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Title/Style of Cause:	Carmelo Soria Espinoza v. Chile
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Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia. Commissioner Claudio Grossman, national of Chile, did not participate in the discussion and adoption of this report, in accordance with the requirements of Article 19(2)(a) of the Regulations of the Commission.
Dated:	19 November 1999
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I. SUMMARY

1. Mr. Carmelo Soria Espinoza (hereinafter “Carmelo Soria”), 54 years of age and of dual Spanish and Chilean nationality, was working as chief of the editorial and publications section of the Latin American Demographic Center (CELADE) in Chile. CELADE is an agency of the Economic Commission for Latin America and the Caribbean (ECLAC) and part of the United Nations (UN) system. Accordingly, Mr. Soria has the status of international official. On July 14, 1976, as he was leaving work, he was kidnapped by security agents of the Dirección de Inteligencia Nacional (hereinafter “DINA”) and subsequently murdered. His body and car were left in a stream. The Chilean courts determined that State agents participated in the crime and their identities were established. However, pursuant to Decree Law Number 2.191 from 1978, known as the self-amnesty law (hereinafter “the self-amnesty law” or “the Amnesty Law”), criminal prosecution was dismissed, allowing the crime committed by these agents to go unpunished. Members of the victim’s family submitted a petition to the Inter-American Commission on Human Rights (hereinafter the “Commission” or “IACHR”) alleging the violation of their right to justice and requesting that the Commission declare the Republic of Chile (hereinafter “the Chilean State,” “the State of Chile,” or “Chile”) responsible for the violation of the American Convention on Human Rights (hereinafter the “American Convention”).

2. Based on the Commission's analysis, the judgment of the Supreme Court of Justice of Chile from May 24, 1996, and other sources, the Commission concludes that State agents violated the rights to liberty, personal integrity and life of Carmelo Soria, enshrined in Article 1

of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"). The Commission also concludes that the dismissal of the criminal proceedings brought concerning the detention and disappearance of Carmelo Soria Espinoza affects the petitioners' right to justice and, therefore, the Chilean State is in violation of its international obligations under Articles 8 and 25, 1(1) and 2 of the American Convention; that the self-amnesty law is incompatible with the American Convention, which was ratified by Chile on August 21, 1990; that the judgment of the Supreme Court of Chile declaring compulsory the application of the aforementioned Amnesty Law as constitutional, at a time when the American Convention had already entered into force in Chile, constituted a violation of Articles 1(1) and 2 of the Convention; that the Chilean State has not complied with Article 2 of the American Convention in that it has not adapted its laws to the provisions of the Convention; that Chile failed to comply with the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons as a result of adopting the Amnesty Law and because its judicial administration bodies have failed to punish the perpetrators for the crimes committed against Carmelo Soria.

II. PROCEEDINGS BEFORE THE COMMISSION

3. On February 15, 1997, Carmen Soria González Vera, the victim's daughter, assisted by the attorney Alfonso Insunza Bascunan, filed a petition with the Commission, dated January 31, 1997. The petitioners accuse the State of violating the right of access to justice in the case of Mr. Carmelo Soria Espinoza and request that the Commission declares the Amnesty Law as incompatible with the obligations of Chile under the American Convention.

4. In a note dated February 24, 1997, without prejudging the admissibility of the petition, the Commission brought the petition to the attention of the State of Chile and requested that it present pertinent information with regard to the same.

5. On July 24, 1997, the Chilean State requested an extension of 30 days to submit the relevant responses. On July 30, 1997, the Commission granted the State of Chile the extension of 30 days requested and informed the petitioners that it had done so.

6. On August 14, 1997, the State of Chile submitted its response to the petition, which was transmitted to the petitioners on August 20, 1997, requesting their observations to Chile's response and any new or additional information to be considered by the Commission.

7. In a communication from October of 1997, the petitioners submitted their observations to Chile's response. These comments were transmitted to the Chilean State on December 15, 1997.

8. In a note dated December 31, 1997, the State of Chile transmitted its observations to the petitioners' reply with respect to the Chilean State's response to the original petition. The State of Chile's observations were transmitted to the petitioners on January 16, 1998.

9. On June 22, 1998, in light of the requirements and characteristics of this case and in accordance with Article 48(1)(f) of the Convention and Articles 54(1) and 54(2) of the

Commission's Regulations, the Commission placed itself at the disposal of the parties for the purpose of reaching a friendly settlement in this case based on the respect for human rights.

10. On July 20, 1998, the State of Chile responded to the Commission's proposal. The State indicated that, notwithstanding the difficulties it had encountered in reaching a friendly settlement in this case, it reiterated its willingness to remain open to solutions that might help reach an agreement with members of the victim's family.

11. On November 13, 1998, the petitioners informed the Commission that the members of Carmelo Soria's family were not in Chile at that moment and requested an additional period of 45 days during which to respond to the Commission's friendly settlement proposal.

12. The Commission convened a hearing during its 102nd Regular Session for the purpose of hearing the parties' final arguments. This hearing took place on March 3, 1999, and was attended by the petitioner, Carmen Soria Gonzalez Vera, and the State's representative, Mr. Alejandro Salinas of the Chilean Foreign Ministry. During this hearing, each party had the opportunity to present their arguments. At that time, the IACHR placed itself at the disposal of the parties for the purpose of reaching a friendly settlement once again. The petitioners stated that it was not possible in the present case to reach a friendly settlement consistent with the respect for human rights as envisioned in Article 48(1)(f) of the American Convention and Articles 54(1) and 54(2) of the Commission's Regulations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

13. In their petition, the petitioners provide a description of the facts based on the conclusions reached by the National Commission for Truth and Reconciliation when it investigated the Carmelo Luis Soria Espinoza case, which are as follows:

On July 16, 1976, the Spanish economist and United Nations official, a socialist party activist, Carmelo Luis Soria Espinoza, was killed by agents of the DINA. The victim had been detained the previous day. The following day, his automobile was thrown into the El Carmen canal in the Piramide district, by a number of agents, with the keys in the ignition but without the radio or seats, except the driver's seat. A bottle of pisco was placed in the car to simulate an accident. The victim's body was thrown into the same canal and was found on July 17th, one kilometer from where the car was found. The Commission was convinced that Carmelo Soria had been executed by State agents in violation of his human rights. The report adds: "Carmelo Soria was Spanish and came under the decree concerning Chileans with dual nationality. He was married, had three children, and was 54 years of age. He was an activist in the Spanish Communist Party, an official of the United Nations, and at the time of his death was working in CELADE. On July 15, 1976, he was detained by DINA agents as he was leaving his office to return home. The following day, on July 16, his body was found near his automobile in the El Carmen canal in Santiago, his death having resulted from actions by DINA agents, who crashed the car to make the death appear accidental."

14. The petitioners allege that, even though it had been judicially determined that Carmelo Soria Espinoza had been murdered by DINA agents, the State of Chile, through its jurisdictional bodies, declined to impose the punishment provided for under law. The petitioners add that civil or criminal disciplinary measures against the officials directly responsible for acts contrary to international law or in violation of human rights were necessary as a consequence of the State's responsibility and for the purpose of ensuring its preventive function.

15. The petitioners maintain that, instead of applying disciplinary measures, the Chilean State applied the Amnesty Law, granting amnesty to the authors, accomplices, and accessories involved in the cover-up of crimes committed between September 11, 1973, and April of 1978. According to the petitioners, the State also declared that the criminal responsibility of the accused, Guillermo Salinas Torres and José Ríos San Martín, was terminated as a result of the Supreme Court's judgment dated August 23, 1996, upholding that of June 4, 1996, dismissing the case against these individuals because the actions investigated in the case occurred within the period of time covered by the aforementioned law.

16. The petitioners add that the decision from December 30, 1993, in which the judge denied the petition to declare the final dismissal null and void in virtue of the amnesty law, was based on the following facts:

Based on the merits of this case, it is justified that on July 14, 1976, Carmelo Soria Espinoza, a Spanish citizen who also enjoyed Chilean nationality and worked in our country as chief of the editorial department of the Latin American Center on Demographics (CELADE), an agency under ECLAC (the Economic Commission for Latin America and the Caribbean), both agencies of the United Nations, was detained by a group of military personnel assigned to the DINA who formed part of a brigade within that agency known as Mulchen, and was then transported in his own automobile to a building located at Via Naraja 4925, in the Lo Curro district, where he was subjected to interrogation, physical duress and subsequent death by his abductors, who, prior to these events, had apparently been investigating Mr. Soria's political activities. These acts constitute the crime of homicide against Carmelo Soria Espinoza, which the perpetrators attempted to cover up immediately afterwards by simulating an automobile accident using the victim's Volkswagen, suggesting at the same time the driver's inebriation as the cause of the accident.

17. According to the petitioners, the judicial record declares that Carmelo Soria Espinoza was a United Nations official and therefore subject to protection under the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, particularly Articles 2(1) and 2(2). Article 2(1) establishes that cases concerning "a murder, kidnapping or other attack upon the person or liberty of an internationally protected person... shall be made by each State Party a crime under its internal law." Article 2(2) specifically states that "[e]ach State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature."

18. Further, the petitioners affirm that according to the Public Prosecutor before the Supreme Court of Chile, in his opinion dated June 17, 1996, international human rights treaties ratified by Chile prohibited the application of the Amnesty Law in the case of Carmelo Soria Espinoza.

19. The petitioners also maintain that the Commission should take into account that in the case of Mr. Carmelo Soria, the State of Chile, by means of the Supreme Court of Justice's judgment issued on August 23, 1996, failed to consider Mr. Soria's status as an international official. They argue that in view of the gravity of the crime, his status should have constituted an obstruction to extending the benefit of amnesty to the perpetrators since, in accordance with the principle *aut dedere aut judicare*, crimes committed against internationally protected persons were unpardonable, and it was the obligation of the State of Chile to punish the perpetrators.

20. The petitioners assert that the decisions of the Chilean courts of justice violate international human rights treaties. These treaties consider or assimilate forced disappearances and summary or arbitrary executions, committed by State agents, with crimes "against humanity," "lesa humanidad," which are not subject to amnesty or statutes of limitations.

21. The petitioners affirm that the State of Chile, in taking this position through its judicial bodies, has failed to fulfill its obligation to punish the perpetrators and thus denied the petitioners the right to justice duly asserted before the appropriate competent authorities.

22. The petitioners conclude that in the case of the disappearance and murder of Carmelo Soria Espinoza several international human rights norms have been violated, particularly provisions within the inter-American system of human rights. The petitioners specifically allege violations of Article XVII of the American Declaration, concerning the right to justice, and Articles 1(1), 8 and 25 of the American Convention on Human Rights. They also request that the Amnesty Law be declared incompatible with the obligations of the aforementioned American Convention inasmuch as it violates Articles 1, 2 and 43 of the Convention.

