to protect the rights of accused persons to a prompt trial, since the civil party or the prosecuting attorney himself may maliciously seek to prolong the proceedings with remedies. In addition, this does not refer to the procedural guarantees which according to Article 8.2.h of the ACHR arise from the judgment of the substance of the charge. The decision of the Examining Judge, which was appealed by the claimant and upheld by the Court of Appeals does not constitute a judgment on the substance of the charge.
e. Violation of the right to nondiscrimination on political grounds
The best way to demonstrate that the judicial proceedings against Salvador Jorge Blanco are not a matter of political persecution is to examine the substance of the charges and the evidence gathered.
The claimant states: "officials under the President of the Republic pursued the persecution outside the judicial system (...) by giving orders to the judicial system or pressuring it." This statement is made without even a shred of evidence of such pressure or orders, unless one understands this to mean the brave denunciations by some officials regarding the calamitous state in which they found the government offices and autonomous agencies when the new government took office.
The claimant also offers as evidence of political persecution Law 5007 of July 15, 1911. However, of the several offenses committed by the claimant, only Article 114 is included in the list stipulated in that law.
f. Violations of the right to personal honor and dignity
The claimant has the right, which he has rejected, to defend himself in a public trial and to contest the charges brought against him. Moreover, should the charges against him be dropped, means exist to bring judicial action for satisfaction and reparation of injury caused, against the individual parties and the Dominican State itself.
g. Violation of the right to freedom from ex post facto laws
We cannot read without anger the claim of Salvador Jorge Blanco that his country does not have or has never instituted the remedy of "amparo", known among us since the year 1914 as the law of Habeas Corpus.
h. Violation of the right to freedom from ex post facto laws in penal matters
The claimant states that in "all open trials and in almost all of the criminal charges brought against me, there is a lack of criminality", and he invokes violation of Article 9 of the ACHR.
Article 9. Freedom from Ex Post Facto Laws - No one shall be convicted for any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was

committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.
It appears that the claimant was not satisfied with the clear and final specification of the criminal offenses named in the formal statement of charges, a copy of which is attached to the documents in the annex of this presentation.

i. Violation of the right to freedom of movement of persons within and outside national borders

The claimant complains that his exit from the country was hindered, and claims that Law No. 200 of March 27, 1964, is in violation of human rights. Article 3 of this law refers to those who are sub judice:
Article 3. The exit from the country of persons who are subject to criminal jurisdiction may be denied, but in such cases the representatives of the Public Ministry shall attach to their ruling a certified copy of the charge or accusation, and the Attorney General of the Republic, and finally the Minister of Justice, shall be empowered to assess whether the seriousness or gravity of the charge or accusation justifies prohibiting the departure of such persons.
If the decision is upheld and departure from the country is prohibited, it shall be the obligation of the representative of the Public Ministry or of persons carrying out its function to immediately notify the Attorney General of the Republic, who shall notify the Minister of Justice of any decision to lift the prohibition regarding that person".
The Dominican law referred to prohibits, in general and in the abstract, any person charged with a crime from leaving the country, unless a permit is given, which the Attorney General of the Republic, the country's highest judicial official, is empowered to grant in certain cases.
It should not be overlooked that the person who is accusing the Dominican Government is the same person who was allowed to leave the country, even though there were grounds to prohibit him from doing so, according to internal law and the Convention itself, and even though he was in preventive custody for having given signs of seeking to evade justice. This shows that despite the prescriptions of Law 200, which protects public order and safety, the law is enforced flexibly and not arbitrarily.
The provisions of Articles 22.1, 22.2, 22.3 and 22.4 in no way contradict the provisions of Law 200.

j. Violation of the right to property and nonconfiscation (Article 21 ACHR)

On this point the Government refers to Article 334 of the Code of Criminal Procedure, which calls for "the attachment of the property of the person in contempt during the course of the examination", and adds that the attachment does not remove the defendant's property from him. The attachment is a kind of seizure that consists of entrusting the property to the care of a third party, whether a thing in litigation or something offered as collateral by a debtor, until the term expires or the grounds that led to it no longer apply. (See Gerard Cornu, Vocabulaire Juridique, edition 1987, p. 733).
Whereas confiscation entails a dispossession in benefit of the state of all of the property of a convicted person, attachment, on the other hand, is a measure of constraint which in no way entails dispossession of the property of the convicted person. In fact, the Code of Criminal Procedure, in Article 340 stipulates that if the person in contempt "is convicted, his property, as of the execution of the sentence, shall be considered and administered as the property of one absent; and accounts of the attachment shall be rendered to the appropriate person, when the conviction has become irrevocable, with the expiration of the time period allowed for judgment of the person in contempt". In sum, attachment ceases with the voluntary or forced appearance of the person in contempt.

