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Institution:	Inter-American Court of Human Rights
File Number(s):	OC-14/94
Title/Style of Cause:	International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)
Doc. Type:	Advisory Opinion
Decided by:	President: Rafael Nieto-Navia; Vice-President: Hector Fix-Zamudio; Judges: Alejandro Montiel-Arguello; Maximo Pacheco-Gomez; Hernan Salgado-Pesantes
Dated:	9 December 1994
Citation:	International Responsibility, Advisory Opinion, OC-14/94 (IACtHR, 9 Dec. 1994)
Editor's Comment:	Requested by the Inter-American Commission on Human Rights
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THE COURT

renders the following Advisory Opinion:

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), by note of November 8, 1993 and pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court") a request for an advisory opinion couched in the following terms:

[1] Insofar as the international obligations of a State Party to the American Convention on Human Rights are concerned, what are the legal effects of a law promulgated by such State that manifestly violates the obligations it assumed upon ratifying the Convention?

[. . .]

[2] What are the duties and responsibilities of the agents or officials of a State Party to the Convention which promulgates a law whose enforcement by them would constitute a manifest violation of the Convention?

2. In the request for the advisory opinion, although not in the questions themselves, the Commission indicates that the interpretation sought relates to Article 4, paragraphs 2 (in fine) and 3 of the Convention, and that the following consideration gave rise to it:

[T]he inclusion of a provision in Article 140 of the new Constitution of Peru which, in violation of Article 4, paragraphs 2 and 3, of the American Convention, extends the application of the

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death penalty to crimes which were not subject to such a penalty under the Political Constitution that entered into force in 1979.
[. . .]
Under the Political Constitution of 1979, the death penalty in Peru was applicable exclusively to the crime of treason against the State in time of external war.

In the arguments advanced by the Commission, reference is made to the following provisions of Peruvian law:

Article 235 of the Political Constitution of 1979:
There shall be no death penalty, except for treason against the State in time of external war.

Article 140 of the new Peruvian Constitution:
The death penalty shall only be imposed for the crime of treason against the State in time of war, and for the crime of terrorism, in accordance with the laws and treaties to which Peru is a party.

And to the following Article of the Convention:

Article 4, American Convention
...
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in States that have abolished it.

3. According to the Commission, the advisory opinion request relates to its sphere of competence, as stipulated under Articles 33, 41 and 64(1) of the Convention.

4. The Commission appointed Professor W. Michael Reisman to serve as its Delegate.

5. In a note dated November 11, 1993, acting pursuant to Article 54(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), the Secretariat of the Court requested written observations and relevant documents on the issues involved in the instant proceedings from the Member States of the Organization of American States (hereinafter "the OAS") and, through the Secretary General, from the organs listed in Chapter VIII of the Charter of the OAS.

6. The President of the Court (hereinafter "the President") directed that the written observations and other relevant documents be filed with the Secretariat before December 31, 1993.

7. Observations were received from the governments of Peru, Costa Rica and Brazil.

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8. The following non-governmental organizations, acting as amici curiae, also submitted their views on the request: the Center for Justice and International Law (CEJIL) jointly with Americas Watch, and the Comisión Andina de Juristas (Andean Commission of Jurists). In addition, Professors Antônio Augusto Cançado Trindade, of the University of Brasilia and the Rio-Branco Institute, Brazil, and Beatriz M. Ramacciotti, of the Pontifical Catholic University of Peru, presented amici curiae briefs expressing their opinions.

9. Acting upon instructions of the President and by notes dated January 3, 1994, the Secretariat summoned the Member States and OAS organs to a public hearing, which was held at 9:30 hours on January 21, 1994.

10. The President authorized the following international, non-governmental organizations to participate in the hearing: Americas Watch; the Center for Justice and International Law (CEJIL); the Andean Commission of Jurists and the Red Latinoamericana de Abogados Católicos (RLAC - Latin American Network of Catholic Lawyers). By note of January 19, 1994, the Andean Commission of Jurists reported that, for reasons beyond its control, its representative would be unable to appear at the public hearing.