B. Position of the State

23. In its responses, the State has not contested the version of the facts presented by the petitioners.

24. With respect to the legal arguments regarding the substance of the case, the State has maintained that the Chilean people, in free exercise of their right to self-determination, chose a means of restoring democracy that involved the acceptance of institutional rules imposed by an authoritarian regime. It declared that implicit in the acceptance of those rules was the acceptance of all laws enacted under the authoritarian system and the decision, within that legal context and in accordance with its rules, to improve those laws until a fully democratic regime had been configured.

25. The State pointed out that "the democratic governments of Chile have not enacted any amnesty law that is incompatible with the American Convention, since Decree Law 2.191 was issued in 1978 under the *de facto* military regime." The State argues that the democratic governments cannot be accused of acts that occurred many years before they assumed power or acts which originate from other powers of the State whose independence, under the constitution, must be respected. Accordingly, the State requested that the Commission take into consideration the historical context and the special situation of the country's return to a democratic regime, in

which the new government had to accept rules imposed by the de facto military regime that could only be modified in the manner prescribed by law and the Constitution.

26. In the State's opinion, it cannot be demanded of the constitutional Government that it transgress the institutional framework it inherited or modify it by means not recognized within that framework. It can only be demanded to comply with that legal framework or to advocate for its modification or derogation through means established by that framework. The State considers that, even though the constitutional governments that came after the military regime might agree with the petitioners' criticisms of the Amnesty Law from 1978, it is not possible to terminate or revoke it.

27. The State also pointed out that the current government absolutely respects the independence of the Judicial Branch and cannot invalidate its judgments or render them without effect, even though they might be contrary to the government's interests or positions. To ensure their independence, the government cannot interfere with the work of the members of the courts.

28. According to the State of Chile, the Executive Branch lacks the authority to unilaterally revoke legal precepts recognized as valid by other powers of the State. With respect to the possibility of revoking the Amnesty Law, legal measures with regard to amnesties may only be initiated in the Senate (Article 62, second paragraph, of the Constitution), a branch of the State in which the current government does not enjoy a majority, due to the number of members not elected by popular vote. The State maintains that in any case, as far as accused persons might be concerned, derogation would be without effect under criminal law by virtue of the principle that criminal laws cannot be applied retroactively against the accused (Article 19 N° 3 of the Constitution).

29. The State referred to the creation of the National Commission for Truth and Reconciliation that, in its 1990 report, identified the victims of fundamental rights violations under the military dictatorship. The case of Carmelo Soria Espinoza was included among those in which State agents were found to have participated in serious violations of fundamental rights. The State maintained that its efforts to investigate the grave human rights violations that occurred between 1973 and 1990 through the National Corporation for Reparation and Reconciliation (a public agency that carried on the investigative work of the National Commission for Truth and Reconciliation) attests to its interest in shedding light on the truth.

30. The State also pointed out that it was the presentation of new facts by the National Commission for Truth and Reconciliation itself that led to the reopening of the summary investigation that had been dismissed so many years before by the Third Criminal Chamber of Santiago, as the petitioners themselves recognize in their brief.

31. The State indicated that its reparations policy is set forth mainly in Law 19.123, published in the Official Journal of February 8, 1992 (hereinafter "the Reparations Law"). This provision granted a single lifetime pension to victims' family members in amounts no less than the average family income in Chile; a special provision for the declaration of presumed death; special attention from the State in the areas of health, education, and housing; forgiveness of

educational, housing, tax and other debts owed to State agencies; and exemption from compulsory military service for the victims' children.

32. The State asserted that the family members of Carmelo Luis Soria Espinoza currently receive monthly benefits under that law, in addition to a lump-sum compensatory benefit equal to 12 monthly pension payments and the corresponding medical benefits. To be precise, Laura González-Vera Marchant receives \$161,905 Chilean pesos.

33. In the particular case of the Carmelo Soria family, following the judgment of the Supreme Court, the State offered to take a series of measures in order to repair the damage caused. The measures offered through the Government of Spain were as follows: a public declaration by the Government of Chile recognizing the responsibility of the State for the acts committed by its agents in the death of Carmelo Soria Espinoza and offering in the same declaration to place a monument in his memory at a site in Santiago designated by his family. The State also undertook to donate a large sum of money for the establishment of a foundation in the name of Carmelo Soria Espinoza, with the aim of promoting respect for human rights and fundamental freedoms. Nevertheless, the victim's family did not accept any of the proposed symbolic and material reparations for the injury caused.

34. The State pointed out that the Government of Spain, by note of December 18, 1996, commented favorably on the State of Chile's proposal and recognized the "constructive efforts of the Government of Chile to reach an extrajudicial solution." At the same time, the Spanish government expressed its "regret that the efforts of both governments to reach a final solution... had not been successful."

35. The State maintains that it cannot be held accountable for the alleged violations and that it is not responsible for human rights violations which led to the opening of case 11.725. The State requests that creation of the National Commission for Truth and Reconciliation and the provisions of the Reparations Law, in its application, be considered as measures taken to ensure respect for the petitioners' human rights.

IV. ADMISSIBILITY

A. The jurisdiction of the Commission

36. The petition in question falls within the jurisdiction of the Commission. The petitioners have locus standi to bring the matter before the Commission and has alleged offenses relating to compliance with the provisions established in the American Declaration and the American Convention, committed by agents of an OAS member state that has been a State Party to the Convention since 1990. The events surrounding the disappearance and extrajudicial execution of Mr. Soria occurred when Chile's obligation as an OAS member state to respect the standards established in the American Declaration were in effect.[FN1] The events surrounding the alleged denial of justice occurred at a time when the Chilean State's obligation to respect and guarantee the rights established in the American Convention was in effect.

[FN1] Article 20 of the Commission's Statute provides that: "In relation to those member states of the Organization that are not parties to the American Convention... the Commission shall have the following powers, in addition to those designated in Article 18: a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration [...] b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate [...]."

B. Admissibility

1. Exhaustion of domestic remedies

37. The petitioners argue that domestic remedies have been exhausted.

38. In July of 1976, criminal proceedings were initiated concerning the death of Carmelo Soria Espinoza. On August 3, 1976, the victim's family lodged a criminal complaint. On July 2, 1979, the Third Criminal Chamber of Santiago declared a temporary stay in the proceedings because it was not possible to locate the principal perpetrators, accomplices, or accessories involved in a cover-up, despite the fact that the crime of homicide had been established. This resolution was approved by the Court of Appeals of Santiago on September 28, 1979.

39. On March 15, 1991, the National Commission for Truth and Reconciliation ordered that the criminal proceedings before the Third Criminal Chamber of Santiago be reopened.

40. On November 16, 1993, the Supreme Court of Justice resolved a jurisdictional dispute in favor of military justice. On December 30, 1993, a Supreme Court judge denied the petition requesting that the dismissal issued by the military justice system, pursuant to the Amnesty Law, be declared null and void. On April 6, 1994, the Supreme Court declared the dismissal null and void and ordered the investigation to continue.

41. On May 24, 1995, the Supreme Court tried the case of the former DINA agents Guillermo Sanilas Torres, former army colonel, as principle perpetrator, and José Ríos San Martín, former sergeant, as an accomplice, in the aggravated homicide of Carmelo Soria Espinoza.

42. Within the second and third grounds considered in its judgment, the Supreme Court affirmed "that the acts described constitute aggravated homicide under Article 391 N° 1, circumstances 1 and 5 of the Criminal Code," and "that facts in the case provide grounds to presume that Guillermo Salinas Torres (former army colonel) was the principle perpetrator and the second person (former army sergeant) was his accomplice."

43. On June 4, 1996, Judge Eleodoro Ortíz ordered the final dismissal of the case pursuant to the Amnesty Law. The second paragraph of the grounds considered in the final dismissal ruling affirmed that "according to information compiled during the investigation, the death of Mr. Soria

occurred on July 14 or 15, 1976, and appears beyond all doubt to have been caused by the criminal acts of third persons."

44. On August 23, 1996, the Supreme Court upheld the final dismissal and closed the case. As a result of the decision of the Supreme Court of Chile, domestic remedies were exhausted.

45. Therefore, the Commission concludes that the Supreme Court of Justice's judgment on August 23, 1996, results in the exhaustion of domestic remedies in the present case, as required by Articles 46 of the American Convention and 20(c) of the Statute of the Commission. The State has not contested the issue of exhaustion.

2. Timeliness of the petition

46. The Commission considers that the petition was presented within a period of six months from the date on which the domestic court rendered its final judgment, in accordance with Article 46(1)(b) of the American Convention.

3. Duplication

47. It is the understanding of the Commission that the subject of the petition is not pending before another international investigation or settlement and is not substantially the same as one previously studied by the Commission or another international organization. Accordingly, the conditions set forth in Articles 46(1)(c) and 47(d) are satisfied.

4. Characterization of the alleged acts

48. The Commission considers that the petition refers to acts that could be characterized as a violation of the rights enshrined in the American Declaration and the American Convention. Specifically, the petitioners refer to an alleged violation of rights guaranteed in Article 1 of the American Declaration and Articles 25, 1(1), 2 and 43 of the American Convention concerning the right to effective judicial protection and the duty of the States to ensure observance of the American Convention by adopting the domestic legislative measures necessary to effectively enforce its provisions and inform the Commission accordingly. It is therefore not evident that the petition is groundless or out-of-order, and the Commission considers that the conditions under Article 47(c) have been met.

49. With respect to the enactment and application of laws compatible with the Convention (Articles 1 and 2), the Commission has jurisdiction under Article 42 of the treaty to determine whether such laws, and in particular the so-called "amnesty" laws, as well as actions taken on the basis of those laws, constitute a violation of the obligations assumed by the State Party concerned.[FN2] The Court has affirmed in this regard that "[a]s a result of the foregoing, the Commission may recommend to a State the derogation or amendment of a conflicting norm that has come to its attention by any means... ."[FN3]

[FN2] In this regard, the Commission must verify in a particular case "whether what the norm provides contradicts the Convention and not whether it contradicts the internal legal order of the State." I/A Court H.R., Advisory opinion OC-13/93, Series A, para. 29.

[FN3] I/A Court H.R., International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14/94, December 9, 1994, para. 39.

50. The Commission has developed a body of precedent concerning its jurisdiction with respect to human rights violations committed by courts of justice in cases where, as a result of a judicial decision, a violation of the Convention has been committed when the decision in question was issued in the absence of due process or apparently violated another right guaranteed by the Convention. The State has not contested the Commission's jurisdiction.

5. Conclusions on admissibility

51. The Commission considers that the present case meets the formal requirements regarding admissibility, established in Articles 46(1) of the Convention and 32 of the Commission's Regulations. The petitioners have exhausted the remedies that were available to them under Chilean law or they are considered excused from the exhaustion requirement under Article 46(2) with respect to the jurisprudence established by the Supreme Court of Chile which does not accept writs of amparo challenging the application of the self-amnesty law in the present case.

