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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Barrios Altos v. Peru
Doc. Type: Judgment (Merits)
Decided by: President: Antonio A. Cancado Trindade;
Vice President: Maximo Pacheco Gomez;
Judges: Salgado Pesantes; Alirio Abreu Burelli; Sergio Garcia Ramirez; Carlos Vicente de Roux Rengifo
Judge Oliver Jackman informed the Court that, for reasons beyond his control, he could not attend the Twenty-fifth special session of the Court; consequently, he did not take part in the discussion and signature of this judgment.
Dated: 14 March 2001
Citation: Barrios Altos v. Peru, Judgment (IACtHR, 14 Mar. 2001)

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In the Barrios Altos case,

the Inter-American Court of Human Rights (hereinafter “the Court” or the “Inter-American Court”), in accordance with Articles 29, 55 and 57 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment.

I. INTRODUCTION OF THE CASE

1. On June 8, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Court the application in this case, in which it invoked Article 51(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 32 of the Rules of Procedure. The Commission submitted the case so that the Court would decide whether the State of Peru (hereinafter “Peru”, “the State” or “the State of Peru”) had violated Article 4 (Right to Life) of the American Convention with regard to Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquiñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo. It also requested the Court to decide whether the State had violated Article 5 (Right to Humane Treatment) of the American Convention with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez. Furthermore, it requested the Court to decide whether the State of Peru had violated Articles 8 (Right to a Fair Trial), 25 (Judicial Protection) and 13 (Freedom of Thought and Expression) of the American Convention as a consequence of the promulgation and application of Amnesty

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Laws No. 26479 and No. 26492. Lastly, it requested the Court to determine whether Peru had failed to comply with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Remedies) of the American Convention on Human Rights, as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492 and the violation of the rights indicated above.

The Commission also requested the Court to call on Peru:

a) To reopen the judicial investigation into the facts;
b) To grant adequate integral reparation for material and moral damage to the next of kin of the 15 alleged victims who were executed and the four alleged victims who are alive;
c) To abrogate or annul Law No. 26479 that conceded "a general amnesty to military, police and civilian personnel for various reasons" and Law No. 26492 that "[d]efines … [the] interpretation and [the] scope of [the] amnesty granted by Law No. 26479"; andd) To pay the costs and expenses incurred by the alleged victims and/or their next of kin while litigating this case both in the domestic sphere and before the Commission and the Court, together with reasonable fees for their lawyers.

II. FACTS

2. In section III of its application, the Commission described the facts that constituted the origin of this case. It indicated that:

a) At approximately 11.30 p.m. on November 3, 1991, six heavily-armed individuals burst into the building located at No. 840 Jirón Huanta in the neighborhood known as Barrios Altos in Lima. When this irruption occurred, a "pollada" was being held, that is, a party to collect funds in order to repair the building. The assailants arrived in two vehicles, one a jeep Cherokee and the other a Mitsubishi. These cars had police lights and sirens, which were turned off when they reached the place where the events took place;
b) The individuals, who ranged from 25 to 30 years of age, covered their faces with balaclava helmets and obliged the alleged victims to lie on the floor. Once they were on the floor, the assailants fired at them indiscriminately for about two minutes, killing 15 people and seriously injuring another four; one of the latter, Tomás Livias Ortega, is now permanently disabled. Subsequently, and with the same speed with which they had arrived, the assailants fled in the two vehicles, sounding their sirens once again;
c) The survivors stated that the detonations sounded "muffled", which appears to suggest that silencers were used. During the investigation, the police found 111 cartridges and 33 bullets of the same caliber at the scene of the crime; they corresponded to sub-machine guns;
d) The judicial investigations and newspaper reports revealed that those involved worked for military intelligence; they were members of the Peruvian Army who were acting on behalf of the "death squadron" known as the "Colina Group", who carried out their own anti-terrorist program. Information from different sources indicates that, in the instant case, the acts were executed in reprisal against alleged members of Sendero Luminoso (Shining Path);
e) A week after the attack, Congressman Javier Diez Canseco gave the press a copy of a document entitled "Plan Ambulante" (Door-to-door [salesmen] Plan), which described an intelligence operation implemented at the scene of the crime. According to this document, the