11. The following persons came before this public hearing:

For the Inter-American Commission on Human Rights:

W. Michael Reisman, Delegate,
Domingo E. Acevedo, Delegate,
Janet Koven-Levitt, Advisor.

For the Government of Peru:

Beatriz Ramacciotti, Agent,
Juan Garland Combe, Advisor,
Sergio Tapia, Advisor.

For the Center for Justice and International Law (CEJIL):

José Miguel Vivanco.

For Americas Watch:

Juan E. Méndez.

Also present as observers:

For the Government of Argentina:

Bernardo Juan Ochoa, Counselor of the Embassy of the Republic of Argentina to the Government of Costa Rica.

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For the Government of Brazil:

Izacyl Guimarães Ferreira, Head of the Cultural Section of the Embassy of Brazil to the Government of Costa Rica.

The Latin American Network of Catholic Lawyers (RLAC) did not appear at the public hearing.

I.

12. By note of December 29, 1993, the Government of Peru presented its observations on the advisory opinion request. Its legal analysis of the request was based on three factors:

a. Standing of the party to request an advisory opinion from the Court.

[. . .]

The IACHR, as a specialized organ of the Organization, invokes the procedure set forth in paragraph 1 of Article 64; however, it encroaches on an area that is reserved exclusively to states whose domestic laws are involved, something contemplated in another provision -paragraph 2 of that same Article 64- [. . .] whose ratio legis (sic) is to spell out in a manner that leaves no room for doubt that only states, whose domestic laws are at issue, are empowered to resort to the Court's advisory jurisdiction when there is a perceived incompatibility between one of their domestic norms and the Convention.

[P]rocedural logic has been distorted in the IACHR's request. That organ of the inter-American system makes express reference to a domestic Peruvian situation and seeks to indirectly question a national law, namely, the new norm contained in Article 140 of the new Constitution of Peru [. . .]

[. . .]

To admit the advisory opinion request under these conditions would be to set an unfortunate precedent, in the sense that it would encourage disproportionate interference in the domestic legislative mechanisms of the Member States of the Organization of American States by an organ that is a part of that system [. . .] Consequently, the IACHR's request is inadmissible because that body does not have the standing to address the Honorable Court, in view of the fact that the matter at issue is the exclusive concern of the states, as provided in paragraph 2 of Article 64 of the Convention, which is the provision applicable to the instant case.

[I]t is evident that the IACHR seeks to obtain indirectly what it is prevented from achieving directly by the aforementioned provision of the Convention.

b. Formal requirements of a request for advisory opinion.

[. . .]

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As for the requirement to identify the provisions to be interpreted, [. . .] the IACHR's intention is to have the Honorable Court render an opinion on a presumed incompatibility or contradiction between that provision of the Convention [Article 4, paragraphs 2 (in fine) and 3] and the domestic laws of Peru. The IACHR, we repeat, lacks the authority to resort to the Inter-American Court of Human Rights for this purpose.

[. . .]

As for the considerations which gave rise to the request, [. . .] the issue concerns the apparent incompatibility between the obligations imposed by the Convention and the scope of domestic laws. As has been clearly explained, this is a situation in which the IACHR has no functional legitimacy or standing.

c. Substantive issues of the IACHR request.

[. . .]

[W]hen the IACHR declares that a domestic law of Peru is in violation of the Convention, it is anticipating judgment, prejudging and assuming functions which have not been conferred upon it.

[. . .]

The request for an advisory opinion was submitted to the Honorable Court on November 9, 1993, as evidenced by the date of receipt. In other words, it was filed when the official results of the national referendum on the new Peruvian Constitution -which does, indeed, contain a new provision regarding capital punishment- were as yet not known. Hence, it was not known with any degree of certainty whether or not the Constitution would be approved; but the IACHR nevertheless went ahead with a request for an advisory opinion regarding a provision contained in a new body of law that had no effect whatsoever.