V. ANALYSIS OF THE SUBSTANCE OF THE CASE

A. General Considerations

52. The Commission notes that the version of the facts presented by the petitioners, with respect to the alleged violation of the rights to life, liberty and personal integrity, is based on the findings of the investigations referred to in the judgments of the Supreme Court of Justice of Chile. The State has not contested these determinations concerning the facts before the Commission. The present case requires a determination of law regarding whether the Amnesty Law and the manner in which it was applied by the Chilean courts, in relation to the forced disappearance, torture and extrajudicial execution of Carmelo Soria, are compatible with the Convention.

53. The State has not denied the participation of its agents in the facts of this case, perpetrated during the period of the military dictatorship. Considering the nature and gravity of the crimes, the adjudication of which was affected by the Amnesty Law, there can be no doubt that the military government in power from September 11, 1973, to March 11, 1990, carried out a systematic policy of repression which resulted in the "disappearance," summary or extrajudicial execution, and torture of thousands of victims. In reference to the practices of the State at that time, the Commission indicated that:

[The] Government has used virtually all known means to physically eliminate dissidents, including: disappearances, summary executions of individuals and groups, executions ordered in trials lacking legal guarantees, and torture.[FN4]

[FN4] Inter-American Yearbook on Human Rights/Anuario Interamericano de Derechos Humanos 1985, Martinus Nijhoff Pub., 1987, page 1062.

54. It is necessary to note that the General Assembly of the Organization of American States has declared that the practice of forced disappearances is “an affront to the conscience of the hemisphere and constitutes a crime against humanity.”[FN5] In its decision from 1988 in the Velásquez Rodríguez case, the Inter-American Court of Human Rights observed that international doctrine and practice have frequently characterized disappearances as a crime against humanity.[FN6] In its preamble, the Inter-American Convention on Forced Disappearance of Persons reaffirms that “the systematic practice of the forced disappearance of persons constitutes a crime against humanity.”[FN7] The social need to clarify and investigate these crimes cannot be considered equal to that of a mere common crime.[FN8] Forced disappearances and related crimes, such as torture and summary execution, are of such gravity that several international instruments have established special standards, such as universal jurisdiction and exceptions to statutes of limitations, for their adjudication with the aim of avoiding impunity.[FN9]

[FN5] Res. AG/RES.666 (XIII-0/83).

[FN6] I/A Court H.R., Velásquez Rodríguez, Judgement of July 29, 1988, Series C, N° 4, para. 153.

[FN7] Inter-American Convention on Forced Disappearance of Persons, Resolution adopted by the General Assembly at its Seventh Plenary Session on June 9, 1994. OEA/Ser. P AG/doc.3114/94 rev.

[FN8] See: AG/RES.443 (IX-0/79); 742 (XIV-0/84); 950 (XVIII-0/88); 1022 (XIX-0/89) and 1044 (XX-0/90) and IACHR, Annual Reports 1978; 1980/81; 1981-82; 1985/86; 1986/87; and in particular those on Argentina (1980), Chile (1985) and Guatemala (1985).

[FN9] Both the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons establish universal jurisdiction for the crimes in question (Article 11 and Articles V and VI respectively). The Convention on Forced Disappearance also provides, in Article VII, for exemption from a statute of limitations or, if that is not possible, the application of limitations equal to those applying to the most serious crimes.

55. The Chilean State, recognizing its obligation to investigate past human rights violations, established a National Commission for the purpose of determining the facts and making them public. As a reparations measure, the then President Aylwin apologized to the victims' families. He also publicly protested and criticized the decision in which the Supreme Court determined that application of the Amnesty Law had the effect of suspending the investigation into the

systematic violations committed during the dictatorship.[FN10] The State pointed out the inability of the democratic government to modify or invalidate the Amnesty Law, as well as the State's obligation to respect the decisions of the Judicial Branch. The State also argued that the measures it adopted are both effective and sufficient to fulfill the obligations of Chile under the Convention. While the petitioners recognize the efforts made by Chile, they maintain that the State's efforts have been insufficient and ineffective, adding that the State has the obligation to investigate the facts, determine the individuals responsible and punish those responsible for past human rights violations.

[FN10] President Aylwin stated: "Justice also requires the clarification of the whereabouts of the disappeared as well as the determination of individual responsibilities. Concerning the first point, the truth established in the report (of the Commission for Truth and Reconciliation) is incomplete. In most of the cases the remains of the detainees-disappeared and those executed were not returned to their families. The Commission did not have the means to determine their whereabouts."

56. The State set out its position in terms of the separation of State Powers: Executive, Legislative and Judicial. However, the Commission must consider the international responsibility of the Chilean State as a whole for the acts of its organs and agents whose active and passive participation in the crimes committed against Carmelo Soria Espinoza have been acknowledged.

57. The State argues that the Executive Branch, as an organ, is not responsible for the alleged violations, inasmuch as the democratic government has not decreed any amnesty law. It maintains that it is unable to revoke the law or adapt it or other provisions to the American Convention. With respect to the application of the self-amnesty, the State can only act within the law and the Constitution, which establish the framework of its authority, responsibilities and powers.

58. The Commission considers that the Amnesty Law and its legal effects flow from the military regime's policy of human rights violations, which governed Chile from September of 1973 to March of 1990.[FN11] Even though the norm in question was issued during the de facto Government of General Augusto Pinochet, it is still applied in order to protect the intellectual authors and actual perpetrators of those crimes whenever Chilean or foreign courts receive or attempt to examine cases concerning human rights violations. The legal consequences of the Amnesty Law and its invariable and continuous application by State bodies during the democratic governments that followed the military regime, as intended by the de facto government, are entirely incompatible with the provisions of the American Convention.

[FN11] Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.34, doc. 21, 1974; Second Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.37, doc. 19, corr., 1976; Third Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.40, doc. 10, 1977; Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc. 17, 1985.

59. Although under Chilean domestic law the executive, legislative and judicial branches are separate and independent, from the point of view of international law, they must be considered as a single entity of the State for the purpose of determining responsibility for the violation of international norms.[FN12]

[FN12] Brownlie, Ian, *Principles of Public International Law*, Clarendon Press. Oxford, 1990, 4th ed. Pages 446/52. *Benadava Derecho Internacional Público*, Ed. Jurídica de Chile, 1976, page 151.

60. From the perspective of international law, the Chilean State cannot justify its lack of compliance with the Convention with the excuse that the Amnesty Law was established by a previous government. Nor can the State justify its failure to repeal the Amnesty Law as well as the continued application of the law based on the inaction and omission of the legislative branch and the acts of the judicial branch. Article 27 of the Vienna Convention on the Law of Treaties enshrines the norm of customary international law whereby States Parties to a treaty may not invoke the provisions of their domestic law as a justification for the failure to comply with a treaty. In addition, the Inter-American Court has held that “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”[FN13]

[FN13] I/A Court H.R Velásquez Rodríguez case, judgment of July 29, 1998, para. 170.

61. The State of Chile is responsible for any denial of justice that the Amnesty Law may have caused, irrespective of the regime that issued the Amnesty Law or the branch of the State that applied it or made its application possible. Even though the abduction and extrajudicial execution took place during the past military government, the State is internationally responsible for fulfilling its obligation to administer justice and punish the agents responsible for these acts.

62. In accordance with the principle of continuity of the State, international responsibility exists independent of changes in government. In that regard, the Inter-American Court of Human Rights asserted that “according to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act which creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.”[FN14]

[FN14] *Idem*, para. 184.

B. Violations of the American Convention

1. Compatibility of the Self-amnesty Law with the American Convention

63. The States Parties to the American Convention have undertaken the obligation, with respect to persons under their jurisdiction, to respect and guarantee all the rights and freedoms protected in the Convention and to adapt their legislation to permit the effective enjoyment and exercise of those rights and freedoms. Specifically, Article 2 of the Convention establishes the obligation of the States Parties to adopt “such legislative or other measures as may be necessary” to give effect to the rights and freedoms enshrined in the Convention. Therefore, the Commission must examine the compatibility of the States Parties’ domestic legislation with the rights enshrined in the Convention.[FN15]

[FN15] IACHR, Report 29/92 Annual Report 1992-1993, para. 32.

64. Some States, in seeking mechanisms for national peace and reconciliation, have resorted to enacting amnesty laws that have left victims of serious human rights violations helpless, depriving them of the right to access to justice. The adoption and application of these types of provisions is incompatible with the obligations undertaken by virtue of Articles 1(1) and 2 of the American Convention.[FN16]

[FN16] See Annual Report of IACHR 1985-1986, page 204; IACHR Report 28/92 (Argentina), Report 29/92 (Uruguay), IACHR Report 1992-1993; IACHR, Report N° 36/96, Case 10.843 (Chile), IACHR Annual Report 1996, para. 49; Report 1/99, Case 10.480 (El Salvador), IACHR Annual Report 1998, para. 107.

65. The compatibility of amnesty laws with the American Convention has been examined by the Commission on several occasions in the context of deciding individual cases. Through the application of impunity, the norm under review protects serious human rights violations committed against persons subject to the jurisdiction of the State Party involved, causing these violations to go unpunished.

66. The Commission has repeatedly indicated that the application of amnesty laws, which bar access to justice in cases concerning serious human rights violations, render ineffective the obligation of the States Parties to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise by all persons subject to their jurisdiction, without discrimination of any kind, as established in Article 1(1) of the Convention.[FN17] Such laws therefore eliminate the most effective means of enforcement of human rights, that is, the adjudication and punishment of those responsible.[FN18]

[FN17] The Inter-American Court of Human Rights has indicated that this provision establishes the obligation of the States Parties to guarantee the respect of each and every right protected by the Convention. I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, supra note 42, para. 162; I/A Court H.R., Godínez Cruz, judgment of January 20, 1989, Series C N° 5 (1989), para. 171; I/A Court H.R., Neira Alegría et al, judgment of January 19, 1995, supra note 65, para. 85. Also see Annual Report of the Inter-American Commission on Human Rights (1996), OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, Reports N° 36/96 (Chile), para. 78 and N° 34/96 (Chile), para. 76; Annual Report of the Inter-American Commission on Human Rights (1992-93), OEA/Ser.L/V/II.83, Doc. 14, March 12, 1993, Reports N° 28/92 (Argentina), para. 41 and N° 29/92 (Uruguay), para. 51, Annual Report of the Inter-American Commission on Human Rights (1997), OEA/Ser.L/V/II.98, Doc. 6 rev., April 13, 1998, para. 71.

[FN18] IACHR Reports 28/92 (Argentina) and 29/92 (Uruguay).

67. The Court, for its part, has stated that "States... have the obligation to prevent human rights violations, investigate them, identify and punish their intellectual authors and accessories after the fact, and may not invoke existing provision of domestic law, such as the Amnesty Law...to avoid complying with their obligations under international law. In the Court's judgment, the Amnesty Law... precludes the obligation to investigate and prevents access to justice. For these reasons... [the State's] argument that it cannot comply with the duty to investigate the facts that gave rise to the present case must be rejected... Consequently, it is the duty of the State to investigate human rights violations, prosecute those responsible and avoid impunity. The Court has defined impunity as the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention and has further stated that"

...the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless[ness] of the victims and their relatives (Paniagua Morales et al. Case, supra 57, para. 173).[FN19]

[FN19] I/A Court H.R., Loayza Tamayo, Reparations, para. 168 and 170.

