In the Blake Case,

the Inter-American Court of Human Rights, pursuant to Articles 29, 55, and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal"), in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in compliance with its January 24, 1998 Judgment, renders the following judgment on reparations in the present case, brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Guatemala (hereinafter "Guatemala" or "the State").

I. JURISDICTION

1. Under the provisions of Articles 62 and 63(1) of the Convention, the Court has jurisdiction to determine reparations and expenses in the present case, inasmuch as Guatemala ratified the American Convention on May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

II. BACKGROUND

2. The present case was submitted to the Court by the Inter-American Commission in an application dated August 3, 1995, which was accompanied by Report No. 5/95 of February 15, 1995. The case originated with a petition (No. 11.219) against Guatemala, lodged with the Secretariat of the Commission on November 18, 1993.

3. On April 16, 1997, Guatemala "accept[ed] international human rights responsibility, for delay in the application of justice until the year nineteen hundred and ninety-five (1995)."

4. On January 24, 1998, the Court rendered a judgment on the merits of the case in which:

1. it declar[ed] that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the judicial guarantees set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 96 and 97 of [said] judgment.
2. it declar[ed] that the State of Guatemala violated, to the detriment of the relatives of Mr. Nicholas Chapman Blake, the right to humane treatment enshrined in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same, in the terms established in paragraphs 112, 114, 115 and 116 of [said] judgment.
3. it declar[ed] that the State of Guatemala is obliged to use all the means at its disposal to investigate the acts denounced and punish those responsible for the disappearance and death of Mr. Nicholas Chapman Blake.
4. it declar[ed] that the State of Guatemala is obliged to pay a fair compensation to the relatives of Mr. Nicholas Chapman Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process.
5. it order[ed] that the reparations stage be opened.

III. PROCEEDINGS AT THE REPARATIONS STAGE

5. On January 24, 1998, the Inter-American Court, in compliance with its judgment of that date, decided:

1. To grant the Inter-American Commission on Human Rights until March 13, 1998, to submit a brief and any evidence that it may have in its possession for the purpose of determining the compensation and expenses in this case.
2. To grant the family members of Nicholas Chapman Blake or their representatives until March 13, 1998, to submit a brief and any evidence that they may have in their possession for the purpose of determining the compensation and expenses in this case.
3. To grant the State of Guatemala until May 4, 1998, to make its observations about the briefs that the Inter-American Commission on Human Rights, and the relatives or their representatives submit pursuant to the preceding paragraphs.

6. On March 2, 1998, the relatives of Mr. Nicholas Blake asked the Court to extend the deadline set by this Court in its January 24, 1998 Resolution for one month to allow them to submit a brief on reparations.

7. On March 4, 1998, the President of the Court (hereinafter "the President") extended the deadline until March 27, 1998, to permit the relatives of Mr. Nicholas Blake or their representatives and the Commission to submit their briefs on reparations. The President also extended the deadline for the Government to submit its brief on the same topic until May 27, 1998.

8. On March 9, 1998, the Inter-American Commission informed the Court of the designation of Mr. Domingo E. Acevedo to serve with Delegate Claudio Grossman as a delegate in this case.

9. On March 9, 1998, the President summoned the relatives of Mr. Nicholas Blake or their representatives, the Inter-American Commission, and Guatemala to a public hearing on reparations, to be celebrated on June 10, 1998 at the seat of the Court.

10. On March 27, 1998, the Inter-American Commission submitted its brief on reparations in the present case.

11. On that same day the relatives of Mr. Nicholas Blake submitted their brief on reparations in English. On March 30, 1998, the corresponding annexes arrived at the Court. On April 14, 1998, the Spanish translation of the brief on reparations was received.

12. On May 22, 1998, the State requested that the President extend the deadline for its observations on the reparations briefs submitted by the relatives of Mr. Nicholas Blake and the Commission until June 2, 1998. On that same day the Secretariat informed Guatemala that the deadline for it to submit its brief had been postponed until the requested date.

13. On June 2, 1998, Guatemala submitted its observations to the reparations briefs of the relatives of Mr. Nicholas Blake and the Commission.

14. On June 10, 1998, the Court held a public hearing on reparations.

There appeared:

for the relatives of Mr. Nicholas Blake:

Joanne Hoeper;

for the Inter-American Commission:

Domingo E. Acevedo, delegate

for the State of Guatemala:

Dennis Alonzo Mazariegos, agent;
Ambassador Guillermo Argueta Villagrán, counsel; and
Alejandro Sánchez Garrido, assistant.

15. On June 12, 1998, the State submitted a report on the procedural situation of the criminal trial concerning Mr. Nicholas Blake, processed in the Department of Huehuetenango. That report had been requested by the President during the public hearing held in this case.

16. On July 21 and November 9, 1998, the Court asked the family of Nicholas Blake, as evidence to help the Court arrive at a more informed judgment, for certified copies of their birth certificates and the birth certificate of Mr. Nicholas Blake; a certified copy of Nicholas Blake's professional degree or an appropriate document that corroborates his academic degree; a record of his salary or receipts that corroborate his income, and mortality tables for the United States of America for the years 1985, 1987, 1992, as well as the current mortality tables. On November 9, 1998, the Court asked Guatemala, as evidence to help the Court arrive at a more informed judgment, for official certification of the tables for the exchange rate between the Quetzal and the U.S. dollar for the years 1985, 1987, and 1992 and the rate in effect at that time.

17. On August 19 and December 24, 1998, respectively, the family of Mr. Nicholas Blake submitted a copy of the birth certificate of Richard Blake Jr. and certified copies of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake, and the documentation requested by the Court on November 9, 1998.

18. On December 17, 1998, Francis B. Coombs, Jr. submitted a writing concerning the personal and professional characteristics of Mr. Nicholas Blake.

19. On January 12, 1999, the State sent the documentation that was requested on November 9, 1998.

IV. PRELIMINARY CONSIDERATIONS

20. For the decision on reparations in the present case, the Court considers it necessary to bear in mind the following points:

a. that in its July 2, 1996 Judgment on Preliminary Objections, the Court declared itself incompetent to decide on the alleged responsibility of the State for the detention and death of Mr. Nicholas Blake, which occurred prior to Guatemala's acceptance of the compulsory jurisdiction of the Court;

b. that is the above cited judgment, the Court also determined that certain effects of the actions of which Mr. Nicholas Blake was a victim continued until June 14, 1992, when his remains were established, a date which is subsequent to Guatemala's acceptance of the contentious jurisdiction of the Court. Consequently, the Court declared itself competent to rule on possible violations of the Convention resulting from the effects, conduct, and acts which occurred after that acceptance.

c. that in the judgment on the merits in the present case, rendered on January 24, 1998, the Court, in view of the partial acceptance of responsibility on the part of Guatemala, presumed to be true all facts related to the delay of justice until 1995, and determined that all facts relating to the obstruction of justice had effects up to the time the judgment was rendered, inasmuch as the case initiated by the death of Blake was still pending in the domestic courts.

d. that the Court declared in the judgment on the merits, that the judicial guarantees set forth in Article 8(1) of the Convention, in relation to Article 1(1) of the same, were violated to the detriment of the relatives of Mr. Nicholas Blake, inasmuch as those relatives have the right to demand that the disappearance and death of their son and brother be effectively investigated by the Guatemalan authorities, that proceedings be instituted against those responsible for the

crimes, that appropriate punishment be imposed on the perpetrators, and that the relatives be compensated for the damages and injuries they sustained; and

e. that the Court also declared in said judgment that the right to humane treatment set forth in Article 5 of the Convention in relation to Article 1(1) of the same was violated by the State to the detriment of the relatives of Mr. Nicholas Chapman Blake, inasmuch as his disappearance caused his family suffering and anguish, a sense of insecurity, and frustration and impotence in the face of the Guatemalan authorities' failure to investigate; and that the burning of the mortal remains of Mr. Nicholas Blake increased their suffering.

21. As the Court already determined that it was not competent to render a decision on the deprivation of liberty and the death of Nicholas Blake (supra 20(a)), it will limit itself to decide on reparations within the framework established in the judgment on the merits, which refers exclusively to the violation, by Guatemala, of Articles 5 (Right to Humane Treatment), and 8(1) (Right to a Fair Trial) of the American Convention in conjunction with Article 1(1) of the same, to the detriment of the relatives of Mr. Nicholas Blake.

V. EVIDENCE

22. In regard to evidence, when the relations of Mr. Nicholas Blake submitted their brief on reparations, they attached the following documents:

a. a statement by Samuel W. Blake dated March 26, 1998;

b. an affidavit by Mr. Richard Blake, dated March 26, 1998;

c. an affidavit by public accountant Michael Cohan, dated March 23, 1998, which was attached to a curriculum vitae, several tables of minimum salaries for a journalist or photographer, and a life expectancy table for the United States for the period 1989-1991.

(cfr. Michael Cohan is a Certified Public Accountant with over twenty years of experience as an audit and accounting professional; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1985; average reporter top minimum as of April 1, 1985; Reporter, Photographer Top Minimums in 122 Contracts as of April 1, 1986; average reporter top minimum as of April 1, 1986; Reporter, Photographer Top Minimums in 123 Contracts as of June 1, 1987; average reporter top minimum as of June 1, 1987; Reporter, Photographer Top Minimums in 120 Contracts as of April 1, 1988; average reporter top minimum as of April 1, 1988; Reporter, Photographer Top Minimums in 119 Contracts as of April 1, 1989, average reporter top minimum as of April 1, 1989; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1990; average reporter top minimum as of April 1, 1990; Reporter, Photographer Top Minimums in 122 Contracts as of April 1, 1991; average reporter top minimum as of April 1, 1991; Reporter, Photographer Top Minimums in 121 Contracts as of April 1, 1992; average reporter top minimum as of April 1, 1992; Reporter, Photographer Top Minimums in 118 Contracts as of April 1, 1993; average reporter top minimum as of April 1, 1993; Reporter, Photographer Top Minimums in 115 Contracts as of June 1, 1994; average reporter top minimum as of June 1, 1994; Reporter, Photographer Top Minimums in 106 Contracts as of June 1, 1995; average reporter top minimum as of June 1, 1995; Reporter, Photographer Top Minimums in 102 Contracts as of December 1, 1996; average reporter top minimum as of December 1, 1997; Reporter, Photographer Top Minimums in 102 Contracts as of April 1, 1997; average salary as of April 1, 1997 and U.S. Decennial life Tables for 1989-91);

d. documents that verify trips to Guatemala and the expenses related to those trips
(cfr. receipts for airline tickets on American Airlines Inc., Eastern Airlines Inc., Taca International, and Pan Am World Airways, for trips 7,8,11,15,17,19, 20 and 22 the tickets are in the name of Richard R. Blake Jr., Richard Blake, Douglas Owsley, and John Verson; Hertz Guatemala; Hotel Camino Real de Guatemala; La Trattoria Guatemala; Restaurante Marios, Guatemala and Restaurante Romanello, Guatemala);
e. receipts for supplementary expenses associated with those trips
(cfr. January 16, 1997 receipt from Helicópteros de Guatemala issued to Richard Blake; note that assigns the expenses incurred by Michael Shawcross and receipts; contract with Felipe Alva, Military Commissioner of Chiantla in the Department of Huehuetenango dated May 19, 1992; note from Sue H. Patterson, General Counsel of the Embassy of the United States of America, dated October 4, 1990, and a memorandum from Richard and Mary Blake, dated March 22, 1998 to which they attached receipts);
f. March 24, 1998, statement by Doctor Malcolm Owen Slavin
g. March 27, 1998, affidavit of Joanne Hoeper
h. expenses of the representatives of the relatives of Mr. Nicholas Blake
(cfr. May 21, 1997, note of Joanne Hoeper)

23. Neither the Inter-American Commission nor the State presented any evidence.

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24. In their brief on reparations, the representatives of the relatives of Mr. Nicholas Blake requested that at this stage of the proceedings the Court consider the statements made during the merits of the case by Samuel and Richard Blake Jr., brothers of Nicholas Blake.