The entire text of the IACHR's request is drafted as though the last part of Article 140 of the new Constitution of Peru did not exist. That portion clearly states that the promulgation of any new norms relating to the death penalty would be subject to their adoption 'in accordance with the laws and treaties to which Peru is a party.' There can be no doubt that this constitutional provision could under no circumstances exclude the American Convention on Human Rights [. . .] (emphasized and underlined in the original)

and in this regard requested the Court to

refuse to render the opinion sought, in line with the precedent established in its own Advisory Opinions; or, alternatively, that the request be held inadmissible because of the lack of standing of the IACHR, because of defects in the manner of its presentation or, if applicable, inadmissible on the merits, insofar as the request of the IACHR seeks the interpretation of a domestic norm of Peruvian law, for which it has no standing.

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13. In its written observations, the Government of Costa Rica submitted that:

[T]he new Constitution of Peru had not yet entered into effect [. . .] As a result, the Constitution in question must be deemed to be a 'Draft Constitution' [. . .] [T]he request presented by the IACHR regarding the compatibility of the Draft Constitution of Peru with the aforementioned Articles of the American Convention on Human Rights is perfectly admissible.

[. . .]

[W]ithout undermining the questions posed by the IACHR to the Court, the substantive problem here is identical to that already decided by the Court in its Advisory Opinion OC-3/83 of September 8, 1983. Consequently, the Court's responses on that occasion are still valid and applicable to the facts which led to the instant advisory opinion request.

14. The Government of Brazil, for its part, submitted the following observations:

Com relação à primeira questão formulada pela Comissão, embora a mesma tenha sido feita em tese, é de se precisar que com a mera edição da Constituição de 1993, não houve por parte do Peru violação das obrigações contraídas em razão de ter ratificado a Convenção em causa [. . .] Primeiramente, a simples edição de lei em contrário não seria violadora de obrigações internacionais, pois seria necessário, para que tal violação se estabelecesse, a concretização de suas disposições. Em segundo lugar, o âmago do problema resolvese pela teoria que cada Estado siga em matéria de hierarquia de leis [. . .]

A resposta à segunda questão formulada pela Comissão varia segundo o prisma em que se coloca o interlocutor. Constitucionalmente falando, os agentes e funcionários do Estado estão adstritos à Constituição, não podendo buscar supedâneo mesmo em convenções internacionais em que o Estado seja parte, para descumpri-la. Examinando-se a problemática sob a ótica internacional, a visão seria inversa [. . .] Contudo, o caso concreto posto pela Contituição peruana vigente não se enquadra perfeitamente [. . .] Quem e como responderia no Peru, se esse país, sem denunciar a Convenção Americana sobre Direitos Humanos, viesse a condenar e executar alguém em virtude de terrorismo? Os constituintes que estabeleceram o artigo 140 da Constituição vigente (lembre-se que a mesma acabou por ser aprovada em referendo popular), os juízes que pronunciaram a sentença ou quem efetivamente a executou?

15. By note of January 21, 1994, the Government of Peru requested the Court to consider a new petition because "the IACHR has amended its written request in the oral arguments it presented at the Public Hearing." The Government requested:

That the written request presented by the IACHR be deemed inadmissible insofar as it refers directly or indirectly to the domestic laws of Peru (Art. 140 of the 1993 Constitution), pursuant to Article 64(2) of the American Convention on Human Rights, as well as similar norms set forth in the relevant Statutes and Rules of Procedure. (Underlined in the original)

II.

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16. This request for an advisory opinion has been submitted to the Court by the Commission pursuant to the powers conferred upon it under Article 64(1) of the Convention.

17. The request presented by the Commission complies with the formal requirements enunciated in Articles 51(1) and 51(2) of the Rules of Procedure, which stipulate that requests for an advisory opinion shall state with precision the specific questions on which the opinion of the Court is sought, identify the considerations giving rise to the request and provide the name and address of the delegate.