68. The doctrine and practice of the IACHR with respect to amnesty coincides with the study on impunity recently prepared by Louis Joinet, United Nations Special Rapporteur on Impunity.[FN20] In his study, presented to the United Nations Commission on Human Rights on October 2, 1997, Joinet recommended the adoption of 42 principles established for the protection and promotion of human rights through measures designed to combat impunity.[FN21]

[FN20] The Administration of Justice and the Human Rights of Detainees "Question of the Impunity of perpetrators of human rights violations (civil and political)" (E/CN.4/Sub.2/1997/20/Rev.1). This report was prepared by Louis Joinet pursuant to resolution 1996/119 of the Sub-Committee on the Prevention of Discrimination Against and the Protection of Minorities, of the United Nations Human Rights Commission.

[FN21] *Idem*, pages 13-15.

69. Principle 20 refers to the State's duty with respect to the administration of justice. In that regard, *Joinet* affirms that impunity is the result of States not fulfilling their obligation to investigate such violations and adopt measures, particularly in the area of the administration of justice, to guarantee that those responsible are accused, tried and punished. Furthermore, impunity arises from the fact that States do not adopt appropriate measures to provide victims with effective recourse, to remedy the injuries they suffered, and prevent the repetition of such violations.

70. As established above, precluding the possibility of judging those responsible for the illegal detention, forced disappearance and extrajudicial execution of Carmelo Soria, perpetrated by agents of the State during the past military regime, violates the right to access to justice and judicial protection enshrined in the Convention. This denial of justice stems from the enactment and application of the Amnesty Law that the military government issued for the benefit of its own members. The State has maintained this law in force after ratification of the American Convention and it has been ruled as constitutional by the State's Judicial Branch, which has applied it in a continuous manner. The Commission has already had the opportunity on earlier occasions to declare its opinion on the incompatibility of this law and its application by domestic courts in particular cases with the international obligations of the Chilean State under the American Convention.[FN22]

[FN22] Report N° 25/98 concerning cases 11.505, Alfonso René Chanfeau Orayce; 11.532, Agustín Eduardo Reyes González; 11.541, Jorge Elías Andrónico Antequera and his brother Juan Carlos and Luis Francisco González Manríquez; 11.546, William Robert Millar Sanhueza and Jorge Rogelio Marín Rossel; 11.549, Luis Armando Arias Ramírez, José Delimiro Fierro Morales, Mario Alejandro Valdés Chávez, Jorge Enrique Vásquez Escobar and Jaime Pascual Arias Ramírez; 11.569, Juan Carlos Perelman and Gladys Díaz Armijo; 11.572, Luis Alberto Sánchez Mejías; 11.573, Francisco Eduardo Aedo Carrasco; 11.583, Carlos Eduardo Guerrero Gutiérrez; 11.585, Máximo Antonio Gedda Ortiz; 11.595, Joel Huaiquiñir Benavides; 11.652, Guillermo González de Asís; 11.657, Lumy Videla Moya; 11.675, Eulogio del Carmen Ortiz Fritz Monsalve; and 11.705, Mauricio Eduardo Jorquera Encina. See IACHR Annual Report 1997, OEA/Ser.L/V/II.98, doc. 6, rev., April 13, 1998, pp. 520-559. See IACHR Annual Report, 1996, Report N° 36/96 and 34/96 Chile, pp. 162-240. See also the Griego case, in the Yearbook of the European Convention on Human Rights, 1969, Martinus Nijhoff, The Hague, 1972.

71. Aware of the close relationship between the Amnesty Law, impunity and the violation of fundamental human rights, the State has taken measures such as those set forth in the Reparations Law for the purpose of compensating victims' family members. As it has expressed on several occasions, the violation of victims' rights from the moment of their arrest up to the denial of justice must be considered as a whole.

72. The Commission has duly noted that the Executive Branch contacted the Supreme Court of Chile in March of 1991 to urge it to consider that the self-amnesty in force should not and could not be an obstacle to the judicial investigation and determination of those responsible. The Executive Branch also vetoed a law that could have contributed to the amnesty.

73. The Commission recognizes the importance of creating the National Commission for Truth and Reconciliation and the work it accomplished in gathering information on human rights violations and disappeared detainees. The report named the victims individually, including Carmelo Soria, and recognized that their cases constituted grave violations of fundamental rights attributable to State agents, and attempted to establish their whereabouts and take measures to provide full reparation and clear each of the victims' reputation.

74. The Commission also recognizes and appreciates the Reparations Law, an initiative of the democratic government that provides victims' families with: (a) a single lifetime pension in an amount no less than the average family income in Chile; (b) a special procedure for the declaration of presumed death; (c) specialized attention given by the State in the areas of health, education and housing; (d) forgiveness of educational, housing, tax and other debts owed to State agencies; and (e) exemption from compulsory military service for victims' children.

75. Nonetheless, in accordance with Articles 8 and 25, in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights, so long as the right to justice remains unsatisfied, these measures are not sufficient to guarantee respect for the petitioners' human rights, which means rendering justice in the specific case, punishing those responsible, and providing adequate reparations to the family members.

76. The Chilean State has affirmed that revocation of the Amnesty Law would have no effect as far as those responsible for the violations are concerned, by virtue of the principle of non-retroactive application of criminal law under Article 9 of the American Convention and 19(3) of the Constitution of Chile. In that regard, the Commission points out that the principle of non-retroactive application of the law, under which no one can be convicted retroactively for actions or omissions that were not considered criminal under applicable law at the time they were committed, cannot be invoked with respect to those granted amnesty because at the time the acts in question were committed they were classified and punishable under Chilean law in force.

77. The Commission concludes that the State is responsible for the continued application of the Amnesty Law from April 19, 1978, in this case through the judgment of the Supreme Court of Justice from August 23, 1996. The State is also found responsible for its failure to bring its domestic law into compliance with the precepts of the American Convention through the revocation of the amnesty law, in violation of the obligations assumed under Articles 1(1) and 2.

2. Denial of justice

78. The violation of the right to justice and the resulting impunity in the present case are the result of a chain of events beginning when the military government issued a series of laws, in its own favor and in favor of State agents who committed human rights violations, designed to form a complex legal framework of impunity. This process formally commenced in 1978 when the

military government enacted the self-amnesty law and eventually led to the judgment issued by the Supreme Court of Justice on August 23, 1996, applying the Amnesty Law against Carmelo Soria Espinoza through declaring the dismissal of the prosecution for his violent death.

a. Violation of the right to judicial guarantees (Article 8)

79. The Commission has established in other cases that amnesties or their effects cannot deprive victims, their family members or survivors of the right to obtain, at a minimum, adequate reparations for human rights violations enshrined in the American Convention. This position derives largely from the interpretation of the Inter-American Court with respect to the consequences of a State's violation of its duty to guarantee human rights under Article 1(1) of the Convention. In the Velásquez Rodríguez case, the Inter-American Court declared that the State has a legal duty to investigate violations committed within its jurisdiction in order to "ensure the victim adequate compensation." (emphasis added). The right to adequate compensation is also intertwined with the right to judicial protection enshrined in Article 25 of the Convention.[FN23]

[FN23] I/A Court H.R., Velásquez Rodríguez, para. 174.

80. The judicial consequences of the self-amnesty are incompatible with the Convention in that they deny the victim the right to a fair trial, under Article 8 of the Convention.

81. Although the State has the obligation to provide effective recourse (Article 25), which must be "substantiated in accordance with the rules of due process of law (Article 8(1)),"[FN24] it is important to note that in many criminal law systems in Latin America the victim has the right to file charges in criminal proceedings. In systems like that of the one in Chile which permit it, the victim of a crime has a fundamental right to recourse before the courts.[FN25] That law is essential for the initiation of criminal proceedings. In the present case, the Amnesty Law clearly affected the right of the victim and his family to obtain justice through effective recourse against those responsible for violating his human rights.

[FN24] I/A Court H.R., Velásquez Rodríguez, Preliminary Exceptions; judgment of June 26, 1987, para. 91.

[FN25] Code of Criminal Procedure of Chile, Title II, "Criminal Action and Civil Action in Criminal Proceedings," Articles 10/41.

82. Even if this were not the case, since the crimes in question here are public crimes, that is to say subject to ex officio prosecution, as in the present case, the State has the legal obligation to investigate them, an obligation which may not be delegated or renounced. Thus, it is in any case incumbent on the Chilean State to take punitive action and press forward with the various procedural stages, in fulfillment of its duty to guarantee the right to justice of the victim and his family. This function must be assumed by the State as its own legal duty, not as a step taken by

private interests or that depends upon the initiative of those private individuals or upon their offer of proof.[FN26]

[FN26] I/A Court H.R, Velásquez Rodríguez, judgment of July 29, 1988, para. 177.

83. The Amnesty Law also deprived the victim's family of the possibility of obtaining reparations in the civil courts. On this point, Article 8 of the American Convention provides:

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...for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

84. Moreover, according to Chilean law, the possibility of initiating a civil case does not necessarily depend on the results of criminal proceedings. Nonetheless, the civil claim must be lodged against a specific person in order to establish their responsibility for the alleged acts and determine the payment of indemnities owed. The absence of an investigation by the State made it materially impossible to establish the responsibility in the civil courts. Even though the Supreme Court of Chile affirmed that the fact that civil and criminal proceedings are independent,[FN27] the manner in which the amnesty was applied by the courts affected the right to obtain reparations within the civil courts, given the impossibility of individualizing or identifying those responsible for the disappearance, torture and extrajudicial execution of Carmelo Soria.

[FN27] Supreme Court of Chile. Decision on a claim for non-application of Decree Law 2.191, August 24, 1990, para. 15. The same court. Decision on a request for clarification on September 28, 1990, para. 4.

85. In addition, as a result of the manner in which it was applied and interpreted by the Chilean courts, the Amnesty Law deprived the petitioners the exercise of their right to a fair trial, established in Article 8(1) of the Convention, for the proper determination of their civil rights.

a. Violation of the right to judicial protection (Article 25)

86. In the present case, the victim and his family were deprived of their right to effective recourse against acts that violated their fundamental rights, under Article 25 of the Convention. Article 25 provides:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his 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.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

87. Concerning the legal obligation that States have to provide effective domestic recourse, the Inter-American Court of Human Rights has asserted the following:

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 (Article 1).[FN28]

[FN28] I/A Court H.R., Velásquez Rodríguez, Preliminary Exceptions, para. 91.

88. The Court has added that: “[a]dequate domestic remedies are those which are suitable to address an infringement of a legal right.”[FN29]

[T]he absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[FN30]

[FN29] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, para. 64.

[FN30] I/A Court H.R., Advisory opinion OC-9/87, para. 24.