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25. On August 19 and December 24, 1998, the relatives of Mr. Nicholas Blake submitted the evidence required by the Court to help it arrive at a more informed judgment

(cfr. copy of the birth certificate of Richard Blake, Jr. and a certified copy of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake; copy of the birth certificate of Nicholas Chapman Blake; November 19, 1998 authenticated note from the University of Vermont; December 14, 1998, letter from Rodney G. Dogherty, December 9, 1998 note from Francis B. Coombs Jr.; copies of articles written by Nicholas Blake for the Globe & the Mail, Philadelphia Inquirer Daily News, Harper's, The Magazine of the Miami Herald, St. Louis Post Dispatch, and The Progressive; several documents submitted to the IRS showing the income of Nicholas Blake for the years 1981 and 1983, and mortality tables for the United States of America during the years 1985, 1987, 1992, and 1995).

26. On January 12, 1999, the State submitted documents pertaining to the exchange rate between the Quetzal and the United States dollar for the years 1985, 1987, 1992, and 1997, in accordance with information furnished by the Bank of Guatemala.

(cfr. January 12, 1999, note from the Bank of Guatemala, and exchange rates from the financial market for the years 1992 and 1998).

27. The documents submitted by the relatives of Mr. Nicholas Blake and by the State were neither contested nor challenged, and therefore the Court accepts them as valid and orders their incorporation into the body of evidence.

28. The body of evidence of a case is unique and indivisible and is made up of the evidence submitted during all stages of the proceedings. For that reason, the statements made by Samuel and Richard Blake Jr., during the public hearing on the merits of the case held before this Court on April 17, 1997, also comprise part of the evidence that will be considered during the present stage, regardless of the request of the representatives of the relatives of Mr. Nicholas Blake.

VI. DUTY TO MAKE REPARATIONS

29. In operative paragraph four of the Judgment of January 24, 1998, the Court declared that Guatemala was "obligated to pay a fair compensation to the relatives of Mr. Nicholas Chapman Blake and reimburse them for the expenses incurred in their representations to the Guatemalan authorities in connection with this process" and in operative paragraph five of the same judgment it ordered that the reparations stage be opened.

30. In the matter of reparations, the applicable provision of the American Convention is Article 63(1) which prescribes that:

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

31. Reparations is a generic term that covers the various ways a State can redress the international responsibility it has incurred (restitutio in integrum, payment of compensation, satisfaction, guarantees that the violations will not be repeated, among others). (Loayza Tamayo Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43, para. 85; Castillo Páez Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43, para. 48, and Suárez Rosero Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, para. 41).

32. The obligation to make reparation established by international courts is governed, as has been universally accepted, by international law in all its aspects: scope, nature, forms, and determination of beneficiaries, none of which the respondent State may alter by invoking its domestic law. (Garrido and Baigorria Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, para. 42; Loayza Tamayo Case, Reparations, supra 31, para. 86; Castillo Páez Case, Reparations, supra 31, para. 49, and Suárez Rosero Case, Reparations, supra 31, para. 42)

33. As the Court has stated, Article 63(1) of the American Convention codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law on the responsibility of States. (Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 10, 1993, Series C No 15, para. 43, and cfr. Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No 9, p. 21 and Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p 29; Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 184) This is the sense in which this Court has applied that provision. (inter alia, Garrido and Baigorria, Reparations, supra 32, para. 40; Loayza Tamayo, Reparations, supra 31, para. 84, and Castillo Páez Case, Reparations, supra 31, para. 50). When a wrongful act occurs that is imputable to a State, the State incurs international responsibility for the violation of international law, with the resulting duty to make reparation, and the duty to put an end to the consequences of the violation.

34. Reparation involves, therefore, measures that are intended to eliminate the effects of the violation that was committed. Their nature and amount depend on the damage done both at the material and moral levels. Reparations are not meant to enrich or impoverish the victim or his heirs. (cfr. Garrido and Baigorria Case, Reparations, supra 32 para. 43; Castillo Páez, Reparations, supra 31, para. 53, and del ferrocarril de la bahía de Delagoa Case, LA FONTAINE, Pasicrisie internationale, Berne, 1902, p. 406)

VII. BENEFICIARIES

35. As regards the beneficiaries of the reparations, in their March 27, 1998 brief, the parents and brothers of Mr. Nicholas Blake asserted that they had been directly injured by the violations of the fundamental rights of their son and brother.

36. In this respect, the Commission stated in its brief of the same day, that the Court has construed the concept of family in a flexible and broad manner, and that the Court's jurisprudence coincides with the jurisprudence of other international organs.For that reason, it deemed that Richard Blake, Mary Blake, Richard Blake Jr. and Samuel Blake should be entitled to the reparations in the present case.

37. The State maintains that the relatives of Mr. Nicholas Blake may not receive reparations in their own right, since the parents and brothers of the victim have not demonstrated that they had a relationship of dependence on him.

38. This Court already recognized, in operative paragraphs 1 and 2 of the January 24, 1998 Judgment, that violations of Articles 8(1) and 5 of the Convention, in conjunction with Article 1(1), were to the detriment of the relatives of Nicholas Blake. Therefore, for the purpose of reparations, the Court determines that these relatives constitute the injured party within the meaning of Article 63(1) of the American Convention. The Court determines that Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake may receive reparations in their own right as the injured party in the present case.

39. The injured party has been represented in the proceedings before the Inter-American system by attorneys Joanne Hoeper, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller of San Francisco, California, and by the attorneys of the "International Human Rights Law Group," of Washington D.C., United States of America.

VIII. PROVEN FACTS

40. To determine the reparations called for in the instant case, the Court will rely upon the facts established in the Judgment of January 24, 1998. However, in the present stage of the proceedings the parties have introduced evidence to the file to demonstrate the existence of additional facts that are relevant to the determination of the measures of reparations. The Court has examined the evidence and the arguments of the parties, and declares the following facts to be proved:

A. concerning Mr. Nicholas Blake:

a. that he was 27 years old when the acts occurred that resulted in the present case
(cfr. copy of the birth certificate of Nicholas Chapman Blake);
b. that he had graduated from the university with a "Bachelor of Science Degree in History" and worked as an independent journalist.
(cfr. official note from the University of Vermont, dated November 19, 1998; December 14, 1998 letter from Rodney G. Dogherty; December 9, 1998 note from Francis B. Coombs Jr.; copies of articles that Nicholas Blake wrote for The Globe and The Mail, Philadelphia Inquirer Daily News, Harper's, The Magazine of the Miami Herald, St. Louis Post Dispatch, and The Progressive); and
c. that his parents are Richard and Mary Blake and his brothers are Samuel and Richard Blake Jr.
(cfr. copy of the birth certificate of Richard Blake Jr., and certified copies of the passports of Mary Anderson Blake, Richard Randolph Blake, and Samuel Wheaton Blake).

B. concerning the injured party:

a. that they incurred a series of expenses in relation to trips to Guatemala
(cfr. receipts of airline tickets on American Airlines Inc., Eastern Airlines Inc., Taca International, and Pan Am World Airways, for trips 11, 15, 17, 19, 20, and 22, the tickets are in the name of Richard R. Blake Jr., Richard Blake, Douglas Owsley, and John Verson; Hertz Guatemala, and the March 26, 1998 affidavit of Richard R. Blake Jr.);
b. that they had various expenses for lodging, food, and telephone calls
(cfr. receipts from the Hotel Camino Real of Guatemala; La Trattoria, Guatemala; Restaurante Marios, Guatemala, and Restaurante Romanello, Guatemala, the March 22, 1998 memorandum of Richard and Mary Blake and attached receipts, and the March 26, 1998 affidavit of Richard R. Blake Jr.);
c. that they incurred various expenses in the search and discovery of the mortal remains of Nicholas Blake
(cfr. note that consigned the expenses incurred by Mike Shawcross and receipts; May 19, 1992 contract with Felipe Alva, Military Commissioner Of Chiantla in the Department of

Huehuetenango; October 4, 1990 note from Sue H. Patterson, General Counsel of the Embassy of the United States of America; airline tickets in the name of Douglas Owsley and John Verson; the March 22, 1998 memorandum from Richard and Mary Blake, and attached receipts; and the March 26, 1998 affidavit of Richard R. Blake Jr.); and

d. that those who comprise the injured party have received medical treatment, and that Samuel Blake continues receiving it.

(cfr. March 26, 1998 statement of Samuel W. Blake; March 26, 1998 affidavit of Richard R. Blake Jr., and March 24, 1998 statement by Dr. Malcolm Owen Slavin).

e. that the injured party has been represented by attorneys Joanne Hoeper, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller, of San Francisco, California, and by the attorneys of the "International Human Rights Group," of Washington D.C., United States of America.

(cfr. May 21, 1997 note from Joanne Hoeper; March 27, 1998 affidavit of Joanne Hoeper, and March 26, 1998 affidavit of Richard R. Blake Jr);

f.. that the attorneys who represented them have done so gratuitously or pro bono

(cfr. March 27, 1998 affidavit of Joanne Hoeper, and March 26, 1998 affidavit of Richard R. Blake Jr.); and

g. that the injured party has incurred a series of expenses for the preparation and submission of their petition before the Inter-American system

(cfr. May 21, 1997 note from Joanne Hoeper; March 27, 1998 affidavit of Joanne Hoeper, and March 26, 1998 affidavit of Richard R. Blake Jr.)

41. As previously stated, for the purpose of a decision on reparations in the present case, only those proven facts that are relevant within the legal framework indicated by the Court will be taken into consideration (supra 21), which is to say, those that refer to the violation of Articles 5 and 8(1) of the American Convention in relation to Article 1(1) of the Convention.

IX. REPARATIONS

42. While the rule of restitutio in integrum is one form of reparation for an international wrongful act (cfr. Factory at Chorzów, Merits, supra 33, p. 48), it is not the only form of reparation. There may be cases in which restitutio in integrum is impossible, insufficient, and inadequate. Compensation is the primary remedy for damages suffered by the injured party, and includes, as this Court has held previously, both material and moral damages. (Garrido and Baigorria Case, Reparations, supra 32, para. 41; Loayza Tamayo Case, Reparations, supra 31, para. 124, and Castillo Páez Case, supra 31, para. 69; cfr Chemin de fer de la baie de Delagoa, sentence, 29 mars 1900, Martens, Nouveau Recueil Général de Traités, 2ème Série, t. 30, p. 402; Case of Cape Horn Pigeon, 29 November 1902, Papers relating to the Foreign Relations of the United States, Washington, D.C.: Government Printing Office, 1902, Appendix I, p. 470); Traité de Neuilly, article 179, annexe, paragraphe 4 (interprétation), arrêt No 3, 1924, P.C.I.J., series A, No. 3, p.9. Maal Case, 1 June 1903, Reports of International Arbitral Awards, vol. X, pp. 732 and 733, and Campbell Case, 10 June 1931, Reports of International Arbitral Awards, vol. II, p. 1158.)

A) MATERIAL DAMAGES

43. The injured party stated that Mr. Nicholas Blake disappeared when he was 27 years old, a journalist, single, and childless. The injured party requested a minimum of US$1,161,949.00 (one million one hundred sixty-one thousand, nine hundred forty-nine dollars of the United States of America) or US$1,329,367.00 (one million three hundred twenty-nine thousand three hundred sixty-seven dollars of the United States of America), the amount that Nicholas Blake would have earned "if he had continued to live and work as a journalist [...] until he retired at age 65."