III. The conditions of admissibility of the denunciation

a. In the second part of its response, the Government refers to exhausting all internal remedies, noting that the fact that the claimant has appealed the decision of the Court of Appeals (which upheld the formal statement of charges No. 116-87 of the Examining Judge) does not mean that all internal remedies have been exhausted, since it was an order to bring him before a criminal court, which in no way establishes the degree of culpability for the charges brought against him.
Likewise, the fact that the Supreme Court of Justice declared inadmissible the remedy of appeal brought against a judgement issued by the Criminal Court of the Court of Appeals of Santo Domingo on May 25,

1988.
And finally, because the Judge of the Seventh Penal Court did not accept, through the Secretariat, the medical excuses that were presented in irregular fashion by the family members of the claimant, since it can be deduced from the logic of Dominican criminal proceedings in general, and from the finding of contempt in particular, that those medical excuses must be presented to the judge, in the course of the trial, in order to give the Public Ministry and the civil party an opportunity to contest them, if they so choose.
The substance of the charges brought against the claimant has not been examined in any of the proceedings instituted against him, due to the many dilatory devices employed by him and his attorneys. How can the exhaustion of internal remedies be invoked if no judge has produced a guilty verdict of any degree?
In other words, the claimant has open to him the jurisdiction of the first instance, and against the decision adopted, if found guilty, the ordinary remedy of appeal, and beyond that, if he claims violation of the law, he may exercise the extraordinary remedy of annulment.
If found in contempt, by reason of being under detention, in the following 30 days he may interpose a remedy of challenge against the finding of contempt, and after the negative judgment may employ all other forms of remedy provided under the law.
In strict adherence to the principles, this injury may only be invoked "when the injured party has previously exhausted all juridical remedies at every level, [FN3] and "a private person may not bring any complaint, if he has effective juridical remedies available to him." [FN4]

[FN3] Cf. Alfred Verdross, Derecho Internacional Público, Biblioteca Jurídica Aguilar, sexta edición 1966, p. 385.
[FN4] Cf. idem.

Furthermore, the prevailing principle is "that the State where the violation occurred should have the opportunity to remedy it by its own means, within the framework of its own internal juridical system." [FN5]

[FN5] Interhandel Case (preliminary objections). I.C.J., Report, 1969, p. 27.
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b. Access to internal remedies
The argument that the claimant was not allowed to exhaust or was impeded from exhausting internal remedies has no basis. The very statement of the claimant shows how skillful he has been in employing both real means of defense and every kind of procedural "quibbling." There is not a single shred of evidence that he was impeded from using internal legal remedies. Although a fugitive from the law, he had access to each and every jurisdictional forum in the country.
We could demonstrate the argument inversely: that the claimant refuses to apply the remedies and means at his disposal, i.e., it is he who has denied himself the opportunity to address the substance of the charges brought against him.
c. Absence of due process
The third circumstance in which the denunciation could be allowed according to Article 46.2 of the Convention is: "When the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated." On this point, no comment is necessary.

CONCLUSIONS:

- There is not any ground or reason to allow the denunciation of the claimant.
- There has been no violation of human rights.
- Internal remedies have not been exhausted.
- Legal due process for the protection of the right or rights alleged to have been violated does exist in internal legislation.
- The allegedly injured party has not been impeded from exercising his right to access to the remedies of the internal jurisdiction nor has he been impeded from exhausting them.

The Inter-American Commission of Human Rights should completely and entirely declare the denunciation inadmissible and groundless, for the reasons stated above.

11. On October 24, 1988, the complainant submitted written comments on the reply from the Dominican Government, reiterating the basic points made in the original complaint and stating, further, that the Government had sought in its reply to give its actions a color of legality in order to conceal its true intent, which is to persecute and discredit him politically and morally.