89. In the present case, the self-amnesty law and its application by the Supreme Court of Chile had the effect of barring the victim's family's access to effective recourse for the protection of their rights under Article 25 of the American Convention. Indeed, by way of these legislative and judicial acts, the State declined to punish the serious crimes committed against Carmelo Soria, which at the least violated his rights to life, liberty and physical and moral integrity enshrined in Articles 4, 5 and 7 of the American Convention. In addition, the manner in which the law was applied by the Chilean courts not only prevented the punishment of the perpetrators of human rights violations, but also ensured that no charges would be brought against those responsible in such a way that they have been considered legally innocent.

90. The Amnesty Law rendered the crimes without juridical effect. The law left the victim and his family without any judicial recourse that might have permitted those responsible for the

human rights violations, committed against Carmelo Soria during the military dictatorship, to be duly judged and punished.

91. Accordingly, by enacting and applying the Amnesty Law, the State of Chile failed to guarantee the rights to judicial protection enshrined in Article 25 of the Convention, thereby violating the corresponding human rights of Carmelo Soria Espinoza and his family.

c. Failure to fulfill the obligation to investigate and punish

92. Article 1(1) of the American Convention provides that the States Parties undertake to “respect” the rights recognized therein and to “ensure” the free and full exercise of those rights. As declared by the Inter-American Court, this obligation implies an actual duty of the States to take measures that effectively ensure such rights.[FN31] By virtue of this obligation, the State of Chile has a legal duty to take reasonable steps to prevent human rights violations, to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose upon them the appropriate punishments, and to ensure the victim adequate reparations.[FN32]

[FN31] “The second obligation of the States Parties is to ensure the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.” I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, Series C N° 4 (1988), para. 166, Godínez Cruz, judgment of January 20, 1989, Series C No. 5 (1989), para. 175.

[FN32] I/A Court H.R., Velásquez Rodríguez, Idem., para. 174, Godínez Cruz, Idem., para. 184.

93. The Court has also held that “[t]he State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation.”[FN33]

[FN33] Idem., para. 174.

94. The Amnesty Law establishes a legal impediment to obtaining relevant information regarding the facts and circumstances surrounding the violation of fundamental rights; it also bars domestic legal recourse for the judicial protection of fundamental rights established in the American Convention, the laws of Chile and its Constitution. Therefore, the Amnesty Law is in violation of the right established in Article 25 of the American Convention.

95. The Commission has reiterated in cases concerning the applicability of amnesty laws that it is necessary for States to adopt “the measures necessary to clarify the facts and identify those responsible for the human rights violations that occurred during the de facto period”;^[FN34] that “the State has the obligation to investigate all violations that have been committed within its jurisdiction, for the purpose of identifying the persons responsible”;^[FN35] and that the State of Chile should “amend its domestic legislation to reflect the provisions of the American Convention on Human Rights, so that violations of human rights by the 'de facto' military government may be investigated, with a view to identifying the guilty parties, establishing their responsibilities and effectively prosecuting them, thereby guaranteeing to the victims and their families the right to justice that pertains to them.”^[FN36]

[FN34] IACHR, Annual Report 1992-1993 - OEA/Ser.L/V/II.83 Doc. 14, Uruguay 29/92, Recommendations, para 3.

[FN35] IACHR, Annual Report 1996 - OEA/Ser.L/V/II.95 Doc. 7 rev., Chile 36/96, para. 77.

[FN36] IACHR, Annual Report 1996 - OEA/Ser.L/V/II.95 Doc. 7 rev., Chile 36/96, Recommendations, para. 111.

96. In interpreting the scope of Article 1(1) of the American Convention, the Inter-American Court has asserted that the obligation established in that provision implies

[...] the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.^[FN37]

[FN37] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, para. 166.

97. The Court has also stated that:

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, impose the appropriate punishment and ensure the victim adequate compensation.^[FN38] If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to guarantee the free and full exercise of those rights to the persons within its jurisdiction.^[FN39]

[FN38] *Idem.*, para. 174. See also I/A Court H.R., Godínez Cruz, judgment of January 20, 1989, *supra* note 70, para. 184.

[FN39] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, *supra* note 42, para. 176; I/A Court H.R., Godínez Cruz, *supra* note 70, para 187.

98. In its interpretation of Article 1(1) of the American Convention, the Inter-American Court has also affirmed that “[t]he second obligation of the States Parties is to ‘guarantee’ the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction...[a]s a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention...”[FN40] The Court continues its analysis of this concept as follows:

What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.[FN41] The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.[FN42] If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN43] The duty to investigate...must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[FN44]

[FN40] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, para. 166.

[FN41] *Idem.*, para. 173.

[FN42] *Idem.*, para. 174.

[FN43] *Idem.*, para. 176.

[FN44] *Idem.*, para. 177.

99. In the present case, the State has the obligation to carry out an exhaustive investigation and to punish, through its jurisdictional bodies, those responsible for the acts that resulted in the death of Carmelo Soria Espinoza. However, even though it was established within the second and third grounds considered in the May 24, 1995 judgment of the Supreme Court of Chile: “that the acts described constitute the crime of aggravated homicide under Article 391, no. 1, circumstance 1 and 5 of the Criminal Code” and “that the same facts provide grounds for presuming that Guillermo Salinas Torres (former army colonel) was the principal author and José Ríos San Martín (former army sergeant) was his accomplice,” the State of Chile, by means of the June 4, 1996 judgment of the Supreme Court applying the Amnesty Law, declared final dismissal of the case. This occurred notwithstanding the finding in the second grounds considered in the aforementioned final dismissal ruling which established that “according to the

information compiled during the investigation, the death of Mr. Soria occurred on July 14 or 15, 1976, and appears beyond all doubt to have been caused by the criminal acts of third persons."

100. This clearly shows that, at the time indicated, once the presumed perpetrators were identified, the State did not fulfill its obligation through its judicial administration bodies to complete the investigation and punish those responsible for the acts connected with the extrajudicial execution of Carmelo Soria Espinoza.

101. The Commission considers it important to point out that "the duty to investigate... must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests which depends upon the initiative of the victim or his family or their offer of proof, without an effective search for the truth by the government." [FN45] In other words, the authorities should have undertaken a serious investigation of the facts in order to establish the objective and real truth. The State apparatus, on the contrary, acted in such a manner that the violations went unpunished and the petitioners' rights were not upheld.

[FN45] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, para. 177.

102. The Commission for Truth and Reconciliation, established by the democratic government to investigate past human rights violations, made a commendable effort to compile information concerning human rights violations and the situation of the disappeared detainees for the purpose of establishing their whereabouts and taking steps to provide full reparation and clear each of the victims' reputation. Nevertheless, although its work covered a large portion of the total number of cases, it did not allow for the investigation of criminal acts committed by State agents, nor the identification and punishment of those responsible, precisely because of the Amnesty Law. For this reason, the rights of surviving victims and family members to know the true facts were violated by the Chilean State.

103. In addition, the National Commission for Truth and Reconciliation was not a judicial body, and its function was limited to establishing the identity of the victims of violations to the right to life. Given the nature of its mandate, the National Commission did not have the authority to publish the names of those who committed crimes nor to impose any type of punishment. Consequently, notwithstanding its importance in establishing the facts and awarding compensation, the National Commission for Truth and Reconciliation cannot be considered as an adequate substitute for judicial process.

104. The same National Commission concluded in its report:

From a strictly preventative standpoint, this Commission considers that an indispensable element for obtaining national reconciliation and for avoiding the repetition of the acts committed would be the State's full exercise of its power to punish. The full protection of human rights is conceivable only under a true Rule of Law. The Rule of Law assumes that all citizens be subject to the law and the courts of justice, which involves the application of punishment as stipulated by

criminal law on an equal basis for all those who violate the norms which ensure the respect for human rights (underlining and emphasis added by the Commission).[FN46]

[FN46] Rettig Report. February 1991, Volume 2, page 868 (unofficial translation).

105. The Government's recognition of responsibility, the partial investigation of the facts and the subsequent payment of compensation are not, in and of themselves, sufficient to comply with the obligations provided for in the Convention. According to Article 1(1), the State has the obligation to investigate violations committed within the scope of its jurisdiction in order to identify those responsible, impose the appropriate punishment and provide the victim with adequate reparations.[FN47]

[FN47] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, para. 174.

106. Therefore, the Commission concludes that the State did not comply with its obligation to investigate and punish those responsible for violating the human rights of Carmelo Soria Espinoza and that the dismissal resulting from the application of amnesty, despite the incriminating evidence existing against them, demonstrates that the State also failed to comply with its obligation to punish.

107. Consequently, by enacting the self-amnesty law and applying it in the case of Carmelo Soria through the judgment issued by the Supreme Court of Justice, the State of Chile failed to fulfill the obligation to investigate and punish those responsible, as stipulated in Article 1(1) of the Convention, and violated human rights recognized in the American Convention to the detriment of the victim and his family.

3. Violation of the right to life, liberty and personal integrity

108. In her petition, Carmen Soria González Vera reported first of all the following facts before the Commission:

My father, Carmelo Soria Espinoza, of dual Chilean-Spanish nationality and an official of CELADE, an international agency under the authority of the United Nations ECLAC, was abducted and subsequently murdered by officials of the Dirección Nacional de Inteligencia (DINA) in July 1976. At that time, my father was 54 years of age. On July 14, 1976, he left his place of work, located at calle Huelén No. 61 in Santiago, between the hours of 5:00 and 5:30 p.m., to return home. That day he did not arrive home. My family took all the steps and measures necessary to locate him until the following day when Guards of the El Salto Lieutenancy found his Volkswagen automobile in the El Carmen irrigation canal located on the outskirts of the Metropolitan Park.

Draining of the canal was ordered, and on Friday, July 16, 1976, after the water level had fallen considerably, my father's body was found. The Commission for Truth and Reconciliation, established by the Administration of Patricio Aylwin in 1990, determined, with respect to the murder of my father, that "On July 15, 1976, the Spanish economist and United Nations official Carmelo Luis Soria Espinoza, a member of the Socialist Party, was killed by agents of the DINA. The victim had been arrested the previous day. The following day, his automobile was pushed by a number of agents into the El Carmen canal in the Piramide district, with the keys in the ignition but without the radio or seats, except the driver's seat. A bottle of pisco was placed in the car to simulate an accident. The victim's body was thrown into the same canal and was found on the 17th of that month at a distance of one kilometer from the place where the car had been found. The Commission was convinced that Carmelo Soria had been executed by State agents in violation of his human rights." The report adds: "Carmelo Soria was Spanish and came under the decree concerning Chileans with dual nationality. He was married, had three children, and was 54 years of age. He was an activist in the Spanish Communist Party, an official of the United Nations, and at the time of his death was working in CELADE. On July 15, 1976, he was detained by DINA agents as he was leaving his office to return home. The following day, on July 16, his body was found near his automobile in the El Carmen canal in Santiago, his death having resulted from actions by DINA agents, who crashed the car to make the death appear accidental."

109. Before it was discontinued, the judicial investigation of the illegal detention, torture and summary execution of Mr. Carmelo Soria Espinoza managed to obtain verification of a number of the facts alleged by the petitioners as well as to identify some of the perpetrators.