18. The governments of Peru and Costa Rica, in their respective observations and before addressing the merits of the Commission's advisory opinion request, touch on aspects relating to its admissibility. The Government of Peru warns of

the IACHR's [Inter-American Commission's] apparent intention of seeking to obtain from the Honorable Court an indirect opinion on a domestic Peruvian law through a request for an advisory opinion filed by an organ of the regional system -the IACHR- which does not have the power to make this type of consultation, since it is prevented from so doing by paragraph 2, Article 64 of the Convention.

Costa Rica, for its part, considers that in view of the fact that "at the time that the IACHR filed the request, the new Constitution of Peru had not yet entered into effect [. . .] the Constitution in question must be deemed to be a 'Draft Constitution'." That Government then goes on to transcribe part of an Opinion rendered by the Court, according to which "pursuant to the powers conferred on it by Article 64(2) [of the American Convention], the Court may render advisory opinions regarding the compatibility of 'draft legislation' with the Convention" (Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights, Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12, para. 22).

19. The Court notes that the governments of Peru and Costa Rica both characterize the advisory opinion request presented by the Commission as one governed by Article 64(2) of the American Convention, that is, as an analysis of the compatibility of the domestic laws of Member States with the aforementioned international instrument. The Commission, however, bases its request on Article 64(1), under which it is authorized, within its sphere of competence, to request the interpretation of the Convention or of other treaties concerning the protection of human rights in the American States.

20. Before considering whether it is appropriate to address the merits of the issues raised by the Commission, the Court must determine the nature of the advisory opinion request presented to it and the standing of that organ of the inter-American system to submit the request.

21. The Court considers, first, that Article 64(1) of the American Convention grants it full authority to interpret the Convention and other human rights treaties that are binding on the American States, and that 64(2) empowers it to analyze the compatibility of the domestic laws of the states with such instruments; however, the purpose of its advisory jurisdiction cannot be diverted to aims other than the protection of the rights and freedoms guaranteed by the Convention.

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22. Under the first hypothesis mentioned above, that is, the one regarding Article 64(1) of the Convention, the advisory jurisdiction of the Court may be invoked by either a Member State of the OAS or by the organs listed in Chapter VIII of the Charter of the OAS, as amended by the 1985 Protocol of Cartagena de Indias —among them, the Commission— but only within their spheres of competence. Under the second hypothesis, on the other hand, a cursory reading of the Convention indicates that the Court may only be consulted by the Member States of the OAS and then only as regards their own domestic laws. In exercising its advisory jurisdiction, the Court is not empowered to interpret or define the scope of the validity of the domestic laws of the States Parties, but only to address their compatibility with the Convention or other treaties concerning the protection of human rights in the American States. Even then, it can only do so at the express request of one of those states, as provided by Article 64(2) of the American Convention. In the event of a supposed violation of the international obligations assumed by the States Parties resulting from a possible conflict between the provisions of their domestic law and those contained in the Convention, the former will be evaluated by the Court in contentious cases as simple facts or expressions of intent which can only be addressed as they relate to the conventions or treaties concerned, regardless of the importance or hierarchy enjoyed by that domestic provision within the legal code of the state in question.

23. The interpretative work that the Court must carry out in exercising its advisory jurisdiction seeks to not only throw light on the meaning, object and purpose of the international norms on human rights but, above all, to provide advice and assistance to the Member States and organs of the OAS in order to enable them to fully and effectively comply with their international obligations in that regard. Indeed, the interpretations should contribute to the strengthening of the system for the protection of human rights. As the Court stated in its first opinion,

[the] advisory jurisdiction of the Court is closely related to the purposes of the Convention. This jurisdiction is intended to assist the American States in fulfilling their international human rights obligations and to assist the different organs of the inter-American system to carry out the functions assigned to them in this field. It is obvious that any request for an advisory opinion which has another purpose would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court. [“Other Treaties” Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 25.]