12. By note of November 2, 1988, the Commission conveyed the complainant's comments to the Dominican Government, asking it to file any reply it deemed appropriate within 30 days.

13. In his comments on the reply from the Dominican Government, the complainant also asked the Commission to take such preventive measures, particularly the suspension of the in absentia proceedings, as were needed to guarantee the final outcome of the procedure before the Commission and avoid irreparable harm to the human rights allegedly violated. He pointed out, moreover, that his absence from the Dominican Republic was explained by the need to continue, for medical reasons, a treatment in Atlanta, Georgia.

14. On November 2, 1988, the above request was conveyed to the members of the Commission in line with Article 29 of the Rules, which empowers the Chairman to decide, after consulting the other members through the Secretariat, whether or not to grant the request for preventive measures.

15. On December 9, 1988, the legal representatives of Mr. Salvador Jorge Blanco informed this Commission that on November 30, 1988, the complainant had returned to the Dominican Republic and appeared before the courts. The same note stated that on December 7, citing "orders from superiors," police authorities in the preventive detention facility of Ensanche La Fe, in Santo Domingo, abruptly barred access to the jail by the lawyers of Mr. Salvador Jorge Blanco.

16. By cablegram of December 22, 1988, the Commission conveyed this information to the Government, asking it to supply as quickly as possible such information as it deemed appropriate.

17. On February 13, 1989, the Commission asked the Government of the Dominican Republic for information on the legal situation of Mr. Salvador Jorge Blanco.

18. On March 3, 1989, the complainant again asked the Commission to adopt preventive measures, adding that the first hearing in the substantive action brought against Mr. Salvador Jorge Blanco had been set for March 1 and subsequently cancelled.

The complainant also reported that another criminal action had been brought against Salvador Jorge Blanco on the strength of charges of alleged embezzlement in a state hospital, made by the President of the Reformist Youth Movement (Juventud Reformista), an organ of the official party now in power. He learned of these charges through the press, having so far received no notice or communication whatever.

19. By note of March 10, 1989, the Commission conveyed to the Dominican Government the additional information from the complainant, giving it 30 days to complete all the reports needed by the Commission.

20. By note of March 13, the Dominican Government replied to the Commission's request for information, as follows:

a. Immediately following his return to the country, Dr. Salvador Jorge Blanco reported to prison authorities, as provided for in Article 345 of our Code of Criminal Procedure, which reads as follows:
Article 345. If the accused reports to prison authorities, or if he is apprehended before the penalty runs out under the statute of limitations, the in absentia judgment shall take effect as from that moment, the convicted offender being entitled, however, to file an appeal [recurso de oposicion] within 30 days.
b. Days after his jailing, and in the exercise of the right granted to the in absentia by the last part of the above-described article, Dr. Jorge Blanco appealed [recurso de oposicion] the decision rendered against him.
c. As the effect of this appeal is to deprive of legal effect all in absentia proceedings subsequent to the decision by the examining magistrate or by the reviewing court, it may be seen that the legal situation of the in absentia or person held in contempt of court reverts, in keeping always with our criminal procedure, to the moment immediately following the decision by the examining magistrate or magistrates, or to be more specific, to the ruling later confirmed by the reviewing court (Article 346).
d. Under current law, the accused was served timely notice of the indictment by the proper officer of the court (Article 218). The presiding judge of the court hearing the substance of the case thereupon issued several orders of which the accused was successively notified: a. calling on him to appoint an attorney (Articles 220 - 223); b. authorizing him to communicate with his lawyer or defender, as well as to make copies of trial documents (Article 277); c. scheduling a hearing (Article 228). His hearing had been set for March 1 but was cancelled by the presiding judge for purely procedural reasons, and is expected to be soon rescheduled.
e. This is a fit opportunity to remind the Inter-American Commission on Human Rights that Dr. Salvador Jorge Blanco appealed to the Commission's international jurisdiction on the grounds that human rights, as well as due process, had been violated in his case. It is well known that there is no exact definition of due process or of precisely how it is to be applied. To most international law scholars, the constitutional terms of "regular application", are synonymous with the expression "according to the laws of the country." This, at any rate, has always been the interpretation of legal scholars and courts in the United States of America when construing and applying the Fourteenth Amendment.
f. Morgan L. Amaimo, a former member of the bar in the State of Maryland, explains in his thorough study of the Constitution of the United States of America that when the defendant has without hindrance or difficulty availed himself of each and every one of the legal provisions laid down by domestic law, when he has been absolutely free to call into play the principles informing his own legislation, when "all those legal elements are collected, the accused cannot then protest his having been deprived of life, liberty, or property, for due process of law has been observed and has faithfully discharged its mission." And he concludes by saying: "The primary purpose of the Fourteenth Amendment is fair play in the enforcement of every law."