110. In the present case, based on the contents of the Commission's file on the case, the judgment issued by Judge Libedinsky of the Supreme Court of Justice of Chile on December 30, 1993, the investigations in the case ascertained that Mr. Carmelo Soria Espinoza was arrested by a group of military officers assigned to the DINA who were members of a brigade of that agency known as Mulchén. Mr. Soria Espinoza was then transported in his own automobile to a building located at Vía Naraja 4925 in the Lo Curro district where he was subjected to interrogation, physical duress and subsequent death by his abductors who, apparently, previously investigated presumed activities of a political nature by the forenamed Soria Espinoza.

The Supreme Court concludes:

These acts constitute the crime of homicide against Carmelo Soria Espinoza, which the perpetrators attempted to cover up immediately afterwards by simulating an automobile accident using the victim's Volkswagen, suggesting at the same time inebriation as the cause of the accident. (unofficial translation)

111. The judgment of the Supreme Court of Justice, dated May 24, 1996, similarly concludes:

That the facts described constitute the crime of aggravated homicide provided for in Article 391 No. 1, circumstances 1 and 5 of the Criminal Code and that the same record provides grounds to presume that Guillermo Salinas Torres (former army colonel) was the principal perpetrator and the second person José Ríos San Martín (former army sergeant) was his accomplice. (unofficial translation)

112. These conclusions were also supported by the judgment of Judge Eleodoro Ortiz of the Supreme Court on June 4, 1996, who, in referring to the responsibility of the persons named in the preceding paragraph, concluded:

According to information compiled during the investigation, the death of Mr. Soria occurred on July 14 or 15, 1976, and appears beyond all doubt to have been caused by the criminal acts of third persons. (unofficial translation)

113. The Commission must take into account the determinations reached as a result of these investigations, which were discontinued after they had in fact established that Carmelo Soria was indeed illegally detained, subjected to interrogation, physical duress, and was subsequently executed by those who abducted him. This occurred after the true identity of the perpetrators, and the fact that they were agents of the Chilean State, had been revealed. At that moment, the judicial investigation was suspended and dismissed pursuant to the Amnesty Law. Given that completion of the proceedings was blocked after the responsibility of the State had been ascertained, the Commission can not leave out the ruling that, based on the investigations of the highest Court of Justice, the responsibility of the State has been duly established concerning the violation of the rights to life, liberty and personal integrity of Mr. Carmelo Soria Espinoza.

114. When these violations occurred, the situation in the Republic of Chile was described by the Inter-American Commission, in its 1985 Report on the Situation of Human Rights in Chile, in the following manner:[FN48]

[FN48] See Report on the Situation of Human Rights in Chile OEA/Ser.L/V/II.66 doc. 17, 1985; Conclusions page 313.

11. With respect to the right to life, the Commission considers that this right has been seriously violated in Chile during the entire period covered by this Report. The magnitude of these violations has been characterized by a clear political orientation, since the victims have largely been persons who supported political positions opposed to that of the Government, or who, in public acts, have expressed their disagreement with it. The magnitude of the violations of the right to life that have occurred is explained by the fact that the Government has used virtually all known means to physically eliminate dissidents, including: disappearances, summary executions of individuals and groups, executions ordered in trials lacking legal guarantees, and torture.

12. The solid evidence collected by the IACHR and set forth in the respective chapter of this Report, enables it to affirm that torture has been a continuous, deliberate, and systematic practice throughout the entire period which began in 1973. This assertion is confirmed by the fact that not a single official has been punished for his participation in torture, to which must be added the allocation of the material and human resources required for that practice. All this, in the judgment of the Commission, has had a clear political purpose--to obtain information or self-

incriminating confessions from the victims--leaving profound consequences on them and on their relatives.

115. At the time of the victim's abduction and execution, the American Convention was not in force. However, it is within the Commission's jurisdiction to examine these violations by virtue of the American Declaration of the Rights and Duties of Man.[FN49] Article I of the American Declaration provides:

Every human being has the right to life, liberty and the security of his person.

[FN49] For the member states of the Organization that have not ratified the American Convention on Human Rights, the American Declaration is the text that determines which are the human rights referred to in the Charter. In other words, for those States, in matters pertaining to the Charter of the Organization, the American Declaration constitutes a source of international obligations. Inter-American Court of Human Rights, Advisory Opinion OC-10/89, para. 45.

116. The Commission's doctrine with respect to arbitrary detention and illegitimate deprivation of liberty in the light of the American Declaration, as set forth in its publication Ten Years of Activities 1971-1981, is as follows:

Given that detention deprives one of liberty, it is of crucial importance for citizens to know that such penalties can not be arbitrarily imposed at the discretion or pleasure of the executive authorities. Unless citizens are guaranteed the exercise of this right, all other rights remain uncertain. While the possibility of arbitrary detention exists, all other obstacles to governmental action turn into false hopes, and democracy can not benefit from the public and spontaneous scrutiny of the people, which democracy requires in order to function properly.

117. In the present case, and as established by the Supreme Court of Justice of Chile in its judgment of December 30, 1993, Carmelo Soria was arbitrarily deprived of his liberty, which constitutes a violation of Article I of the American Declaration.

118. With respect to the right to personal integrity, the Commission has affirmed that torture is not justified under any circumstances, because it constitutes an offense against human dignity and violates the integrity of the person, the defense of which is also enshrined in Article I of the American Declaration.[FN50] The Commission has expressed the necessity for States to conduct an exhaustive investigation of any accusation of torture and to punish those found responsible for acts of that nature, irrespective of their position or rank.[FN51]

[FN50] IACHR Annual Report, 1972, page 26.

[FN51] IACHR Annual Report, 1978, page 24; IACHR Annual Report, 1976, page 20.

119. In the present case, as established by the Supreme Court of Justice of Chile in its judgment of December 30, 1993, Carmelo Soria was subject to physical duress when he was interrogated by State agents, which constitutes a violation of Article I of the American Declaration.

120. With respect to observance of the precept concerning the right to life enshrined in the American Declaration and the punishment of those responsible for violating that right, the Commission has affirmed that “the right to life is worthy of special consideration because it constitutes, without a doubt, the foundation and basis for all other rights.”[FN52]

[FN52] IACHR Annual Report, 1971, page 35.

121. The Commission has also indicated that member states where such violations occur have the obligation to “put an immediate stop to the extremely grave practice of illegal executions committed by security forces or paramilitary groups,” recommending that the States adopt “such preventive measures as may be appropriate” and ensure the existence of “an independent Judicial Branch and sufficiently empowered” to “investigate and subsequently...punish all those responsible for such illegal executions.”[FN53]

[FN53] Ibid., page 128.

122. In the present case, as established by the Supreme Court of Justice of Chile in its judgment of December 30, 1993, Carmelo Soria was ultimately murdered by his abductors, in violation of Article I of the American Declaration.

123. In conclusion, the State is responsible in this case for the violation of the rights to life, liberty and personal integrity of Mr. Carmelo Soria Espinoza, enshrined in Article I of the American Declaration. This responsibility derives from the investigations conducted by the Supreme Court of Justice of Chile itself, and the documents confirming the State's responsibility are contained in the judicial files which were a part of the investigation process concerning the disappearance, torture and homicide of Mr. Soria.

d. Obligations in matters of human rights established in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons and Universal Jurisdiction

1. The alleged violation of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons

124. On December 14, 1973, the Chilean State ratified the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, which was signed by the delegate of Chile on that same date and published as law of the Republic on February 28, 1977 (Official Journal of March 29, 1977). As a State Party to that Convention, the State of Chile has

an obligation under the rules and principles of international customary law to observe this treaty in good faith and to adapt its domestic laws accordingly. The Chilean State has also undertaken the obligation to respect that Convention and to ensure compliance with it under all circumstances, especially in grave situations such as the forced disappearance, torture and extrajudicial execution of Carmelo Soria Espinoza.

125. Indeed, Article 3 of the aforementioned Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons provides that each State Party shall take the necessary measures to enforce its jurisdiction over the crimes enumerated in paragraph 1 of Article 2, which include "murder, kidnapping or other attack upon the person or liberty of an internationally protected person." The concept of an internationally protected person includes "any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him,... is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household" (Article 1(1)(b) of the aforementioned Convention). Additionally, "[e]ach State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature" (Article 2(2)).[FN54]

[FN54] Taken from the Report of the Office of the Public Prosecutor before the Supreme Court, June 19, 1996.

126. In the case of Carmelo Soria, by not taking into account his legal status as a United Nations international official, the State of Chile failed to observe its international obligations derived from the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons to which it is a Party. Given the grave nature of the crime, the State should have prevented granting the benefit of amnesty upon the perpetrators of his murder, since according to the principle *aut dedere aut judicare* crimes committed against internationally protected persons are unpardonable and it is the obligation of Chile to punish the perpetrators.

127. Indeed, Article 2(2) of the aforementioned Convention provides that in cases of homicide, kidnappings and other offenses against the physical integrity or liberty of an international official "[e]ach State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature" (emphasis added by the Commission).

128. The violation of this international obligation by the Chilean State is confirmed by the judgment of the Supreme Court of Chile itself, dated August 23, 1996, which was submitted as evidence by the petitioners. It is clear from this judgment that the aforementioned Supreme Court failed to consider Mr. Soria's capacity as an international official subject to protection, even though it had before it the evidence issued by the Ministry of Foreign Affairs of Chile, based on an ECLAC report from September 8, 1994, explicitly recognizing that Mr. Soria had the "status of permanent United Nations international official."

129. Even though it had this evidence before it, the Supreme Court ignored it, declaring that international protection derived from the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons was not applicable to Mr. Soria, inasmuch as "it can only be inferred from the aforementioned documents that Mr. Soria was an ECLAC official, but they do not provide convincing elements in a credible manner establishing that he had the capacity of chief or senior official of ECLAC staff or its mission, CELADE. Such capacity is supported only by mere affirmations by the informants, without any official corroborating documentation."

130. This notwithstanding, the same Supreme Court judgment affirmed the interpretation of the judgment under appeal, which ultimately upheld that Mr. Soria should only receive the benefit of the guarantee referred to in the aforementioned Convention if the criminal infraction at issue had been established in his case: "the punishable nature of the infraction when the judgment was issued and the conduct in question was an imputable crime, which obviously had not been established in this case given the objective situation of the extinction of criminal responsibility resulting from the amnesty established in Decree Law 2.191, which was clearly applied in this case." With this conclusion, the Supreme Court ultimately upheld the decision of the Chilean Judicial Branch to not apply the aforementioned Convention, pursuant to the amnesty, disregarding the additional obligation of the Chilean State deriving from Mr. Soria's capacity as an international official.

131. Aside from these considerations, the jurisdiction of the Inter-American Commission and Inter-American Court with respect to the application of other provisions of international law for the protection of human rights, such as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, is amply supported by the very text of the American Convention and the body of precedent established by decisions of the Inter-American Commission and Inter-American Court themselves.[FN55]

[FN55] See IACHR, Report No. 26/97 (Colombia), September 30, 1997; IACHR Report No. 55/97 (Argentina), November 18, 1997.