44. Moreover, the injured party requested the payment of US$299,577.70 (two hundred ninety-nine thousand, five hundred seventy-seven dollars of the United States of America and seventy cents), as reimbursement for expenses. However, during the public hearing on reparations, they clarified that the correct amount is US$289,469.00 (two hundred eighty-nine thousand, four hundred sixty-nine dollars of the United States of America), an amount with includes;

a. expenses for the twenty-two trips made by members of the Blake family to Guatemala and to Central America until they recovered the mortal remains of Mr. Nicholas Blake in the month of June 1992, which amount to US$112.108.00 (one hundred and twelve thousand hundred and eight dolars of the United States of America). This amount includes expenses for airline tickets, lodging, and meals.
b. other expenses, listed as extraordinary, connected with the search for Mr. Nicholas Blake, such as the rental of helicopters, contract with a forensic anthropologist, and payments made to Felipe Alva, Military Commissioner and leader of the Civil Defense Patrols of the region of Chiantla, in the Department of Huehuetenango, Guatemala, which amount to US$8,023.00 (eight thousand, twenty-three dollars of the United States of America)
c. expenses of approximately US$21,374.58 (twenty-one thousand, three hundred seventy-four dollars of the United States of America and fifty-eight cents) for telephone calls to Guatemala City and other places in that country during the search for Mr. Nicholas Blake. The expenses are broken down in the following manner: US$19,200.00 (nineteen thousand, two hundred dollars of the United States of America) in long distance charges to an ATT credit card from 1985 to 1993 and US$2,174.58 (two thousand, one hundred seventy-four dollars of the United States of America and fifty-eight cents) for other telephone expenses; and
d. the expenses for the treatment of Samuel Blake, incurred by the family, which to this date total US$96,470.00 (ninety-six thousand, four hundred seventy dollars of the United States of America, as well as US$30,000.00 (thirty thousand dollars of the United States of America) to cover his future treatment. They also stated that Samuel Blake received psychiatric treatment and he was prescribed medications for the acute depression that he suffered, for which they spent approximately US$12,000.00 (twelve thousand dollars of the United States of America). Likewise, the family procured the assistance of specialists to treat the trauma that they suffered as a result of the death of Mr. Nicholas Blake. Consequently, they requested the amount of US$138,470.00 (one hundred thirty-eight thousand, four hundred seventy dollars of the United States of America) for medical treatment.

To these expenses are added the expenses related to the proceedings before the Inter-American system, which will be referred to in the respective chapter (infra 66).

The Court observes that the total of the amounts listed does not concur with the total amount initially requested by the injured party in its brief on reparations, nor with the amount indicated in the public hearing; nevertheless, this mathematical error is irrelevant to the judgment, for which the Court will separately consider each of the types of expenses mentioned above.

45. The Commission asserted that Guatemala should make reparation to the injured party by the payment of adequate compensation for the irreversible injury they suffered as a consequence of the violation of their rights. It also argued that this compensation should include material damages resulting as a direct consequence of the facts proved in chapter VII of the judgment on the merits, and the damages included in Nicolas Blake's relatives' brief on reparations. The Commission referred the Court to the calculations and totals requested by the representatives of the injured party, as well as to the evidence that accompanied them.

46. For its part, Guatemala stated that the claims for material injury can not go forward, because the Court did not declare that there was a violation of Article 4 of the Convention, and it has not been proved that there are persons who depended economically on Mr. Nicholas Blake who could have suffered economic detriment. It added that the reparation of material injury is the right of the victim and of the dependents, and that, consequently, it can not be extended to other persons who do not have the status of victim or dependent, and that neither the parents nor the brothers of Mr. Nicholas Blake proved a dependent economic relationship to him.

47. The Court rejects the injured party's claim that the Court order the payment of US$1,161,949.00 (one million one hundred sixty-one thousand, nine hundred forty-nine dollars of the United States of America) or US$1,329,367.00 (one million three hundred twenty-nine thousand, three hundred sixty-seven dollars of the United States of America), since, as a consequence of the holding in the judgment on the merits, the amount of reparations in the present case must be limited to those corresponding to the violation of Articles 5 and 8(1) of the American Convention in relation to Article 1(1) of the Convention to the detriment of the injured party.

48. The Court has taken into consideration that the injured party made several trips, principally to Guatemala City, for the purpose of ascertaining the whereabouts of Mr. Nicholas Blake from the time of his disappearance until the discovery of his mortal remains, due to the cover up of what occurred and the Guatemalan authorities' failure to investigate the facts, and that this situation gave rise to expenses in the form of airline tickets, lodging, meals, payments for telephone calls, etc.

49. The Court further considers that these expenses are of an extrajudicial nature, since, as has been proved, the family of Nicholas Blake did not resort to the domestic tribunals. For that reason, the Court holds that it is appropriate to order the State to pay the reasonable expenses incurred by the injured party from March 9, 1987 (the date of Guatemala's acceptance of the contentious jurisdiction of the Court), which are equitably estimated to be the amount of US$16,000 (sixteen thousand dollars of the United States of America), taking into account for this purpose that the judgment on the merits referred solely to the violation of Articles 5 and 8 of the American Convention.

50. As to the request that the Court order Guatemala to pay the amount of US$138,470.00 (one hundred thirty-eight thousand, four hundred seventy dollars of the United States of America) for the medical treatment received and to be received by Samuel Blake, the Court holds that it has been proved that his ailments occurred due to the situation of the disappearance of his brother, the uncertainty as to his brother's whereabouts, the suffering on learning of his brother's death, and his frustration and impotence in the face of the lack of results of the factual investigations by the Guatemalan public authorities and their later cover up. For those reasons, this Tribunal determines that it is appropriate to grant to Samuel Blake, in equity, the amount of US$15,000 (fifteen thousand dollars of the United States of America) in his capacity as one of the injured parties.

B) MORAL DAMAGES

51. The injured party referred to the "emotional injury" they incurred due to the disappearance and the death of Mr. Nicholas Blake and the cover up of those facts. They added that Richard and Samuel Blake dedicated part of their lives to the search for their brother. They requested, for moral damages to the family, the total sum of US$500,000.00 (five hundred thousand dollars of the United States of America).

52. The Commission stated that, as to moral damages, the suffering of the injured party derived, inter alia, from the circumstances of the forced disappearance of Mr. Nicholas Blake; the incineration of his mortal remains in order to destroy all traces that could reveal his whereabouts, and the Guatemalan authorities' failure to assist from March 1985 to the present.

53. The State alleges that the amount claimed bears no equitable relationship to the prevailing conditions in Guatemala and to the context in which the event occurred.

54. The Court is of the opinion that while its jurisprudence may establish precedents in this regard, it cannot be invoked as an absolute criterion, as each case must be examined individually. (Neira Alegría Case et al., Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 19, 1996, Series C. No. 29, para. 55, and Castillo Páez Case, Reparations, supra 31, para. 83).

55. As for moral damages, the Court has previously held that there are numerous cases in which other international tribunals have determined that a judgment of condemnation constitutes adequate reparation per se for moral damages (for an example from the case law of the European Court of Human Rights; cfr., v.g. arrêt Ruiz Torija c. Espagne du 9 décembre 1994. Serie A no.303-A p. 13, pára.33). Nevertheless, in the grave circumstances of the present case, it is the view of the Court that it is not sufficient; for which reason the Court deems it necessary to award compensation for moral damages. (cfr. in this regard, El Amparo Case, Reparations, (Art. 63(1) American Convention on Human Rights), Judgment of September 14, 1996, Series C No. 28, para. 35, and Castillo Páez Case, Reparations, supra 31, para. 84). This same criteria has been applied by the European Court (Cour eur. D.H., arrêt Wiesinger du 30 octobre 1991, séries A No. 213, para. 85; Cour eur D.H., arrêt Kemmache c. France (article 50) du 2 novembre 1993, série A No. 270-B, para. 11; Cour eur. D.H., arrêt Mats Jacobsson du 28 juin 1990, série A No. 180-A, párr. 44; Cour eur. D.H., arrêt Ferraro du 19 février 1991, série A No. 197-A, para. 21).

56. In the present case, the Court itself cited the violation of Article 5 of the Convention in the context of the special gravity of the forced disappearance of a person, on finding that the circumstances of the forced disappearance of Mr. Nicholas Blake "generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate." (Blake Case, Judgment of January 24, 1998, Series C No. 36, para. 114.)

57. In effect, the forced disappearance of Mr. Nicholas Blake caused his parents and brothers suffering, intense anguish, and frustration in the face of the Guatemalan authorities' failure to investigate and the cover up of what occurred. The suffering of the family members, in violation of Article 5 of the Convention, can not be disassociated from the situation created by the forced disappearance of Mr. Nicholas Blake that lasted until 1992 when his mortal remains were located. The Court, in conclusion, holds that the grave moral damage suffered by the four family members of Mr. Nicholas Blake is completed proved.

58. For the reasons set forth above, the Court considers it equitable to award US$30,000 (thirty thousand dollars of the United States of America) to each one of the four family members of Mr. Nicholas Blake.

X. THE DUTY TO TAKE DOMESTIC MEASURES

59. In its brief on reparations, the Commission requested that the Court order Guatemala to take the following measures relative to the reparation of the damages suffered: that the State investigate, both administratively and judicially, the criminal acts related to the illegal detention and subsequent forced disappearance of Mr. Nicholas Blake, and the cover up of the facts; that it identify, prosecute, and punish the perpetrators and accomplices; that it adopt the domestic legal measures necessary to avoid a recurrence of such violations, and that it inform the Court within a reasonable period as to the measures taken, among which the Commission believes should include, inter alia, those that oblige the State to comply in an effective way with the provision of the Convention which establishes that judicial proceedings must take place within a reasonable time.

60. The State, for its part, argued in its brief that it had taken steps directed toward the reparation of the human rights violations that resulted from the armed conflict, such as the cessation of the conflict through dialog, the assurance of effective control over the armed forces and security for civil authority, the training of the armed forces in human rights, the strengthening of the judicial power, and other measures adopted within the framework of the Accord of Firm and Lasting Peace, of December 29, 1996. The State also pointed to Guatemala's acceptance of international responsibility for the unjustified delay in the administration of justice in the present case, and it stated that that acceptance should be considered to be part of the non pecuniary reparations. It added that the criminal trial concerning the acts that are being examined in the present judgment has taken its course, an "accused has been captured and efforts are being made to comply with two judicial arrest warrants for the others."

61. The American Convention guarantees very person's right of access to justice to assert his rights, and provides that the States Parties have the duty to prevent, investigate, identify, and punish the perpetrators of human rights violations and the accessories after the fact.

62. In the judgment on the merits, the Court stated that Article 8(1) of the American Convention, which sets forth the right of every person to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal for his rights of any nature, also includes the right of the victim's relatives to judicial guarantees. The Court recognizes that

Article 8.1 of the American Convention recognizes the right of Mr. Nicholas Blake's relatives to have his disappearance and death effectively investigated by the Guatemalan authorities; to have those responsible prosecuted for committing said unlawful acts; to have the relevant punishment meted out where appropriate; and to be compensated for the damages and injuries they sustained. (Blake Case, supra 56, para.97)

63. Article 8(1) of the American Convention bears a direct relation to Article 25 in conjunction with Article 1(1) of the Convention, which guarantees to all persons a simple and rapid recourse so that, among other things, those responsible for human rights violations will be tried and reparations may be obtained for the damages suffered. As the Court has stated, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention" inasmuch as it contributes decisively to assure access to justice. (Castillo Páez Case, Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83; Suárez Rosero Case, Judgment of November 12, 1997. Series C No. 35, para. 65; Paniagua Morales et al. Case, Judgment of March 8, 1998. Series C No. 37, para. 164; Loayza Tamayo Case, Reparations, supra 31, para. 169, and Castillo Páez Case, Reparations, supra 31, para. 106).