24. In the instant case, although the considerations giving rise to the interpretation requested by the Commission regarding Article 4, paragraphs 2 (in fine) and 3, of the American Convention relate to the amendment of the Constitution of Peru, which expanded the number of cases for which the death penalty can be applied, it is evident that the Commission is not here requesting a statement as to the compatibility of that provision of Peru’s domestic law with the abovementioned provision of the Convention. On the contrary, the questions posed by the Commission make no reference to that provision. They are general in nature and concern the obligations and responsibilities of the states or individuals who promulgate or enforce a law manifestly in violation of the Convention. Consequently, the Court’s response would apply not only to Article 4 but also to all other provisions that proclaim rights and freedoms.

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25. The Court considers that the Commission has standing to present the instant request for an advisory opinion based on Article 64(1) of the Convention, since it neither seeks nor requests an express statement regarding the compatibility of a domestic law of a state with the provisions of the American Convention. Rather, in the exercise of the mandate which the Convention itself entrusts to the Commission in its Article 41, the Commission may, in addition to other functions and powers, "make recommendations to the governments of the Member States, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions." Under those circumstances, the advisory jurisdiction of the Court can and should constitute a valuable support to enable the Commission "[t]o carry out the functions" assigned to it.

26. With regard to the issue raised by the Government of Costa Rica in its observations regarding the "draft" nature of the text of the Peruvian Constitution, cited as the basis for the advisory opinion request, the conclusions set forth by the Court up to this point render it unnecessary to examine this contention.

27. Accordingly, the requirement contained in Articles 51(1) and 51(2) of the Rules of Procedure that the advisory opinion request shall identify the considerations giving rise to the request should be interpreted as indicating that advisory opinion requests dealing with academic issues that do not meet the objectives of the advisory function of the Court as it has been defined, should be ruled inadmissible. This does not mean that disguised contentious cases may be submitted as requests for advisory opinions, nor that the Court must analyze and rule on the considerations giving rise to the request; instead, it must weigh whether the issue raised relates to the aims of the Convention, as in the instant request.

28. Furthermore, the Court has already stated that the mere fact that there exists a dispute between the Commission and a government regarding the meaning —and, now, the application— of a given provision of the Convention "does not justify the Court to decline to exercise its advisory jurisdiction" [Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 39]. Consequently, if the Commission is of the opinion that the amendment to the Constitution of Peru could constitute a manifest violation of the obligations of that State under the Convention, it may avail itself of that circumstance to request an advisory opinion of a general nature. What the Commission may not do is seek to have a contentious case before it decided by the Court through its advisory jurisdiction, since that jurisdiction, by its very nature, does not provide the state with the opportunities to defend itself that are granted under the contentious jurisdiction.

29. In view of the above, the Court believes that, on this occasion, it must limit its response to the questions posed in the request for advisory opinion, without addressing the interpretation of Article 4, paragraphs 2 (in fine) and 3 of the Convention which are cited in the cover note and in the considerations that gave rise to the request. The Court also should not concern itself with the interpretation of Article 140 of the new Constitution of Peru mentioned by the Commission and cited as the reason for its advisory opinion request. In the oral arguments before the Court,

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the Commission itself only referred to these provisions tangentially and restricted its comments to developing or defending the two specific questions posed in its advisory opinion request.

30. Having disposed of the foregoing, the Court will now analyze the advisory opinion request.

III.

31. The first question posed by the Commission refers to the legal effects of a law that manifestly violates the obligations the state assumed upon ratifying the Convention. In responding to this question, the Court will apply the word "law" in its material, not formal, sense.

32. The question implicitly refers to the interpretation of Articles 1 and 2 of the Convention, which set forth the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction, and to adopt, if necessary, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

33. It follows that if a state has undertaken to adopt the measures mentioned above, there is even more reason for it to refrain from adopting measures that conflict with the object and purpose of the Convention. The latter would be true of the "laws" to which the question posed by the Commission refer.

34. The question refers only to the legal effects of the law under international law. It is not appropriate for the Court to rule on its domestic legal effect within the state concerned. That determination is within the exclusive jurisdiction of the national courts and should be decided in accordance with their laws.