132. In this sense, Article 29 of the American Convention, concerning restrictions regarding interpretation, provides that "[n]o provision of this Convention shall be interpreted as: (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party."

133. It should be noted that the Inter-American Court has endorsed the Commission's practice of applying sources of international law found in other treaties that contain human rights provisions different from those of the American Convention. In Advisory Opinion N° 1,[FN56] interpreting the term "other treaties" in Article 64 of the American Convention, the Court maintained that:

The need of the regional system to be complemented by the universal finds expression in the practice of the Inter-American Commission on Human Rights and is entirely consistent with the

object and purpose of the Convention, the American Declaration and the Statute of the Commission. The Commission has properly invoked in some of its reports and resolutions "other treaties concerning the protection of human rights in the American states," regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system. This has been true most recently in the following reports of the Commission: the situation of human rights in El Salvador (OEA/Ser.L/V/II.46, doc.23, rev.1, November 17, 1979) at 37-38; the situation of political prisoners in Cuba (OEA/Ser.L/V/II.48, doc.24, December 14, 1979) at 9; the situation of human rights in Argentina (OEA/Ser.L/V/II.49, doc. 19, April 11, 1980) at 24-25; the situation of human rights in Nicaragua (OEA/Ser.L/V/II.53, doc.25, June 30, 1981) at 31; the situation of human rights in Colombia (OEA/Ser.L/V/II.53, doc.22, June 30, 1981) at 56-57; the situation of human rights in Guatemala (OEA/Ser.L/V/II.53, doc.21, rev.2, October 13, 1981) at 16-17; the situation of human rights in Bolivia (OEA/Ser.L/V/II.53, doc.6, rev.2, October 13, 1981) at 20-21; and Case 7481-Acts which occurred in Caracoles (Bolivia), Resolution N° 30/82 (OEA/Ser.L/V/II.55, doc.54, March 8, 1982). (emphasis added by the Commission)

[FN56] I/A Court H.R., Advisory opinion OC 1/82, para. 43.

134. Accordingly, the Court has explicitly asserted that this Commission's practice is "entirely consistent with the object and purpose of the Convention, the American Declaration and the Statute of the Commission." [FN57]

[FN57] Idem.

135. This leads the Commission to the conclusion that the Chilean State has failed to fulfill its obligation to punish crimes committed against international officials in accordance with the Convention on the Protection and Punishment of Crimes against Internationally Protected Persons as a result of applying the self-amnesty law, failing to adapt its laws to the provisions of that Convention, and because its competent organs in the Administration of Justice have not punished the crimes of forced disappearance, torture and extrajudicial execution committed against Carmelo Soria, an internationally protected person.

2. The question of universal jurisdiction in the doctrine of the Commission

136. The Commission has expressed its position on numerous occasions concerning the need for an international judicial process for recourse in cases where human rights have been violated by State agents and where proper investigation and punishment under domestic law has proven impossible. On December 8, 1998, during the celebration of the fiftieth anniversary of the American Declaration of the Rights and Duties of Man and the United Nations Universal Declaration of Human Rights, the Commission issued a recommendation to the states parties to the inter-American system in which it took note of "one of the greatest advances in recent

international public law: the establishment of the principle of individual criminal responsibility within the international legal order."

137. In that recommendation, approved during its 101st regular session, the IACHR indicated that "pursuant to the Principles of Nuremberg, adopted by the United Nations General Assembly in 1946, and the resolutions establishing the international criminal courts for the former Yugoslavia and Rwanda, issued by the United Nations Security Council in 1993 and 1994, the recent diplomatic conference in Rome approved the Permanent Statute of the International Criminal Court on July 17, 1998."

138. The Commission also noted that "Articles 1 and 25 of that Statute proclaim the criminal responsibility of any person accused of committing a crime against international law in one of the following three categories: genocide, crimes of war and crimes against humanity (such as the forced disappearance of persons, torture and grave or systematic human rights violations). Additionally, these Articles permit the prosecution and adjudication of such crimes by the new international criminal court in cases where the national system of criminal law concerned is not willing or able to perform this function."

139. The recommendation adds that "this evolution in the legal framework has permitted further consolidation of the principle of universal jurisdiction, by virtue of which any State has the authority to pursue, prosecute and sanction the individuals responsible for such international crimes, even those committed outside of a State's territorial jurisdiction or which do not relate to the nationality of the accused or of the victims, since such crimes affect all of humanity and are in conflict with public order in the world community."

140. The recommendations conclude that "as principal organ of the Inter-American system, the IACHR has the mission to promote the observance and defense of human rights in the hemisphere among the Member States of the OAS. Therefore, it considers that the definite establishment of the principle of individual criminal responsibility in the international legal order, together with the principle of universal jurisdiction, contribute significantly to the strengthening of international systems for the protection of human rights and, even more importantly, to the consolidation of the rule of law and fundamental human freedoms in the world community." Accordingly, in exercise of its functions established in Articles 41(b) of the American Convention, 18(b) of its Statute, and 63(f) of its Regulations, the Inter-American Commission decided:

A. To recommend that the member states of the Organization of American States adopt such legislative and other measures as may be necessary to invoke and exercise universal jurisdiction against individuals in matters of genocide, crimes against humanity, and war crimes.

B. To recommend that the member states of the Organization of American States, which have not yet done so, sign and ratify the Statute of the International Criminal Court approved by the Diplomatic Conference of Rome on July 17, 1998.

141. The Commission considers that, with respect to the individual criminal responsibility of the accused for the extrajudicial execution of the ECLAC official, universal jurisdiction is clearly applicable in terms of the Commission's Recommendations from December 8, 1998. This

consideration is based on the finding that the Supreme Court of Justice of Chile chose not to administer justice in the case of Carmelo Soria when it applied the amnesty law and compromised the State's international responsibility by leaving the commission of the crime immune.

142. It is also important to consider that the Inter-American Court, in its interpretation of Article 1(1) of the American Convention, referring to the duty to ensure the protection established in that provision, declared in the Velásquez Rodríguez case that the State had the obligation to prevent, investigate, sanction and provide reparations for rights violated in the following terms:

This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[FN58]

[FN58] I/A Court H.R., Velásquez Rodríguez, judgment of July 29, 1988, Series C, N° 4, para. 166.

143. Furthermore, in the Castillo Páez case, the Court clarified the obligation of the State to investigate and punish as follows:

In connection with the above-mentioned violations of the American Convention, the Court considers that the Peruvian State is obliged to investigate the events that produced them. Moreover, on the assumption that internal difficulties might prevent the identification of the individuals responsible for crimes of this kind, the victim's finally still have the right to know what happened to him and, if appropriate, where his remains are located. It is therefore incumbent on the State to use all the means at its disposal to satisfy these reasonable expectations. In addition to this duty to investigate, there is also the duty to prevent the commission of forced disappearances and to sanction those responsible for them.[FN59]

[FN59] I/A Court H.R., Castillo Páez, judgment of November 3, 1997, Series C, N° 34, para. 90.

144. In the same case, Castillo Páez, the victim's family members requested that the Court urge the State to eliminate the legal obstacles that impeded an investigation of the facts and the eventual punishment of those responsible. In the reparations stage of the case, the Court determined that the Amnesty Law constituted an obstacle to the investigation of the facts and the access to justice, which prevented the victim's family from knowing the truth and receiving the corresponding reparations.[FN60] According to the Court, Articles 25 and 1(1) of the American Convention require the State to guarantee all persons the right to simple and prompt recourse to

ensure that those responsible for human rights violations are tried and that reparations for the damages suffered can be obtained.[FN61] Article 25 is directly related with Article 8(1) of the American Convention, which establishes the right of every person to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, for the determination of his or her rights. Accordingly, the Court determined that the State had the obligation to investigate the human rights violations, try those responsible, and prevent a situation of impunity,[FN62] which in the context of these facts means that the State has the obligation to revoke the Amnesty Law.[FN63]

[FN60] I/A Court H.R., Castillo Páez, Reparations, judgment of November 27, 1998, Series C, No. 43, para. 90.

[FN61] Ibid., para. 106.

[FN62] Ibid., para. 107.

[FN63] Ibid. In the separate concurrent decision by Judges Cancado Trindade and Abreu Burelli this is expressed even more explicitly. In Paragraph 3, the Judges declare that "States have the obligation to eliminate measures (that constitute an obstacle to the enjoyment of human rights), consistent with the other general obligation of adapting their internal laws to international norms...."

145. The applicability of universal jurisdiction to the present case in favor of Carmelo Soria is based on Articles 1, 2 and 3 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, which includes the following provisions:

146. With respect to persons subject to international protection, Article 1 of the treaty provides:

For the purposes of this Convention:

1. "internationally protected person" means:

(b) Any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. "Alleged offender" means a person as to whom there is sufficient evidence to determine prima facie that he has committed or participated in one or more of the crimes set forth in article 2.

With respect to acts giving rise to international protection, Article 2 of the same treaty provides:

1. The intentional commission of:

- (a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
- (b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
- (c) a threat to commit any such attack;
- (d) an attempt to commit any such attack; and
- (e) an act constituting participation as an accomplice in any such attack;

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

With respect to the jurisdiction established for investigating and sanctioning such crimes, Article 3 of the aforementioned Convention provides:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

- (a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

147. In the event that due consideration is not given to a claim for investigation and punishment, Article 3(3) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, provides that "This Convention does not exclude any criminal jurisdiction," irrespective of the perpetrators' whereabouts, provided it is "exercised in accordance with internal law."

148. Under the principle of universal jurisdiction, any State has the judicial authority to pursue, prosecute and punish individuals presumed to be responsible for international crimes or crimes against international law, even those crimes committed outside their territorial jurisdiction or that do not pertain to the nationality of the accused or the victims, since such crimes are an offense against humanity and a disturbance to public order in the world community.[FN64] Indeed, such international crimes or crimes against international law are for the most part *ius cogens*, and have been codified or recognized over time in conventions. It is characteristic of these crimes that they cannot be committed without State involvement, action, tolerance or consent. This definition consists of at least 25 categories of international violations, including crimes against United Nations officials, based expressly on the special convention cited and analyzed here.[FN65]

[FN64] See, *inter alia*, Sharon A. Williams, "The Prosecution of War Criminals in Canada," Timothy L.H. MacCormack & Gerry J. Simpson (eds), *THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES*, Kluwer Law International, The Hague, 1997, pp. 156 et seq.

[FN65] See, *inter alia*, M. Cherif Bassiouni, *INTERNATIONAL CRIMINAL LAW CONVENTIONS AND THEIR PENAL PROVISIONS*. Transnational Publishers, Inc. New York, 1997, pp. 34 et seq. Professor Cherif Bassiouni is an authority on the subject who has participated in the drafting of several international instruments in this field, and is President of the International Human Rights Law Institute of DePaul College of Law, President of the International Association of Criminal Law, and President of the International Institute of Higher Studies in Criminal Sciences.