64. The State has the duty to prevent and combat impunity, which the Court has defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention." (Paniagua Morales et al. Case, supra 63, para. 173) In this respect, the Court has advised 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 defenselessness of victims and their relatives. (Paniagua Morales et al. Case, supra 63, para. 173)

65. Consequently, the State has a duty to investigate the acts that resulted in violations of the American Convention in the present case, to identify and punish those responsible and to adopt the internal legal measures necessary to ensure compliance with this obligation. (Articles 1(1) and 2 of the American Convention)(Loayza Tamayo Case, Reparations, supra 31, para. 171 and Suárez Rosero Case, Reparations, supra 31, para. 80).

XI. EXPENSES

66. In relation to expenses, the injured party stated that it was represented by attorneys Joanne Hoeper, Margarita Gutiérrez, A. James Vásquez-Aspiri, and Samuel Miller, of San Francisco, California, and by the International Human Rights Law Group of Washington D.C., who have assisted the family gratuitously or pro bono and have not received compensation for their professional services. Nevertheless, the injured party observed that the family had incurred expenses such as trips, translations, telephone calls, photocopies, and postal services. The Blake family requested, for this reason, the amount of US$22,802.12 (twenty-two thousand eight hundred and two dollars of the United States of America and twelve cents).

67. The Inter-American Commission adopted the calculation of expenses set forth by the injured party in its brief on reparations. It also requested that the Court order Guatemala to pay the expenses incurred by the injured party in the proceedings and motions before the Commission and the Court, based on that stated by the injured party in its brief.

68. Guatemala observed that the expenses claimed by the Blake family are not related to the State's obligation to investigate, as set forth in the judgment on the merits, inasmuch as the Court ordered the reimbursement of "the expenses incurred by [the injured party] in their representations to the Guatemalan authorities in connection with this process;" and that from the facts proved it shows that the injured party conducted an investigation independent of the Guatemalan authorities, who were responsible for carrying out the judicial investigation. It added that, from the evidence put forth, it can not be deduced that the expenses correspond to those spent in actions before the public authorities, as set forth by the Court in operative paragraph four of the Judgment on the merits of this case. In light of the above, it requested that the Court reject the claims of the injured party and the Commission.

69. After examining the expenses for which the injured party requests reimbursement, the Court observes that they arise from trips to Guatemala to gather information relating to the processing of the case before the Commission; trips made by the attorneys for the Blake family for appearances before the Commission and the Court, including meals and lodging, and various expenses for translations, telephone calls, photocopies and correspondence, all of which were generated by the presentation of the case before the organs of the Inter-American system for the protection of human rights.

70. It falls to the Court to carefully assess the specific scope of those expenses, for even though the attorneys for the injured party worked gratuitously, the Tribunal understands that they had to incur certain expenses to process the present case before the Inter-American system for the protection of human rights, for which reason the Court considers it equitable to grant to the injured party indemnization of US$10,000 (ten thousand dollars of the United States of America) as compensation for the expenses resulting from its actions before this system.

XII. MODE OF COMPLIANCE

71. To comply with this Judgment, the State is to pay the compensation ordered , within six months from the date of its notification, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake as the injured party . If any one of them has died, the compensation shall be paid to the heirs. The State may fulfill its obligations through payments to the beneficiaries or their

duly accredited representatives in US dollars or the equivalent in Guatemalan currency. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Guatemalan currency in the market of New York, USA on the day prior to the date of the payment.

72. If, for any reason, it is not possible for the beneficiaries of the compensation to receive it within the specified six month period, the State is to place the amounts in question in an account or a certificate of deposit in the beneficiary's name, with a solvent and secure financial institution, either in United States dollars or its equivalent in Guatemalan currency, under the most favorable financial terms that banking law and practice permit. If at the end of ten years the compensation is not claimed, the sum shall be returned, with interest, to the State.

73. The compensation specified in this Judgment shall be exempt from any existing or future national, provincial or municipal tax or duty.

74. Should the State be in arrears with its payments, it shall pay interest on the amount owed at the interest rate in effect in Guatemala.

XII. OPERATIVE PARAGRAPHS

75. Now therefore,

THE COURT

DECIDES:

Unanimously

1. To order the State of Guatemala to investigate the facts of the present case, identify and punish those responsible, and adopt the measures in its domestic law that are necessary to assure compliance with this obligation (in conformance with operative paragraph three of the judgment on the merits), of which it will inform the Court, semiannually, until the end of the corresponding actions.
2. To order the State of Guatemala to pay:

a. US.$151,000.00 (one hundred fifty-one thousand dollars of the United States of America) or its equivalent in Guatemalan national currency, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake, as the injured party, as reparations, to be distributed in the manner indicated in paragraphs 58, 50, and 49 of this judgment:

i. US$30,000.00 (thirty thousand dollars of the United States of America) as moral damages to each of the following persons: Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake;
ii. US$15,000.00 (fifteen thousand dollars of the United States of America) as medical expenses to Samuel Blake; and

iii. US$16,000.00 (sixteen thousand dollars of the United States of America) as expenses of an extrajudicial nature.

b. Also, US$10,000.00 (ten thousand dollars of the United States of America) or its equivalent in Guatemalan national currency, to Richard Blake, Mary Blake, Richard Blake Jr., and Samuel Blake, as the injured party, for reimbursement of the expenses incurred in the processing of the case before the Inter-American system for the protection of human rights, in accordance with paragraph 70 of this Judgment.

3. To order that the State of Guatemala make the payments indicated in operative paragraph 2 within six months of the notification of this Judgment.
4. To order that the payments ordered in this Judgment shall be exempt from any existing or future tax or duty.
5. To supervise fulfillment of this Judgment.

Judge Cançado Trindade advised the Court of his Concurring Opinion and Judge ad hoc Novales-Aguirre of his Reasoned Concurring Opinion, both of which are attached to this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, this twenty-second day of January, 1999.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Alfonso Novales-Aguirre
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have voted in favour of the present Judgment on reparations in the case Blake versus Guatemala which the Inter-American Court of Human Rights has just adopted, for considering it in accordance with the applicable law, and bearing in mind what was previously resolved by the Court in the Judgments on preliminary objections (of 02.07.1996) and on the merits (of 24.01.1998). I understand, nevertheless, that the decision of the Court, in conformity with the law stricto sensu, does not keep a direct relationship with the gravity of the facts which took place in the present Blake case; therefore, just as I have done in my Separate Opinions in the two previous Judgments above-mentioned, I feel obliged to express, in this new Separate Opinion, my concerns and thoughts on the outcome of the Blake case, which I develop in this Judgment on reparations fully convinced that only through the transformation of the existing law one will achieve the realization of justice in circumstances such as those raised in the present Blake case of forced disappearance of person.

2. In fact, the present Blake case, perhaps more than any other case before the Inter-American Court to date, has revealed the ineluctable tension between the postulates of the law of treaties, in the framework of Public International Law, and those of the International Law of Human Rights. This tension originated itself in the limitation ratione temporis of the contentious jurisdiction of the Court, resulting from the temporal intersection - in the consideration of the intertwined facts of the continuing situation of the forced disappearance of Mr. Nicholas Chapman Blake - operated by the incidence of the date of acceptance on the part of Guatemala of the contentious jurisdiction of the Court.

3. The juridical tragedy - as I see it - of the present Blake case lies in that, by the application of a classic postulate of the law of treaties, the crime of forced disappearance of persons was unduly disfigured and fragmented, with clear repercussions in the present Judgment of reparations. This occurs despite all the endeavours which resulted in the recent tipification, at international level, of such disappearance as a "continuing or permanent" crime "as long as the fate or the whereabouts of the victim has not been determined" (Inter-American Convention on the Forced Disappearance of Persons of 1994, Article III), as a complex form of violation of human rights (with related criminal acts) to be understood pursuant to a necessarily integral approach (in the light of Articles IV and II, and the Preamble, of that Convention).

4. This occurs precisely at a moment in which contemporary legal doctrine, - as I pointed out in my two previous Separate Opinions in the present case, - strives to achieve the establishment of a true international regime against grave violations of human rights (such as torture, forced or involuntary disappearance of persons, and extra-legal, arbitrary and summary executions). Moreover, as I added in my Separate Opinion (paragraph 21) in the Judgment on the merits, there is an element of intemporality proper to the International Law of Human Rights which the law of treaties cannot keep on failing to take into due account: this is a legal order of protection destined to be applied in any circumstances and without temporal limitation, that is, all the time.

5. The tension between the precepts of Public International Law and those of the International Law of Human Rights is not of difficult explanation: while the juridical concepts

and categories of the former have been formed and crystallized above all at the level of inter-State relations (under the dogma that only the States, and later on the international organizations, are subjects of that legal order), the juridical concepts and categories of the latter have been formed and crystallized at the level of intra-State relations, that is, in the relations between the States and the human beings under their respective jurisdictions (erected these latter as subjects of that legal order).

6. The tension referred to - of which the present Blake case bears eloquent testimony - was, thus, to be expected. The juridical concepts and categories of Public International Law, constructed in the framework of a legal order of coordination in accordance with the principle of the juridical equality of States, have shown themselves not always adequate when transposed into the domain of the International Law of Human Rights. This latter, in its turn, went on to contribute decisively to the historical rescue of the position of the human being in the law of nations (droit des gens), in accordance, even, with the historical origins of this discipline. In regulating new forms of legal relations, imbued with the imperatives of protection, the International Law of Human Rights came of course to question and challenge certain dogmas of the past.

7. Distinctly from Public International Law, the International Law of Human Rights does not regulate the relations between equals; it operates precisely in defense of those who are ostensibly weaker and more vulnerable (the victims of violations of human rights). In the relations between unequals, it stands in defense of those in greater need of protection. It does not seek to obtain an abstract balance between the parties, but rather to remedy the effects of the lack of equilibrium and of the disparities to the extent that they affect human rights. It does not feed on the concessions of reciprocity, but it rather inspires itself in the considerations of ordre public in defense of superior common interests. It is a true law of protection (droit de protection), marked by a logic of its own, and turned to the safeguard of the rights of human beings and not of States.

8. This is the proper sense of the International Law of Human Rights, whose juridical norms are interpreted and applied bearing always in mind the pressing needs of protection of the victims, and requiring, in this way, the humanization of the postulates of classic Public International Law. There is no reason for the already-mentioned tension between the postulates of Public International Law and those of the International Law of Human Rights to last always, but quite on the contrary: the great challenge which faces us is precisely in the sense of the overcoming of that tension.

9. One of the most eloquent manifestations of such tension emanates from the question of reservations to human rights treaties. Inspired in the criterion sustained by the International Court of Justice in its Advisory Opinion of 1951 on the Reservations to the Convention against Genocide [FN1], the present system of reservations set forth in the two Vienna Conventions of the Law of Treaties (Articles 19-23) [FN2], in joining the formulation of reservations to the acquiescence or the objetions thereto for the determination of their compatibility with the object and purpose of the treaties, is of a markedly voluntarist and contractualist character.

[FN1] In which, - it may be recalled, - the Hague Court endorsed the so-called pan-American practice relating to reservations to treaties, given its flexibility, and in search of a certain balance between the integrity of the text of the treaty and the universality of participation in it; hence the criterion of the compatibility of the reservations with the object and purpose of the treaties. Cf. ICJ Reports (1951) pp. 15-30; and cf., a contrario sensu, the Joint Dissenting Opinion of Judges Guerrero, McNair, Read and Hsu Mo (pp. 31-48), as well as the Dissenting Opinion of Judge Álvarez (pp. 49-55), for the difficulties generated by this criterion.
[FN2] That is, the Vienna Convention on the Law of Treaties of 1969, and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, - to which one may add, in the same sense, the Vienna Convention on Succession of States in the Matter of Treaties of 1978 (Article 20).
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10. Such a system, as I pointed out in my Separate Opinion (paragraphs 16-19) in the Judgment on the merits in the present Blake case, leads to a fragmentation (in the bilateral relations) of the conventional obligations of the States Parties to multilateral treaties, appearing entirely inadequate to human rights treaties, which are inspired in superior common values and are applied in conformity with the notion of collective guarantee. That system of reservations, unfortunately endorsed by the American Convention on Human Rights itself (Article 75), suffers from notorious insufficiencies when transposed from the law of treaties into the domain of the International Law of Human Rights.