We reaffirm our position that the Inter-American Commission should decline jurisdiction to hear the charges leveled by Salvador Jorge Blanco against the Dominican Government, inasmuch as the former President has recourse, and constantly and with full freedom continues to have recourse to all legal mechanisms that in the exercise of sovereignty have been established alike in favor of Dominican and foreign defendants residing in our territory.

21. By note of March 17, 1989, the Commission conveyed the Government's reply to the

complainant, giving him 30 days to complete the filing of reports on this case.

CONCLUSIONS:

A review of this case leads the Commission to the following conclusions:

1. The complaint of July 1988, filed by the legal representative of Mr. Salvador Jorge Blanco meets the formal requirements set out in Article 32 of the Rules of the Commission and like provisions of the Convention (Article 46 (1)(c) and (d)), inasmuch as the subject of the petition is not pending in another international proceeding for settlement and the petition contains the name, nationality, profession of the complainant, and an account of the relevant events.

2. The Commission took up the matter of its jurisdiction ratione materiae to hear this case on the grounds that it involves alleged violations of due process of law (Article 8), as specified in the American Convention on Human Rights.

3. Apart from its jurisdiction ratione materiae, the Commission weighed the requirements for admissibility of the complaint under Article 46 (1)(a) and (b) and Article 46 (2), (a), (b) and (c) of the American Convention.

4. The admissibility of a complaint hinges on: a. exhaustion of domestic remedies "in accordance with generally recognized principles of international law," and b. lodging of the complaint with the Commission within a period of six months from the date the party alleging the violation of his rights was notified of the final judgment. These requirements, however, do not rule out the admissibility of a communication when it can be shown that:

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

5. The reason for the rule of prior exhaustion of domestic remedies lies in the principle that the defendant State must be allowed, before anything else, to provide redress on its own and within the framework of its internal legal system, which must be exhausted before international jurisdiction is brought into play. Consequently, before resorting to an international agency or tribunal, recourse must be had to such remedies available under domestic law as are capable of providing effective and sufficient means to settle the matter for which international action is sought. From which it follows that the effect of the rule of prior exhaustion of domestic remedies is to assign to the jurisdiction of the Commission an essentially subsidiary role.

6. This has been reiterated by the Inter-American Court of Human Rights in the Velasquez Rodriguez case. [FN6]

[FN6] Cf. Case No. 7920, Velásquez Rodríguez versus Honduras, decision of July 29, 1988, paragraph 61.

The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its

internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter "reinforce or complements" the domestic jurisdiction (American Convention, Preamble).

7. This rule would make no sense if such remedies did not exist under the legal system of the contracting States. In this connection, the Inter-American Court has pointed out that:

The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Indeed, under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1). [FN7]

[FN7] Cf. ibid. Preliminary Objections, paragraph 91.

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8. Accordingly, "if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46.2. It must not be rashly presumed that a State Party to the Convention has failed to comply with its obligations to provide effective domestic remedies." [FN8]

[FN8] Cf. Decision of July 29, 1988, op. cit., paragraph 60.

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9. In the instant case, the complainant states that he has "exhausted all internal remedies I could have exhausted" and that under international law he was bound to exhaust only those remedies that were "accessible and adequate" to the defense of the rights allegedly violated. [FN9]

[FN9] The complainant cites the decision of the European Court of Human Rights in the case "Stogmuller" (November 10, 1969).

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10. In this regard, the Inter-American Court has held that "adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable." [FN10]

[FN10] Decision of July 29, 1988, op. cit., paragraph 64.