149. In the present case, the Chilean State, by virtue of the pertinent provisions of the aforementioned treaty, had the obligation to investigate and punish the perpetrators (State agents) responsible for the crimes of the forced disappearance, torture and summary execution of Carmelo Soria. By not proceeding to do so, the Chilean State not only violated its international obligations under the aforementioned Convention, but also opened the way for universal jurisdiction to apply in the case. Therefore, it would amount to a typical international crime against humanity where the State, if it does not wish to or cannot fulfill its obligation to punish those responsible, must accept the application of universal jurisdiction for that purpose.

150. Therefore, in the present case, the Chilean State violated its international obligations under Articles 1, 2 and 3 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, under which the Chilean State has the obligation in this case to accept universal jurisdiction for the purpose of ensuring that an investigation is conducted and the State agents responsible for the illegal detention, torture and summary execution of Carmelo Soria are punished.

VI. ACTIONS TAKEN SUBSEQUENT TO REPORT N° 79/99

151. On May 5, 1999, during the 103rd session held from April 29 to May 9, 1999, the Commission adopted Report N° 79/99 on the present case, based on Article 50 of the American

Convention. The Commission transmitted it to the Chilean State with a number of recommendations, granting the State a period of two months, from the date of the transmittal, to report on the implementation of the Commission's recommendations. The Government of Chile did not respond to the Commission's note in Report N° 79/99 from May 5, 1999, during the above mentioned period, and it did not request an extension of the time period for doing so. The period granted by the Commission within which to send a reply having expired, the Chilean State finally forwarded its observations on September 29, 1999. The Commission regrets the State's failure to reply to the report within the aforementioned period, which could have led it to reiterate its conclusions and recommendations without having before it the required information. Nevertheless, in light of the response submitted by the State, the Commission proceeds to address that information below.

152. In its reply, the Chilean State maintains the following:

That it values the efforts of the Commission to reach a friendly settlement but, given the nature of the petition and the considerations involved, it has not been possible to arrive at a satisfactory outcome for both parties which would put an end to this dispute; that it has had difficulty to comply with the recommendations contained in the Commission's report, but that said recommendations have been partially adopted; that the Supreme Court concluded that by law Mr. Soria was not entitled to the legal protection afforded by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons[SW1] , a decision which may not be challenged by any other State authority without seriously breaching the Constitution and the Pact of San Jose itself.

That it is not possible to recommend the State of Chile to transfer the case concerning Mr. Soria's immunity to an international court with universal jurisdiction since that is not provided for in the above cited Convention, nor does there exist any court with powers recognized by the State to that end; that the criminal responsibility of the persons who carried out the killing of Carmelo Soria has been determined before the courts and appeared in the process heard by the Supreme Court, and consequently the Chilean State has complied with the recommendation relating to the establishment of criminal liability in this case.

That the adaptation of Chilean domestic law to reflect the provisions contained in the American Convention is a core objective of the Government's policy, but that the repeal or amendment of Decree Law 2.191 of 1978 has complex legal implications; that the Supreme Court, in connection with another case involving human rights violations, recently interpreted the provision contained in Decree Law 2.191 in the sense that it is not possible to apply amnesty in those cases involving people detained-disappeared, inasmuch as they are considered crimes that are in progress or ongoing, and, in cases where the bodies of the victims appear, it will be necessary to establish the date of death in order to determine whether the exculpatory provision applies, in such a way as to move toward compliance with the Commission's specific recommendation in regard thereto; that this case law contains the recent interpretation of the amnesty law and demonstrates the manner in which the Supreme Court is adapting its judgments to reflect international human rights law in force in the country.

The State has formally acknowledged that the death of Mr. Carmelo Soria Espinoza was the consequence of actions by State agents and a serious violation of human rights; that said acknowledgement is contained in the report of the National Commission for Truth and Reconciliation, and that in consequence of such acknowledgement the family of Mr. Soria is beneficiary to the established reparation measures; that, moreover, the Chilean Government has offered additional redress in favor of the family of Carmelo Soria, which the family itself rejected, and which consisted of a public statement recognizing the State's responsibility for the actions of its agents; the construction of a monument of remembrance to him in a location designated by his family in Santiago; and the donation of a substantial sum of money for setting up a foundation named after him with the purpose of promoting respect for human rights and fundamental freedoms.

153. In its response, the Chilean State admits that it has not been possible to give full compliance to the Commission's recommendations, nor to arrive at a satisfactory outcome designed to come to an understanding with the petitioners in order to reach a friendly settlement in relation to the present case. Furthermore, the Commission notes and values the efforts made by the Chilean State to propose compensation measures to the family of Carmelo Soria. Nonetheless, the family of Carmelo Soria has repeatedly expressed to this Commission that the primary substantial and essential reparation for them consists of the termination of the impunity granted to the material and intellectual perpetrators of the crimes committed against him by State agents, and that they are not prepared to receive compensation in return for the continuation of impunity or without the guarantee that those responsible will be effectively punished. The foregoing concurs with the jurisprudence cited in the Commission's present report, in the sense that, when dealing with human rights violations, States must adopt compensation measures, including the effective punishment of those responsible, by which token, any legislative measure designed to prevent such punishment, as is the case involving an amnesty law, runs contrary to the Convention. In light of the foregoing, it is clear that the Chilean State has not adopted the necessary measures to comply with the recommendations contained in Report N° 78/99. The Commission recalls what the Inter-American Court has established with respect to the States' obligation to comply with its recommendations:

in accordance with the principle of good faith, embodied in the aforesaid Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to comply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principle organs of the Organization of the American States, whose function is 'to promote the observance and defense of human rights' in the hemisphere.[FN66]

[FN66] I/A Court H.R., Loayza Tamayo, judgment September 17, 1997, para. 80.

VII. CONCLUSIONS

154. For the above reasons, the Commission reiterates the conclusions adopted in its Report N° 79/99 to the effect that, as established by the Supreme Court of Justice of Chile itself in its judgment of August 23, 1996, the Chilean State has violated, in the case of Carmelo Soria Espinoza, the right to personal liberty, the right to life, and the right to personal integrity enshrined in Article I of the American Declaration of the Rights and Duties of Man.

155. The Commission also reiterates its conclusions in the aforementioned Report N° 79/99, that the judicial decisions ruling the dismissal of criminal proceedings initiated concerning the detention, forced disappearance, torture and extrajudicial execution of Carmelo Soria Espinoza, in whose name this case was instigated, not only aggravate the situation of impunity, but also violate the victim's family's right to justice for the purpose of identifying the perpetrators of these crimes, establishing responsibility, imposing the corresponding punishment and providing judicial reparation.

156. The Commission confirms further that in the present case the Chilean State violated the rights enshrined in Articles 8 and 25, in conjunction with Articles 1(1) and 2 of the American Convention.

157. The Commission also reiterates that Decree Law 2.191 for self-amnesty, issued in 1978 by the past military regime of Chile, is incompatible with Articles 1, 2, 8 and 25 of the American Convention, ratified by that State on August 21, 1990.

158. The Commission also confirms that the Chilean State has violated its international obligations under Articles 1(1) and 2 of the American Convention by way of the judgment of the Supreme Court of Chile of August 23, 1996, confirmed on September 28 that same year, declaring the Amnesty Law constitutional and its application by the Judicial Branch mandatory, at a time when the aforementioned American Convention had already entered into force in Chile.

159. The Commission confirms further that the Chilean State has not complied with the norms established in Article 2 of the American Convention, in that it has not adapted its domestic laws on amnesty to the provisions of the aforementioned Convention.

160. The Commission also reiterates that the State of Chile has violated its international obligations derived from the norms contained in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons as a result of having applied the Amnesty Law by virtue of the fact that its competent organs for the administration of justice failed to observe its international obligations—specifically, when the Supreme Court of Chile, in its judgment of August 23, 1996, decided to apply the Amnesty Law. Therefore, the Chilean State has violated Article 2(1) of the aforementioned international Convention – a human rights provision—inasmuch as it failed to punish the crimes committed against Carmelo Soria, an internationally protected person under that Convention who, according to documentation issued by ECLAC on September 8, 1994, at the request of the Chilean Foreign Ministry, had the status of "permanent senior international official of the United Nations." [FN67]

[FN67] The quoted text was taken from paragraph 2, page 1, of the judgment of the Supreme Court of Justice of Chile of August 23, 1996.

VIII. RECOMMENDATIONS

Based on the foregoing analysis and conclusions

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE CHILEAN STATE

1. To establish the responsibility of the persons identified as guilty of the murder of Carmelo Soria Espinoza by due process of law, in order for the parties responsible to be effectively punished and for the family of the victim to be effectively ensured the right to justice, enshrined in Articles 8 and 25 of the American Convention.
2. To comply with the provisions of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, in order for human rights violations, committed against international officials entitled to international protection, such as the execution of Mr. Carmelo Soria Espinoza in his capacity as an officer of ECLAC , to be appropriately investigated and effectively punish those responsible. Should the Chilean State consider itself unable to fulfill its obligation to punish those responsible, it must, consequently, accept the authorization of universal jurisdiction for such purposes.
3. To adapt its domestic legislation to reflect the provisions contained in the American Convention on Human Rights in such a way that Decree Law No. 2.191 enacted in 1978 be repealed, in order that human rights violations committed by the de facto military government against Carmelo Soria Espinoza may be investigated and punished.
4. To adopt the necessary measures for the victim's family members to receive adequate and timely compensation that includes full reparation for the human rights violations established herein, as well as payment of fair compensation for physical and non physical damages, including moral damages.

IX. PUBLICATION

161. On October 8, 1999, the Commission transmitted Report N° 110/99—the text of which is the foregoing—to the Chilean State and the petitioners pursuant to Article 51(2) of the American Convention; and granted the State a period of one month within which to comply with the foregoing recommendations.

162. In accordance with the aforementioned Article 51(2), at this stage of the proceedings the Commission shall limit itself to assessing the measures adopted by the Chilean State to comply with the recommendations and remedy the situation examined. The State of Chile did not respond to the note from the Commission regarding the aforesaid Report N° 110/99 of October 6, 1999.

163. The lack of response from the Chilean State is evidence that it has not adopted the measures incumbent upon it to comply with the recommendations contained within the Commission's Report N° 110/99 and to remedy the situation examined.

164. In accordance with the foregoing, and with the provisions in Articles 51(3) of the American Convention and 48 of the Commission's Regulations, the Commission decides to reiterate the conclusions and recommendations contained in chapters VII and VIII supra, respectively; make public the present report; and include it in its Annual Report to the OAS General Assembly. The IACHR, in accordance with the provisions contained in the instruments that govern its mandate, will continue to evaluate the measures adopted by the Chilean State with respect to the above mentioned recommendations until they have been fully complied with by said State.

165. The Commission decides to transmit the present report to the State of Chile and to the petitioners.

Done and signed by the Inter-American Commission on Human Rights, in the city of San José, Costa Rica, on this the 19th day of November of 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Carlos Ayala, Jean Joseph Exumé, and Alvaro Tirado Mejía, Commission members.