35. International obligations and the responsibilities arising from the breach thereof are another matter. Pursuant to international law, all obligations imposed by it must be fulfilled in good faith; domestic law may not be invoked to justify nonfulfillment. These rules may be deemed to be general principles of law and have been applied by the Permanent Court of International Justice and the International Court of Justice even in cases involving constitutional provisions [Greco-Bulgarian "Communities", Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, p.32; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, p. 24; Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 167; and, I.C.J. Pleadings, Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Case of the PLO Mission) (1988) 12, at 31-2, para. 47]. These rules have also been codified in Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties.

36. There can be no doubt that, as already stated, the obligation to adopt all necessary measures to give effect to the rights and freedoms guaranteed by the Convention includes the

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commitment not to adopt those that would result in the violation of those very rights and freedoms.

37. As the Court has previously stated:

A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention. [Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26.]

38. With regard to a state which passes a law in conflict with the Convention, the Court has already held that

[w]ithin the terms of the attributes granted by Articles 41 and 42 of the Convention, the Commission is competent to find any norm of the internal law of a State Party to be in violation of the obligations the latter has assumed upon ratifying or adhering to it [. . .] (Certain Attributes of the Inter-American Commission on Human Rights, supra 37, operative/resolutory paragraph 1.)

39. As 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 whatsoever, whether or not that norm has been applied to a concrete case. That determination and recommendation may be addressed by the Commission directly to the state [Art. 41(b)] or be included in the reports referred to in Articles 49 and 50 of the Convention.

40. The same problem would be handled differently by the Court. In the exercise of its advisory jurisdiction and pursuant to Article 64(2), the Court may refer to the possible violation of the Convention or of other treaties concerning the protection of human rights by a domestic law, or simply to the compatibility of such instruments. When its contentious jurisdiction is involved, however, the analysis has to be conducted in a different manner.

41. It should be noted, first, that a law that enters into force does not necessarily affect the legal sphere of specific individuals. The law may require subsequent normative measures, compliance with additional conditions, or, quite simply, implementation by state authorities before it can affect that sphere. It may also be, however, that the individuals subject to the jurisdiction of the norm in question are affected from the moment it enters into force. Throughout this opinion, the Court will refer to the latter as “self-executing norms” (“leyes de aplicación immediata”), for lack of a better term.

42. If a law is non-self-executing and has not yet been applied to a concrete case, the Commission may not appear before the Court to present a case against the state merely on the grounds that the law has been promulgated. Non-self-executing laws simply empower the authorities to adopt measures pursuant to them. They do not of themselves constitute a violation of human rights.

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43. In the case of self-executing laws, as defined above, the violation of human rights, whether individual or collective, occurs upon their promulgation. Hence, a norm that deprives a portion of the population of some of its rights —for example, because of race— automatically injures all the members of that race.

44. When dealing with norms that violate human rights only upon their application and to prevent such violations from occurring, the Convention provides for provisional measures [Art. 63(2) of the Convention, Art. 29 of the Regulations of the Commission].

45. The reason why the Commission may not present to the Court cases involving non-self-executing laws which have not yet been applied is that, under Article 61(2) of the Convention, "[i]n order for the Court to hear a case, it is necessary that the procedures set forth in Article 48 to 50 shall have been completed." For those procedures to be initiated, it is essential that the Commission receive a communication or petition alleging a concrete violation of the human rights of a specific individual.

46. This requirement that the matter concern specific individuals can be inferred from Article 46(1)(b), which provides that the petition or communication "be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment," and from Article 46(2)(b), which dispenses with the exhaustion of domestic remedies and waives the requirement of the stated period if "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them [. . .]."

47. The conclusions of the foregoing paragraphs were also arrived at by the European Court of Human Rights in the cases of Klass et al. (Judgment of 6 September 1978, Series A No. 28), Marckx (Judgment of 13 June 1979, Series A No. 31), and Adolf (Judgment of 26 March 1982, Series A No. 49) in interpreting the word "victim" as it is employed in Article 25 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms.