11. To start with, it does not distinguish between human rights treaties and classic treaties, making abstraction of the jurisprudence constante of the organs of international supervision of human rights, converging in pointing out that distinction. It allows reservations (not objected) of a wide scope which threaten the very integrity of human rights treaties; it allows reservations (not objected) to provisions of these treaties which incorporate universal minimum standards (undermining, e.g., the basic judicial guarantees of inviolable rights). If certain fundamental rights - starting with the right to life - are non-derogable (in the terms of the human rights treaties themselves), thereby not admitting any derogations which, by definition, are of an essentially temporal or transitory character, - with greater reason one should not admit any reservations, perpetuated in time until withdrawn by the State at issue; such reservations are, in my understanding, without any caveat, incompatible with the object and purpose of those treaties. In this particular, I go, accordingly, beyond what was expressed in this respect by this Court in its third Advisory Opinion (paragraph 61) on Restrictions to the Death Penalty (1983) [FN3].

[FN3] In that Advisory Opinion, the Court considers a reservation which enables a State Party to suspend any of the fundamental non-derogable rights as incompatible with the object and purpose of the American Convention and not permitted by it, but curiously adds that "the situation would be different if the reservation sought merely to restrict certain aspects of a non-derogable right without depriving the right as a whole of its basic purpose" (paragraph 61). I see myself in the impossibility of following the reasoning of the Court's Advisory Opinion referred to in this last limitation: in my view, if a fundamental right does not admit any derogation, a fortiori it does not admit any restriction imposed by a reservation either.
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12. Although the two Vienna Conventions on the Law of Treaties prohibit the acceptance of reservations incompatible with the object and purpose of the treaty at issue, they leave, however, various questions without answers. The criterion of the compatibility is applied in the relations with the States which effectively objected to the reservations, although such objections are often motivated by factors - including political - other than a sincere and genuine concern on the part of the objecting States with the prevalence of the object and purpose of the treaty at issue. For the same reason, from the silence or acquiescence of the States Parties in relation to certain reservations one cannot infer a belief on their part that the reservations are compatible with the object and purpose of the treaty at issue.

13. Such silence or acquiescence, moreover, appears to undermine the application of the criterion of the compatibility of a reservation with the object and purpose of the treaty. And the two Vienna Conventions referred to are not clear either, as to the legal effects of a non-permissible reservation, or of an objection to a reservation considered incompatible with the object and purpose of the treaty at issue. They do not clarify, either, who ultimately ought to determine the permissibility or otherwise of a reservation, or to pronounce on its compatibility or otherwise with the object and purpose of the treaty at issue.

14. The present system of reservations permits even reservations (not objected) which hinder the possibilities of action of the international supervisory organs (created by human rights treaties), rendering difficult the realization of their object and purpose. The above-mentioned Vienna Conventions not only fail to establish a mechanism to determine the compatibility or otherwise of a reservation with the object and purpose of a given treaty [FN4], but - even more gravely - do not impede either that certain reservations or restrictions formulated (in the acceptance of the jurisdiction of the organs of international protection) [FN5] come to hinder the operation of the mechanisms of international supervision created by the human rights treaties in the exercise of the collective guarantee. The present Blake case will remain as a sad and disconcerting illustration in this respect.

[FN4] As neither the afore-mentioned Vienna Conventions, nor - prior to them - the cited Advisory Opinion of the International Court of Justice on Reservations to the Convention against Genocide, define what constitutes the compatibility or otherwise (of a reservation) with the object and purpose of a treaty, the determination is left to the interpretation of this latter, without it having been defined either on whom falls that determination, in what way and when it should be made. At the time of the adoption of that Advisory Opinion (1951), neither the majority of the Hague Court, nor the dissenting Judges on the occasion, foresaw the development of the international supervision of human rights by the conventional organs of protection; hence the insufficiencies of the solution then advanced, and endorsed years later by the two Vienna Conventions on the Law of Treaties referred to.

[FN5] There is a distinction between a reservation stricto sensu and a restriction in the instrument of acceptance of the jurisdiction of an international supervisory organ, even though their legal effects are similar.

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15. The present system of reservations, reminiscent of the old pan-American practice, rescued by the International Court of Justice and the two Vienna Conventions on the Law of Treaties, for having crystallized itself in the relations between States, not surprisingly appears entirely inadequate to the treaties whose ultimate beneficiaries are the human beings and not the Contracting Parties [FN6]. Definitively, human rights treaties, turned to the relations between States and human beings under their jurisdiction, do not bear a system of reservations which approaches them as from an essentially contractual and voluntarist perspective, undermining their integrity, allowing their fragmentation, leaving at the discretion of the Parties themselves the final determination of the extent of their conventional obligations.

[FN6] Hence the warning that I saw it fit to formulate, in an intervention in the debates of 12 March 1986 of the Vienna Conference on the Law of Treaties between States and International Organizations or between International Organizations (reproduced in: U.N., United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 1986) - Official Records, vol. I, N.Y., U.N., 1995, pp. 187-188; and also in: 69/71 Boletim da Sociedade Brasileira de Direito Internacional (1987-1989) pp. 283-285), for the manifest incompatibility with the concept of jus cogens of the voluntarist conception of international law, which is not even capable to explain the formation of rules of general international law.

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16. As the two Vienna Conventions of 1969 and 1986 do not provide any indication for an objective application of the criterion of the compatibility or otherwise of a reservation with the object and purpose of a treaty, they leave it, on the contrary, to be applied individually and subjectively by the Contracting Parties themselves, in such a way that, at the end, only the reserving State knows for sure the extent of the implications of its reservation. The results of this indefinition [FN7] could not be other than the uncertainties and ambiguitities which surround the matter to date. It calls the attention, for example, the extensive list of reservations, numerous and at times long, and often incongruous, of the States Parties to the Covenant on Civil and Political Rights of the United Nations [FN8]; and the practical problems generated by many of the reservations (also numerous and not always consistent) of the States Parties to the Convention on the Elimination of All Forms of Discrimination against Women are well-known, - to what one can add the reservations to the United Nations Convention against Torture and the Convention on the Elimination of All Forms of Racial Discrimination [FN9].

[FN7] Despite the efforts in the sense of systematizing the practice of States on the matter (cf., e.g., J.M. Ruda, "Reservations to Treaties", 146 Recueil des Cours de l'Académie de Droit International de La Haye (1975) pp. 95-218; D.W. Bowett, "Reservations to Non-Restricted Multilateral Treaties", 48 British Year Book of International Law (1976-1977) pp. 67-92; P.-H. Imbert, Les réserves aux traités multilatéraux, Paris, Pédone, 1979, pp. 9-464; K. Holloway, Les réserves dans les traités internationaux, Paris, LGDJ, 1958, pp. 1-358; K. Zemanek, "Some Unresolved Questions Concerning Reservations in the Vienna Convention on the Law of Treaties", Essays in International Law in Honour of Judge Manfred Lachs (ed. J. Makarczyk), The Hague, Nijhoff, 1984, pp. 323-336; Ch. Tomuschat, "Admissibility and Legal Effects of

Reservations to Multilateral Treaties", 27 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (1967) pp. 463-482; F. Horn, Reservations and Interpretative Declarations to Multilateral Treaties, Uppsala, Swedish Institute of International Law, 1988, pp. 184-222), it is difficult to escape from the finding that such practice has shown itself to be inconclusive until now, and at times confusing (which becomes even more serious when dealing with reservations to human rights treaties). This being so, the International Law Commission of the United Nations has deemed it fit to adopt, in 1998, a project of a Practical Guide on Reservations to Treaties: cf. U.N., Report of the International Law Commission on the Work of Its 50th Session (1998), General Assembly Official Records - Supplement n. 10(A/53/10), pp. 195-214 ("Reservations to Treaties: Guide to Practice").

[FN8] Compiled by the Secretary-General of the United Nations and collected in the document: U.N., CCPR/C/2/Rev.4, of 24.08.1994, pp. 1-139 (English version), and pp. 1-160 (Spanish version).

[FN9] For a study of the problems created by the reservations to these four human rights treaties of the United Nations, cf. L. Lijnzaad, Reservations to U.N. Human Rights Treaties - Ratify and Ruin?, Dordrecht, Nijhoff, 1995, pp. 131-424.

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17. With the persistence of the inadequacy and the insufficiencies of the present system of reservations, it is not at all surprising that, firstly, the criticisms and manifestations of dissatisfaction in this respect are multiplied in contemporary doctrine [FN10], and secondly, the human rights international supervisory organs begin to disclose their willingness to assert their competence to apply the criterion of the compatibility (supra) and contribute to secure, in this way, the integrity of the respective human rights treaties. At regional level, in its well-known judgment in the Belilos versus Switzerland case (1988), locus classicus on the issue, the European Court of Human Rights considered the declaration amounting to a reservation (of a general character) of Switzerland to the European Convention on Human Rights incompatible with the object and purpose of this latter (in the light of its Article 64). In its turn, the Inter-American Court of Human Rights, in its second and third Advisory Opinions [FN11], pointed out the difficulties of a pure and simple transposition from the system of reservations of the Vienna Convention on the Law of Treaties of 1969 into the domain of the international protection of human rights.

[FN10] Cf. D. Shelton, "State Practice on Reservations to Human Rights Treaties", 1 Canadian Human Rights Yearbook/Annuaire canadien des droits de la personne (1983) pp. 205-234; C. Redgwell, "Universality or Integrity? Some Reflections on Reservations to General Multilateral Treaties", 64 British Year Book of International Law (1993) pp. 245-282; L. Lijnzaad, op. cit. supra n. (9), pp. 3-424; M. Coccia, "Reservations to Multilateral Treaties on Human Rights", 15 California Western International Law Journal (1985) pp. 1-49; G. Cohen-Jonathan, "Conclusions générales - La protection des droits de l'homme et l'évolution du Droit international", Société Française pour le Droit International, Colloque de Strasbourg - La protection des droits de l'homme et l'évolution du Droit international, Paris, Pédone, 1998, pp. 322-326; P. van Dijk, "The Law of Human Rights in Europe - Instruments and Procedures for a Uniform Implementation", VI-2 Collected Courses of the Academy of European Law / Recueil des Cours de l'Académie de Droit Européen - Firenze (1995) pp. 58-60 and 64; B. Clark, "The Vienna

Convention Reservations Regime and the Convention on Discrimination against Women", 85 American Journal of International Law (1991) pp. 281-321; W.A. Schabas, "Reservations to the Convention on the Rights of the Child", 18 Human Rights Quarterly (1996) pp. 472-491; L. Sucharipa-Behrmann, "The Legal Effects of Reservations to Multilateral Treaties", 1 Austrian Review of International and European Law (1996) pp. 67-88; E.F. Sherman Jr., "The U.S. Death Penalty Reservation to the International Covenant on Civil and Political Rights: Exposing the Limitations of the Flexible System Governing Treaty Formation", 29 Texas International Law Journal (1994) pp. 69-93; A. Sanchez Legido, "Algunas Consideraciones sobre la Validez de las Reservas al Convenio Europeo de Derechos Humanos", 20 Revista Jurídica de Castilla-La Mancha (1994) pp. 207-230; C. Pilloud, "Reservations to the Geneva Conventions of 1949", International Review of the Red Cross (March/April 1976) pp. 3-44.

[FN11] In its third Advisory Opinion on Restrictions to the Death Penalty (1983) the Court warned that the question of reciprocity as related to reservations did not fully apply vis-à-vis human rights treaties (paragraphs 62-63 and 65). Earlier, in its second Advisory Opinion on the Effect of Reservations on the Entry into Force of the American Convention (1982), the Court dismissed the postponement of the entry into force of the American Convention by application of Article 20(4) of the 1969 Vienna Convention (paragraph 34).