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11. The Commission takes the view that the remedies exhausted by the complainant have to do with "incidental matters" that arise in the course of the procedure and are related to the question regarded as central. Ordinarily, incidental issues are unforseen procedural obstacles that must be cleared if the

substance of the matter is to be logically reached. The same end is sought by the "interlocutory decisions" issued by a court to decide incidental matters in the course of hearing a case.

12. As shown by the evidence collected in this case, the decisions pronounced in the course of the proceedings do not establish a degree of culpability in relation to the charges against the complainant. Nor do they amount to a final judgment in the case.

13. Moreover, the fact that the complainant appeared before the competent Dominican court in order to exercise his right to file the appeal provided by law against decisions pronounced in in absentia trials is ample proof that domestic remedies have not been exhausted, [FN11] for the appeal [oposicion] invalidates, by the mere operation of law, all previous proceedings related to the in absentia.[FN12]

[FN11] Article 345 of the Code of Criminal Procedure prescribes in this connection: "If the accused reports to prison authorities, or if he is apprehended before the penalty runs out under the statute of limitations, the in absentia judgment shall take effect as from that moment, the convicted offender being entitled, however, to file an appeal [recurso de oposición] within 30 days.

[FN12] Cf. Article 346 of the Code of Criminal Procedure, and see note 16 to Article 186: "The appeal [recurso de oposición] filed by the defendant or accused produces, more than a suspensive effect, the quashing of the judgment itself in criminal proceedings, provided it is lodged within five days of notification of the judgment and in criminal actions only, whereupon the case must be heard as fully as it was the first time."

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14. Consequently, the existence of a final decision is unproven, according to the universally accepted principle of res judicata, so long as the case remains open.

15. In addition, the other requirement for admission of a complaint under Article 46 of the American Convention is that it should be filed within six months of notification of the final domestic judgment. [FN13] Accordingly, the Commission would not be in a position to address itself to the case prior to a final decision by the national courts.

[FN13] Underscoring added by the IACHR.

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16. As for the complainant's request that the Commission take such preventive steps, particularly the suspension of in absentia proceedings, as are needed to guarantee the final outcome of the proceedings before the Commission and avoid irreparable harm to the rights allegedly violated—such as being tried without the possibility of defending himself, or the seizure of his property--, the Commission takes the view that preventive measures are intended to guard against imminent violations of the human rights mentioned in the Convention, and in this case the decision challenged merely sets the date for the opening of a trial and does not violate due process of law.

17. The decision to take preventive measures could not be adopted without reference to the substance of the complaint, and this would be premature while the case is in progress before the competent judicial authorities of the Dominican Republic.

18. Subsequent to the request mentioned, the Commission was informed of the complainant's decision to appear before the Dominican courts in order to appeal from the decision pronounced by the judge of the Seventh Court of Criminal Appeals of Santo Domingo.

19. The complainant's appearance before the competent courts of the Dominican Republic removes the reason underlying the request for preventive measures to suspend the in absentia trial. Accordingly, the request cannot be granted.

20. As for the alleged violation of the complainant's rights, namely, due process (Article 8); personal liberty (Article 7); security of person (Article 7.1); nondiscrimination for political reasons (Article 1.1 and 24); respect for his honor and his dignity (Article 11); simple and prompt recourse (Article 25); freedom of movement (Article 22); the right to property and freedom from confiscation (Article 21) in connection with the right to due process as it relates to the application of penalties in absentia; and the right to physical integrity (Article 5) in relation to in absentia and its failure to take account of medical reasons. [FN14] It does not lie within the purview of the Commission to deal with the substance of the allegations, because the evidence produced by the parties leaves no doubt that domestic remedies have not been exhausted in this case—as required by Article 46 of the Convention—inasmuch as the proceedings have not come to an end.

[FN14] 1. Cf. Above, pages 10 and 11.

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21. When a petition has been ruled inadmissible because domestic remedies have not been exhausted, it remains open to the complainant to bring the matter again before the Commission if he can show that those remedies have been exhausted, as prescribed by the generally recognized principles of international law on this subject.

22. Consequently, in light of the above conclusions and bearing in mind that the absence of agreement between the parties to this case rules out the friendly settlement procedure referred to in Article 45 (3) of the Rules of the Commission, the complaint embodied in case number 10.280 is ruled inadmissible, and the Commission refrains from exercising and deciding the allegations set out in it.

23. This report will be conveyed to the Government concerned and to the complainant.