48. If the case were to come to the Court after the completion of the proceedings described in the relevant articles, the Court would have to weigh and decide whether the action attributed to the state constitutes a violation of the rights and freedoms protected under the Convention, regardless of whether or not such action is consistent with the state's domestic law. If the Court were to find the existence of such a violation, it would have to hold that the injured party be guaranteed the enjoyment of the rights or freedoms that have been violated and, if appropriate, that the consequences of such violation be redressed and compensation be paid.

49. The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions. There is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention. As has already been noted, the Commission has that power and, in exercising it, would fulfill its main function of promoting respect for and defense of human rights. The Court also could do so in the exercise of its advisory jurisdiction, pursuant to Article 64(2).

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50. The Court finds that the promulgation of a law that manifestly violates the obligations assumed by a state upon ratifying or acceding to the Convention constitutes a violation of that treaty and, if such violation affects the guaranteed rights and liberties of specific individuals, gives rise to international responsibility for the state in question.

IV.

51. The second question posed by the Commission refers to the duties and responsibilities of the agents or officials of a state who enforce a law that violates the Convention.

52. International law may grant rights to individuals and, conversely, may also determine that certain acts or omissions on their part could make them criminally liable under that law. In some cases, that responsibility is enforceable by international tribunals. In that sense, international law has evolved from the classical doctrine, under which international law concerned itself exclusively with states.

53. Nevertheless, at the present time individual responsibility may only be invoked for violations that are defined in international instruments as crimes under international law, such as crimes against peace, war crimes, and crimes against humanity or genocide, which, of course, also affect specific human rights.

54. As far as the abovementioned international crimes are concerned, it is of no consequence that they are committed by enforcing a law of the state to which the agent or official belongs. The fact that the action complies with domestic law is no justification from the point of view of international law.

55. What has been said in the foregoing paragraphs is reflected in various international instruments. Thus, for example, in its Resolution Nº 764 of 13 July, 1992 regarding the conflict in the former Yugoslavia, the Security Council of the United Nations reaffirmed that "persons who commit or order the commission of grave breaches of the Conventions [of Geneva, 1949] are individually responsible in respect of such breaches."

Thereafter, the Security Council adopted Resolution Nº 808 of 22 February, 1993 approving the establishment of the International Tribunal to Prosecute Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Article 7(4) of the Statute of the International Tribunal, approved by Security Council Resolution Nº 827 of 25 May, 1993, reads as follows: "The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires." This provision is similar to Article 8 of the Charter of the International Military Tribunal or Nuremberg Charter, attached to the London Agreement of 8 August, 1945.

56. As far as concerns the human rights protected by the Convention, the jurisdiction of the organs established thereunder refer exclusively to the international responsibility of states and not to that of individuals. Any human rights violations committed by agents or officials of a state

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are, as the Court has already stated, the responsibility of that state (Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, para. 170; Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, para. 179). If these violations were also to constitute international crimes, they would, in addition, give rise to individual responsibility. However, it is the Court's understanding that the Commission is not asking it to resolve the issues that arise from this proposition.

57. The Court finds that the enforcement of a law manifestly in violation of the Convention by agents or officials of a state results in international responsibility for that state. If the enforcement in question constitutes an international crime, it will also subject the agents or officials who execute it to international responsibility.

58. In view of the above,

THE COURT,

unanimously,

FINDS

that it has jurisdiction to render this Advisory Opinion.

AND IS OF THE OPINION

by a unanimous vote,

1. That the promulgation of a law in manifest conflict with the obligations assumed by a state upon ratifying or adhering to the Convention is a violation of that treaty. Furthermore, if such violation affects the protected rights and freedoms of specific individuals, it gives rise to international responsibility for the state in question.
2. That the enforcement by agents or officials of a state of a law that manifestly violates the Convention gives rise to international responsibility for the state in question. If the enforcement of the law as such constitutes an international crime, it will also subject the agents or officials who execute that law to international responsibility.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this ninth day of December, 1994.

Rafael Nieto-Navia
President

Héctor Fix-Zamudio
Alejandro Montiel-Argüello
Máximo Pacheco-Gómez
Herrnán Salgado-Pesantes

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Manuel E. Ventura-Robles
Secretary

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