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18. At global level, in the I. Gueye et alii versus France case (1989), e.g., the Human Rights Committee (under the United Nations Covenant on Civil and Political Rights), in spite of a reservation ratione temporis of the respondent State [FN12], understood that the question - pertaining to pension benefits of more than 700 retired Senegalese members of the French army - was justiciable under the Covenant (as the effects of the French legislation on the matter lasted until then), and concluded that there was a violation of Article 26 of the Covenant [FN13]. The same Committee, in its general comment n. 24(52), of November 1994, warned that the provisions of the two Vienna Conventions and the classic rules on reservations (based upon reciprocity) were not appropriate to the human rights treaties; given the special character of the Covenant as a human rights treaty, the question of the compatibility of a reservation with its object and purpose, instead of being left at the discretion of the manifestations of the States Parties inter se, should be objectively determined, on the basis of juridical principles, by the Human Rights Committee itself (paragraphs 17 and 20) [FN14].

[FN12] To Article 1 of the [first] Optional Protocol to the Covenant on Civil and Political Rights.

[FN13] Communication n. 196/1985, decision of 03.04.1989 (and previous decision of admissibility of 05.11.1987).

[FN14] Text in U.N./Human Rights Committee, document CCPR/C/21/Rev.1/Add.6, of 02.11.1994, pp. 6-7.

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19. In the face of the uncertainties, ambiguities and lacunae of the present system of reservations to treaties of the two Vienna Conventions of 1969 and 1986, one can already identify in contemporary doctrine [FN15] some proposals tending at least to reduce the tension between the law of treaties and the International Law of Human Rights in the matter of

reservations, namely: first, the inclusion of an express indication in human rights treaties of the provisions which do not admit any reservations (such as those pertaining to the fundamental non-derogable rights), as an irreducible minimum to participate in such treaties; second, as soon as the States Parties have proceeded to the harmonization of their domestic legal order with the norms of those treaties (as required by these latter), the withdrawal of their reservations to them [FN16]; third, the modification or rectification, by the State Party, of a reservation considered non-permissible or incompatible with the object and purpose of the treaty [FN17], whereby a reservation would thus be seen no longer as a formal and final element of the manifestation of State consent, but rather as an essentially temporal measure, to be modified or removed as soon as possible; fourth, the adoption of a possible "collegial system" for the acceptance of reservations [FN18], so as to safeguard the normative character of human rights treaties, bearing in mind, in this respect, the rare example of the Convention on the Elimination of All Forms of Racial Discrimination [FN19]; fifth, the elaboration of guidelines (although not binding) on the existing rules (of the two Vienna Conventions of 1969 and 1986) in the matter of reservations, so as to clarify them in practice [FN20]; and sixth, the attribution to the depositaries of human rights treaties of the faculty to request periodic information from the reserving States on the reasons why they have not yet withdrawn the reservations to such treaties.

[FN15] Cf., e.g., references in n. (10), supra.
[FN16] Cf., in this line of reasoning, the Vienna Declaration and Programme of Action (1993), main document adopted by the II World Conference on Human Rights, part II, paragraph 5, and cf. part I, paragraph 26.
[FN17] Cf. note (21), infra.
[FN18] Possibility that came to be considered at the Vienna Conference which adopted the Convention of 1969.
[FN19] System of the two-thirds of the States Parties, set forth in Article 20(2) of that Convention.
[FN20] Such as drawn up in 1998 by the International Law Commission of the United Nations; cf. note (7), supra.

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20. The current work (as from 1993) of the International Law Commission of the United Nations on the topic of the Law and Practice Concerning Reservations to Treaties tends to identify the essence of the question in the need to determine the powers of the human rights international supervisory organs in the matter, in the light of the general rules of the law of treaties [FN21]. This posture makes abstraction of the specificity of the International Law of Human Rights, attaching itself to the existing postulates of the law of treaties. The debates of 1997 of the International Law Commission focused effectively on the question of the applicability of the system of reservations of the Vienna Conventions in relation to human rights treaties. Although the point of view prevailed that the pertinent provisions of those Conventions should not be modified [FN22], it was acknowledged that that system of reservations should be improved, given its lacunae, above all in relation to non-permissible reservations [FN23].

[FN21] Cf. A. Pellet (special rapporteur of the U.N. International Law Commission), Second Report on the Law and Practice Relating to Reservations to Treaties (1997), paragraphs 164, 204, 206, 209, 227, 229 and 252.
[FN22] U.N., Report of the International Law Commission on the Work of Its 49th Session (1997), General Assembly Official Records - Supplement n. 10(A/52/10), p. 94, par. 47.
[FN23] Ibid., p. 112, par. 107. In this respect, it was warned that States often and consciously formulate reservations incompatible with the object and purpose of human rights treaties for knowing that they will not be challenged, and that the lack of sanctions for such reservations thus leads States to become Parties to such treaties without truly committing themselves; ibid., pp. 117-118, pars. 129-130.

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21. In the debates of the Commission, it was even admitted that the conventional organs of protection of judicial character (the regional European and Inter-American Courts of Human Rights) pronounce on the permissibility of reservations when necessary to the exercise of their functions [FN24]; such considerations were reflected in the "Preliminary Conclusions on Reservations to Multilateral Normative Treaties Including Human Rights Treaties", adopted by the Commission in 1997 (paragraphs 4-7) [FN25]. In my understanding, one has to go further: the important labour of the International Law Commission on the matter can lead to satisfactory solutions to the human rights international supervisory organs to the extent that it starts from the recognition of the special character of human rights treaties and gives precision to the juridical consequences - for the treatment of the question of reservations - which ensue from that recognition.

[FN24] Ibid., pp. 106-107, 119 and 121-122, pars. 82, 84, 134, 138 and 143, respectively.
[FN25] Text in ibid., pp. 126-127.

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22. The attribution of the power of determination of the compatibility or otherwise of reservations with the object and purpose of human rights treaties on the part of the international supervisory organs themselves created by such treaties would be much more in conformity with the special nature of these latter and with the objective character of the conventional obligations of protection. There is a whole logic and common sense in attributing such power to those organs, guardians as they are of the integrity of human rights treaties, instead of abandoning such determination to the interested States Parties themselves, as if they were, or could be, the final arbiters of the scope of their conventional obligations. Such system of objective determination would foster the process of progressive institutionalization of the international protection of human rights [FN26], as well as the creation of a true international public order (ordre public) based on the full respect to, and observance of, human rights.

[FN26] For the conception of human rights as an "autonomous juridical imperative", cf. D. Evrigenis, "Institutionnalisation des droits de l'homme et droit universel", in Internationales Colloquium über Menschenrechte (Berlin, Oktober 1966), Berlin, Deutsche Gesellschaft für die Vereinten Nationen, 1966, p. 32.

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23. It ought to be said, with frankness and firmness, and without margin of error, that, from the perspective of a minimally institutionalized international community, the system of reservations to treaties, such as it still prevails in our days, is rudimentary and primitive. There is pressing need to develop a system of objective determination of the compatibility or otherwise of reservations with the object and purpose of human rights treaties, although for that it may be considered necessary an express provision in future human rights treaties, or the adoption to that effect of protocols to the existing instruments [FN27].

[FN27] As suggested in the afore-mentioned "Preliminary Conclusions" of 1997 (paragraph 7) of the International Law Commission; cf. U.N., Report of the International Law Commission... (1997), op. cit. supra n. (22), pp. 126-127.

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24. Only with such a system of objective determination we will succeed in guarding coherence with the special character of human rights treaties, which set forth obligations of an objective character and are applied by means of the exercise of the collective guarantee. Only thus we will succeed to establish, in the ambit of the law of treaties, standards of behaviour which contribute to the creation of a true international ordre public based on the respect and observance of human rights, with the corresponding obligations erga omnes of protection. The acts which took place in the present Blake case, in my view, demand in an eloquent way the renovation and humanization of the law of treaties as a whole, comprising also the forms of manifestation of State consent.

25. I do not see how not to take into account the experience of international supervision accumulated by the conventional organs of protection of human rights in the last decades. Any serious evaluation of the present system of reservations to treaties cannot fail to take into account the practice, on the matter, of such organs of protection. It cannot pass unnoticed that the International Court of Justice, in its already mentioned Advisory Opinion of 1951, effectively recognized, in a pioneering way, the special character of the Convention for the Prevention and Punishment of the Crime of Genocide of 1948, but without having extracted from its acknowledgement all the juridical consequences for the regime of reservations to treaties.

26. Almost half a century having lapsed, this is the task which is incumbent upon us, all of us who have the responsibility and the privilege to act in the domain of the international protection of human rights. The words pronounced by the Hague Court in 1951 remain topical nowadays, in pointing out that, in a Convention such as that of 1948, adopted for a "purely humanitaran" purpose,

"(...) the Contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the Convention. Consequently, in a Convention of this type one cannot speak of individual advantages and disadvantages to States, of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by

virtue of the common will of the Parties, the foundation and measure of all its provisions" [FN28].

[FN28] International Court of Justice, Advisory Opinion of 28.05.1951, ICJ Reports (1951) p. 23; and, for a study on the matter, cf. A.A. Cançado Trindade, "La jurisprudence de la Cour Internationale de Justice sur les droits intangibles / The Case-Law of the International Court of Justice on Non-Derogable Rights", Droits intangibles et états d'exception / Non-Derogable Rights and States of Emergency (ed. D. Prémont), Brussels, Bruylant, 1996, pp. 53-89.

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27. I see no sense in trying to escape from the reality of the specificity of the International Law of Human Rights as a whole, the recognition of which, in my understanding, in no way threatens the unity of Public International Law; quite on the contrary, it contributes to develop the aptitude of this latter to secure, in the present domain, compliance with the conventional obligations of protection of the States vis-à-vis all human beings under their jurisdictions. With the evolution of the International Law of Human Rights, it is Public International Law itself which is justified and legitimized, in affirming juridical principles, concepts and categories proper to the present domain of protection, based on premises fundamentally distinct from those which have guided the application of its postulates at the level of purely inter-State relations.

28. I am not, therefore, here proposing that the development of the Internacional Law of Human Rights be brought about to the detriment of the law of treaties: my understanding, entirely distinct, is in the sense that the norms of the law of treaties (such as those set forth in the two above-mentioned Vienna Conventions, anyway of a residual character) can greatly enrich with the impact of the International Law of Human Rights, and develop their aptitude to regulate adequately the legal relations at inter-State as well as intra-State levels, under the respective treaties of protection. In sustaining the development of a system of objective determination - which seems to me wholly necessary - of the compatibility or otherwise of reservations with the object and purpose of human rights treaties in particular, in which the organs of international protection created by such treaties would exert an important role, I do not see in that any threat to the "unity" of the law of treaties.

29. Quite on the contrary, there could hardly be something more fragmenting and underdeveloped than the present system of reservations of the two Vienna Conventions, for which reason it would be entirely illusory to assume that, to continue applying it as until now, one would thereby be fostering the "unity" of the law of treaties. The true unity of the law of treaties, in the framework of Public International Law, would be better served by the search for improvement in this area, overcoming the ambiguities, uncertainties and lacunae of the present system of reservations, through the development of a system of objective determination (supra), in conformity with the special nature of human rights treaties and the objective character of the conventional obligations of protection. The unity of Public International Law itself is measured rather by its aptitude to regulate legal relations in distinct contexts with equal adequacy and effectiveness.

30. Despite of what happened in the present Blake case, in which the terms of acceptance by the respondent State of the contentious jurisdiction of the Court brought about the decomposition of the crime of forced disappearance of person (with direct consequences for the reparations to the injured party), there is no reason for desperation, for not existing juridical impossibility of achieving the humanization of the law of treaties. Thus, to quote one example in this sense, in providing for the conditions in which a breach of a treaty can result in its termination or the suspension of its application, the two Vienna Conventions on the Law of Treaties expressly and specifically exclude "the provisions relating to the protection of the human person contained in treaties of a humanitarian character" (Article 60(5)).

31. This provision resulted from a proposal submitted by Switzerland, in the second session of the Vienna Conference (1969) which adopted the first Vienna Convention on the Law of Treaties. Its purpose was that of pointing out that the treaties of a humanitarian character have a special nature, do not exist for the sole benefit of the States, and transcend the reciprocity between the Parties in incorporating obligations of protection of an absolute character [FN29]. Such provision (Article 60(5)), together with those concerning jus cogens (Articles 53 and 64), represent what exists of most progressive in the Vienna Convention, fostering, ultimately, the very moralization of the law of treaties [FN30].

[FN29] I.M. Sinclair, The Vienna Convention on the Law of Treaties, Manchester, University Press/Oceana, 1973, pp. 104-105; and cf. G.E. do Nascimento e Silva, Conferência de Viena sobre o Direito dos Tratados, Rio de Janeiro, M.R.E., 1971, pp. 80-81; E. de la Guardia y M. Delpech, El Derecho de los Tratados y la Convención de Viena, Buenos Aires, La Ley, 1970, pp. 458 and 454; F. Capotorti, "Il Diritto dei Trattati Secondo la Convenzione di Vienna", Convenzione di Vienna sul Diritto dei Trattati, Padova, Cedam, 1984, p. 61.
[FN30] P. Reuter, La Convention de Vienne sur le Droit des Traités, Paris, Libr. A. Colin, 1970, pp. 21-23.

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32. Besides constituting a true clause of safeguard in defense of the human being, the provision of Article 60(5) of the two above-mentioned Vienna Conventions pierces the stronghold (previously exclusive) of inter-State relations in the framework of the law of treaties, and recognizes the special nature of the treaties of a humanitarian character with all its juridical consequences. Such recognition is strengthened by the assertion, in the preamble of the two Vienna Conventions, of the principle of universal respect and observance of human rights (sixth paragraph of the Preamble), to be taken into account in the interpretation of the Vienna Conventions of 1969 [FN31] and 1986 themselves. There is no reason for this evolution to be circumscribed to the specific issue of the termination or the suspension of the application of a treaty (supra), and not extending itself likewise, e.g., to the forms of manifestation of the consent of the State (i.e., signature, approval, and ratification of a treaty, or accession to it, and acceptance of an optional clause of recognition of the jurisdiction of an international supervisory organ). In contracting conventional obligations of protection, it is not reasonable, on the part of the State, to assume a discretion so unduly broad and conditioning of the extent itself of such obligations, which would militate against the integrity of the treaty.

[FN31] E. Schwelb, "The Law of Treaties and Human Rights", in Toward World Order and Human Dignity - Essays in Honor of M.S. McDougal (eds. W.M. Reisman and B.H. Weston), N.Y./London, Free Press/Collier Macmillan, 1976, pp. 263 and 265.

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33. The principles and methods of interpretation of human rights treaties, developed in the case-law of conventional organs of protection, can much assist and foster this necessary evolution. Thus, in so far as human rights treaties are concerned, one is to bear always in mind the objective character of the obligations enshrined therein, the autonomous meaning (in relation to the domestic law of the States) of the terms of such treaties, the collective guarantee underlying them, the wide scope of the obligations of protection and the restrictive interpretation of permissible restrictions. These elements converge in sustaining the integrity of human rights treaties, in seeking the fulfillment of their object and purpose, and, accordingly, in establishing limits to State voluntarism. From all this one can detect a new vision of the relations between public power and the human being, which is summed up, ultimately, in the recognition that the State exists for the human being, and not vice-versa.

34. The juridical concepts and categories, inasmuch as they enshrine values, are a product of their time, and, as such, are in constant evolution. The protection of the human being in any circumstances, against all the manifestations of arbitrary power, corresponds to the new ethos of our times, which is to be reflected in the postulates of Public International Law. There is - may I insist - no juridical imposibility to reconsider such postulates in the light of the needs of protection of the human being. Such needs ought to prevail over limitations ratione temporis, or of other kind, of the conventional organs of protection. Otherwise, we will always be revolving in vicious circles generated by the already mentioned tension between the postulates of the law of treaties, in the framework of Public International Law, and those of the International Law of Human Rights.

35. A pertinent illustration, in the contentious proceedings of the present Blake case, is found in the difficulties experienced both by the Inter-American Commission of Human Rights and by the representative of the relatives of the disappeared person (Ms. Joanne Hoeper), as well as by the respondent State, in presenting, in the public hearing before the Court of 10.06.1998, distinct arguments as to the claims for reparations and indemnities, and costs, in relation to the violations of Articles 5 and 8(1), in combination with Article 1(1), of the American Convention, established by the Court in the Judgment on the merits of 24.01.1998, in a form "separated" from the detention, disappearance and death of Mr. Nicholas Chapman Blake.

36. I do not see how to "separate" the intense suffering of the relatives of the disappeared person (Article 5), also victims in the present case (cf. infra), and the lack of the due process of law and of the investigation of the facts (Article 8(1)), in combination with the general duty to respect the protected rights and to secure their free and full exercise (Article 1(1)), from the context of the forced disappearance of Mr. Nicholas Chapman Blake. The debates of the public hearing before the Court of 10.06.1998, in which all those who intervened - the Inter-American Commission on Human Rights, the representative of the relatives of the victim, and the respondent State, - submitted as it was possible to them their points of view in conformity with

their criteria and the premises from which they started [FN32], disclose, nevertheless, the artificiality of the fragmentation or decomposition of the crime of forced disappearance of person.

[FN32] Cf. the oral arguments reproduced in: Inter-American Court of Human Rights, Transcripción de la Audiencia Pública Celebrada en la Sede de la Corte el 10 de Junio de 1998 sobre las Reparaciones en el Caso Blake, pp. 3-4, 6, 11-17, 19-20 and 22-24 (mimeographed, internal circulation).

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37. This artificiality has marked the consideration of the present case in all its phases, - preliminary objections, merits and reparations. The inescapable truth is that the violations of Articles 5 and 8(1), in combination with Article 1(1), of the American Convention, were established as such by reason of the continuing and complex crime of the disappearance of Mr. Nicholas Chapman Blake, with implications for the determination of the reparations. The artificiality referred to, resulting from the application of a classic postulate of the law of treaties, has conditioned the very decisions of the Court in all the phases of the case, - preliminary objections, merits, and, now, reparations. It has, furthermore, generated a gap between the responsibility of the State Party to the American Convention of Human Rights for violations of the protected rights and the jurisdiction - limited ratione temporis - of the judicial organ of protection, what, in its turn, brings about the undesirable situation of the lack of a jurisdictional basis for the determination of the engagement of the responsibility of the State for the totality of the acts that took place, and for the establishment of their juridical consequences.

38. It does not seem to me at all reasonable that, in the context of a concrete case such as Blake versus Guatemala, a whole significant doctrinal evolution of struggle against grave violations of human rights is simply vanished by the imposition of a temporal limitation, in conformity with a classic postulate of the law of treaties but to the detriment of the development of the International Law of Human Rights. This paradox is even more worrisome in the face of the violation of fundamental non-derogable rights (starting with the right to life), protected by the treaties and conventions of human rights as well as of International Humanitarian Law [FN33]; moreover, the Statute of the International Penal Tribunal, adopted by the recent Diplomatic Conference of the United Nations in Rome, on 17 July 1998, in determining the crimes under the jurisdiction of the Tribunal, includes the "crimes against humanity" (Article 5), which, in turn, comprise, inter alia, torture and the forced disappearance of persons (Article 7(1)(f) and (i)), when generalizedly and systematically perpetrated [FN34].

[FN33] As exemplified by the provisions on fundamental guarantees of the two Additional Protocols of 1977 to the Geneva Conventions on International Humanitarian Law of 1949 (Protocol I, Article 75, and Protocol II, Article 4).

[FN34] These two "crimes against humanity" are defined in Article 7(2)(e) and (i) of the Statute referred to.

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39. The outcome of the Blake case, pointing in a direction opposite to a whole doctrinal evolution reflected in the international tipification of the forced disappearance of person and tending to the consolidation of a true international regime against grave violations of human rights, is thus endowed with an anti-historical sense, which is to me a matter of great concern. The present Blake case is in a way a stone on the path of the evolution of the more lucid doctrine and case-law to guide the struggle against grave violations of human rights. This stone on the path, however, will not make us lose sight of the line of the horizon, in which the development emerges of the peremptory norms of international law (jus cogens) and of the obligations erga omnes of protection of the human being. As I allowed myself to ponder in my Separate Opinion (paragraph 28) in the Judgment of the Court on the merits (of 24.01.1998) in the present Blake case,

"The consolidation of erga omnes obligations of protection, as a manifestation of the emergence itself of imperative norms of international law, would represent the overcoming of the pattern erected upon the autonomy of the will of the State. The absolute character of the autonomy of the will can no longer be invoked in view of the existence of norms of jus cogens. It is not reasonable that the contemporary law of treaties continues to aligning itself to a pattern from which it sought gradually to free itself, in giving expression to the concept of jus cogens in the two Vienna Conventions on the Law of Treaties. It is not reasonable that, by the almost mechanical application of postulates of the law of treaties erected upon the autonomy of the will of the State, one would restrain - as in the present case - a reassuring evolution, fostered above all by the opinio juris as a manifestation of the universal juridical conscience, to the benefit of all human beings".

40. Our purpose ought to lie precisely upon the doctrinal and jurisprudencial development of the peremptory norms of International Law (jus cogens) and of the corresponding obligations erga omnes of protection of the human being. It is by means of the development in this sense [FN35] that we will achieve to overcome the obstacles of the dogmas of the past, as well as the current inadequacies and ambiguities of the law of treaties, so as to bring us closer to the plenitude of the international protection of the human being.

[FN35] On the formation and development of the concept of jus cogens in contemporary International Law, cf., e.g.: J. Sztucki, Jus Cogens and the Vienna Convention on the Law of Treaties - A Critical Appraisal, Wien/N.Y., Springer-Verlag, 1974, pp. 1-194; C.L. Rozakis, The Concept of Jus Cogens in the Law of Treaties, Amsterdam, North-Holland Publ. Co., 1976, pp. 1-194; A. Gómez Robledo, El Jus Cogens Internacional (Estudio Histórico Crítico), Mexico, UNAM, 1982, pp. 7-227; T.O. Elias, The Modern Law of Treaties, Leiden/Dobbs Ferry N.Y., Sijthoff/Oceana, 1974, ch. XII, pp. 177-187; G. Gaja, "Jus Cogens beyond the Vienna Convention", 172 Recueil des Cours de l'Académie de Droit International de La Haye (1981) pp. 279-313; L. Alexidze, "Legal Nature of Jus Cogens in Contemporary International Law", in ibid., pp. 227-268; R. Ago, "Droit des traités à la lumière de la Convention de Vienne - Introduction", 134 Recueil des Cours de l'Académie de Droit International de La Haye (1971) pp. 320-324. E. Suy, "The Concept of Jus Cogens in Public International Law", Papers and Proceedings of the Conference on International Law (Lagonissi/Greece, 03-08.04.1966), Geneva, C.E.I.P., 1967, pp. 17-77; Ch. de Visscher, "Positivisme et jus cogens", 75 Revue générale de

Droit international public (1971) pp. 5-11; A. Verdross, "Jus Dispositivum and Jus Cogens in International Law", 60 American Journal of International Law (1966) pp. 55-63; U. Scheuner, "Conflict of Treaty Provisions with a Peremptory Norm of International Law", 27 and 29 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (1967 and 1969) pp. 520-532 and 28-38, respectively; H. Mosler, "Ius Cogens im Völkerrecht", 25 Schweizerisches Jahrbuch für internationales Recht (1968) pp. 1-40; K. Marek, "Contribution à l'étude du jus cogens en Droit international", Recueil d'études de Droit international en homage à P. Guggenheim, Geneva, IUHEI, 1968, pp. 426-459.

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41. Within the legal situation created in the Blake versus Guatemala case before the Inter-American Court, this latter has, however, succeeded, in the present Judgment on reparations as well as in the previous Judgment on the merits of the case, to contribute - in relation to a specific aspect - to the jurisprudential treatment of the crime of forced disappearance of person, to the extent that it gives precision to, and consolidates, the position of the relatives of the disappeared person also as victims and titulaires of the rights protected by the American Convention on Human Rights. All those who were withdrawn from the protection of the law - the disappeared person as well as his relatives - form, thus, the "injured party", in the sense of Article 63(1) of the American Convention, as recognized in the present Judgment on reparations of the Court.

42. This position finds full support in contemporary doctrine and case-law. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (United Nations, 1985) [FN36] affirms that "the term `victim' also includes, where appropriate, the immediate family or the dependents of the direct victim and the people injured by interceding to give assistance to the suffering victims or to prevent the victimization" (paragraph 2 in fine). In the African continent, in the K. Achuthan (on behalf of A. Banda) versus Malawi case (1994), the African Commission on Human and Peoples' Rights accepted that the petitioner acted on behalf of his father-in-law, and established a violation of Articles 4, 5, 6, 7(1)(a)(c) and (d), and 26, of the African Charter on Human and Peoples' Rights [FN37].

[FN36] Adopted by resolution 40/34 of the General Assembly of the United Nations, of 29.11.1985.

[FN37] Communication n. 64/92, in ACHPR, Decisions of the African Commission on Human and Peoples' Rights, 1986-1997, Series A, vol. I, Banjul, 1997, pp. 63 and 68.

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43. In the European continent, already in 1970 the old European Commission of Human Rights sustained, in the X versus Federal Republic of Germany case, that the term "victim" meant "not only the direct victim or victims of the alleged violation but also any person who would indirectly suffer prejudice as a result of such violation or who would have a valid personal interest in securing the cessation of such violation" [FN38]. This understanding was also advanced by the Commission in other cases [FN39]. The basis was set for the jurisprudential development of the notion of indirect victim under the European Convention on Human Rights [FN40]. Shortly afterwards, in the Amekrane versus United Kingdom case (1973-1974), the European Commission admitted that the widow and the sons of Mohamed Amekrane, - a

Moroccan military who sought political asylum in Gibraltar and was extradited therefrom by the British authorities to Morocco, where he was condemned to death and executed, - could claim to be "victims" of violations of Articles 3, 5 and 8 of the European Convention, to the detriment of their deceased husband and father [FN41]. More recently, in its decision on the admissibility of the Andronicou and Constantinou versus Cyprus case (1995), the European Commission relied upon its own jurisprudence constante to the effect that the parents of a person whose death engages the responsibility of the respondent State can claim to be victims of a violation of the European Convention, the same occurring with the brothers and sisters of the deceased person in case that person was unmarried [FN42].

[FN38] Application n. 4185/69, decision of 13.07.1970, in: Collection of Decisions of the European Commission of Human Rights, vol. 35, pp. 140-142; la applicant - wife of a person detained in an asylum for the mentally ill - considered herself an "indirect victim" of the detention of her husband pursuant to decisions of the German tribunals.

[FN39] Cf., e.g., Koolen versus Belgium case, application n. 1478/62, in Collection of Decisions of the European Commission of Human Rights, vol. 13, p. 89; X. versus Federal Republic of Germany case, application n. 282/57, in Yearbook of the European Convention on Human Rights, vol. I, p. 166.

[FN40] Cf. two other decisions in ibid., p. 275.

[FN41] European Commission of Human Rights, application n. 5961/72, decision of admissibility of 11.10.1973, pp. 1-14, pars. 1-30, cf. especially par.26 (mimeographed, internal circulation); and cf., for the friendly settlement of the case, European Commission of Human Rights, Amekrane versus United Kingdom case, Report of the Commission (of 19.07.1974), pp. 1-5.

[FN42] Application n. 25052/94, Andronicou and Constantinou versus Cyprus case, decision of admissibility of 05.07.1995, in: Commission Européenne des Droits de l'Homme, Décisions et Rapports, vol. 82-B, Strasbourg, C.E., 1995, p. 112; and the Commission added that the conditions governing applications under Article 25 of the European Convention do not necessarily coincide with the national criteria concerning locus standi, as the legal norms of domestic law on the matter can serve ends different from those of Article 25 of the Convention (autonomy of the notion of victim).

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44. At global level (United Nations), several decisions of the Human Rights Committee (under the Covenant on Civil and Political Rights of the United Nations) have oriented themselves in the same sense. It may be recalled, for example, the position adopted in the matter by the Committee in two cases pertaining to Uruguay, namely: in the García Lanza de Netto case (1980), the Committee accepted that the initial author of the petition, by virtue of "close family connection", acted on behalf of the alleged victims, her uncle and aunt (who had been detained and were unable to act on their own behalf) [FN43]; and in the Valentini de Bazzano case (1979) the Committed understood in the same way that the author of the petition "was justified by reason of close family connection in acting on behalf of the other alleged victims" [FN44]. Thus, the present Blake versus Guatemala case, in the inter-American system of protection of human rights, makes no exception to this significant doctrinal and jurisprudential evolution as to the notion of victim under human rights treaties.

[FN43] Communication n. 8/1977, in: International Covenant on Civil and Political Rights, Human Rights Committee - Selected Decisions under the Optional Protocol, [vol. I], N.Y., U.N., 1985, pp. 45-46.

[FN44] Communication n. 5/1977, in ibid., pp. 41 and 43; moreover, communication n. 63/1979, concerning Uruguay, decided by the Committee in 1981, was submitted by Violeta Setelich, on behalf of her husband Raúl Sendic Antonaccio (in ibid., pp. 102 and 104).

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45. Which are, at last, the lessons that we can extract from the present Blake case before the Inter-American Court? Essentially ten, in my understanding, which I allow myself to summarize in conclusion:

- First, in accepting optional clauses of recognition of the contentious jurisdiction of conventional organs of protection, States Parties to human rights treaties ought to bear always in mind the objective character of the obligations of protection enshrined in such treaties, as well as the element of intemporality inherent in the protection of human rights;
- Second, one cannot decharacterize the crime of forced disappearance of persons as a continuing and complex crime; the fragmentation of its constitutive elements, even if pursuant to the application of law stricto sensu, as in the present case (by virtue of the limitation ratione temporis of the jurisdiction of the Court in the circumstances of the cas d'espèce), discloses the notorious artificiality of such decomposition, which marked the consideration by the Court of the present case in all its phases (preliminary objections, merits and reparations);
- Third, the undue fragmentation of the continuing and complex crime of forced disappearance of persons, besides leading to unsatisfactory legal results, is endowed with an anti-historical character, in the sense that it points to the direction opposite to the contemporary doctrinal and jurisprudential development tending towards the consolidation of a true international legal regime against grave violations of human rights;
- Fourth, there is pressing need, in this fin de siècle, of a reconsideration of the law of treaties itself in its entirety, and in particular of that pertaining to all forms of manifestation of State consent, starting from the necessary recognition of the special nature of human rights treaties and of the objective character of the conventional obligations of protection, with all legal consequences ensuing therefrom;
- Fifth, the present system of reservations to treaties (set forth in the two Vienna Conventions on the Law of Treaties, of 1969 and 1986), surrounded by uncertainties, ambiguities and lacunae, is of a contractual and voluntarist character, and of a fragmenting effect; bearing in mind the special character of human rights treaties, there is pressing need to develop a system of objective determination of the compatibility or otherwise of the reservations with the object and purpose of such treaties, so as to preserve the integrity of these latter;
- Sixth, such system of objective determination concerning reservations to human rights treaties in no way affects the unity of the law of treaties in the framework of Public International Law; on the contrary, it contributes to develop the aptitude of this latter to secure compliance with the conventional obligations of protection of the States vis-à-vis all human beings under their jurisdictions;

- Seventh, the limitation - e.g., ratione temporis - of the jurisdiction of a conventional organ of protection in no way affects the responsibility itself of the State Party for violations of the rights protected by the human rights treaty at issue; the States Parties remain bound by such treaty as from the moment in which they ratified it or adhered to it, and the terms of acceptance of the jurisdiction of the organ of protection condition only that jurisdiction, but not the responsibility of the State Party;
- Eighth, the fundamental human rights which admit no derogations a fortiori admit no reservations either, and integrate the domain of jus cogens; as an imperative of the universal juridical conscience, one ought to keep on fostering the development of the peremptory norms of international law (jus cogens) and of the corresponding obligations erga omnes of protection of the human being in any circumstances;
- Ninth, all the persons who were withdrawn from the protection of the law - such as, in the present case, the disappeared person and also his relatives - are victims and titulaires of the protected rights, forming the "injured party" (in the sense of Article 63(1) of the American Convention on Human Rights) for the effects of reparations; and
- Tenth, the victims, thus understood, who form the injured party in the international contentieux of human rights, are, in conclusion, subjects of the International Law of Human Rights, endowed with international legal personality as well as full international legal capacity.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE ALFONSO NOVALES-AGUIRRE

I concur in this Judgment on reparations for injuries, based on the precepts of Article 63(1) of the American Convention on Human Rights.

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Obviously, it is now appropriate to clearly establish the reparations that are the obligation of the State of Guatemala for the violations of Articles 5 (Right to Humane Treatment) and 8(1) (Right to a Fair Trial) of the aforementioned Convention, which were thoroughly demonstrated in the Judgment of January 24, 1998.

Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.
...

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

I am convinced that an effective investigation of the facts that brought about the violations of the Pact of San José is an apt form of reparations. This signifies that, the establishment of pecuniary compensation in the present case is not, in my opinion, sufficient reparation for the Blake family, inasmuch as it is the duty of Guatemala, as a State, to continue and intensify the investigation warranted by the case until its conclusion. In that way the families of Nicholas Blake and Griffith Davis obtain effective reparations and there is a precedential frontal assault on impunity in general and particularly on those acts that were established in the July 2, 1996 Judgment on Preliminary Objections, concerning the disappearance and death of Blake and Davis. That decision resulted from the State of Guatemala acceptance of the competence of the Honorable Inter-American Court of Human Rights on March 9, 1987 “with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States,” and the fact that the events in this case occurred two years earlier (March, 1985).Therefore, the Court declared itself to be incompetent concerning the alleged responsibility of the State of Guatemala for the detention and death of the persons named, whose mortal remains were recovered in June, 1992.

It was for that reason that my Concurring Opinion to the Judgment dated January 24, 1998, rendered by the Honorable Inter-American Court of Human Rights affirmed that:

...the State should be urged to conduct an exhaustive investigation, through the Department of the District Prosecutor (Ministerio Público) to determine the “real truth” about the acts perpetrated against Mr. Blake and Mr. Davis; and their families should be required to cooperate with the Office of the Public Prosecutor and the court hearing the case, in order to produce the evidence necessary for the case to be resolved with due process and in that way launch a frontal assault on impunity.

At the procedural stage corresponding to reparations, it becomes necessary, in order to carry out the Judgment in its true sense, for the State of Guatemala to put its full effort into an effective, dynamic, and prompt investigation of the facts, to convict the material and intellectual perpetrators and accessories after- the-fact in accordance with the criminal law applicable to the case, and to provide the periodic information required by this Honorable Court.

Only after carrying out an in depth, objective, and prompt investigation, can it be said that the present Judgment on reparations has been obeyed so as to conclusively close the present case.

Alfonso Novales-Aguirre
Judge

Manuel E. Ventura-Robles
Secretary