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"terrorists" had been meeting in the place where the events of the instant case took place since January 1989 and they concealed themselves by pretending that they were door-to-door salesmen. In June 1989, Sendero Luminoso had carried out an attack about 250 meters from the place where the Barrios Altos events occurred, in which several of the assailants were disguised as door-to-door salesmen.

f) On November 14, 1991, the senators of the Republic, Raúl Ferrero Costa, Javier Diez Canseco Cisneros, Enrique Bernales Ballesteros, Javier Alva Orlandini, Edmundo Murrugarra Florián and Gustavo Mohme Llona requested the full Senate of the Republic to clarify the facts of the Barrios Altos crime. On November 15 that year, the Senate adopted this petitory and appointed Senators Róger Cáceres Velásquez, Víctor Arroyo Cuyubamba, Javier Diez Canseco Cisneros, Francisco Guerra García Cueva and José Linares Gallo as members of an Investigation Committee, which was installed on November 27, 1991. On December 23, 1991, the Committee conducted an inspection of the building where the events took place, interviewed four people and executed other measures. The senatorial Committee did not complete its investigation, because the "Government of National Reconstruction and Emergency", which came to power on April 5, 1992, dissolved Congress and the Democratic Constituent Congress elected in November 1992 did not take up the investigation again or publish the senatorial Committee's preliminary findings;

g) Although the events occurred in 1991, the judicial authorities did not commence a serious investigation of the incident until April 1995, when the prosecutor of the Office of the Forty-first Provincial Criminal Prosecutor of Lima, Ana Cecilia Magallanes, accused five Army officials of being responsible for the events, including several who had already been convicted in the La Cantuta case. The five men accused were Division General Julio Salazar Monroe, at that time Head of the National Intelligence Service (SIN), Major Santiago Martín Rivas, and Sergeant Majors Nelson Carbajal García, Juan Sosa Saavedra and Hugo Coral Goycochea. On several occasions, the prosecutor tried unsuccessfully to compel the accused men to appear before the court to make a statement. Consequently, she filed charges before the Sixteenth Criminal Court of Lima. The military officers replied that the charges should be addressed to another authority and indicated that Major Rivas and the sergeant majors were under the jurisdiction of the Supreme Military Justice Council. As for General Julio Salazar Monroe, he refused to answer the summons, arguing that he had the rank of a Minister of State and therefore enjoyed the same privileges as the Ministers;

h) Judge Antonia Saquicuray of the Sixteenth Criminal Court of Lima initiated a formal investigation on April 19, 1995. Although this Judge tried to take statements from the alleged members of the "Colina Group" in prison, the Senior Military Command prevented this. The Supreme Military Justice Council issued a resolution establishing that the accused men and the Commander General of the Army and Head of the Joint Command, Nicolás de Bari Hermoza Ríos, were prevented from giving statements before any other judicial organ, because a case was being processed concurrently before military justice.

i) As soon as Judge Saquicuray's investigation began, the military courts filed a petition before the Supreme Court claiming jurisdiction in the case, alleging that it related to military officers on active service. However, before the Supreme Court could take a decision on this matter, the Congress of Peru adopted Amnesty Law No. 26479, which exonerated members of the army, police force and also civilians who had violated human rights or taken part in such violations from 1980 to 1995 from responsibility. The draft law was not publicly announced or discussed, but was adopted as soon as it was submitted, in the early hours of June 14, 1995. The

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President promulgated the law immediately and it entered into force on June 15, 1995. The effect of this law was to determine that the judicial investigations were definitively quashed and thus prevent the perpetrators of the massacre from being found criminally responsible;

j) Law No. 26479 granted an amnesty to all members of the security forces and civilians who had been accused, investigated, prosecuted or convicted, or who were carrying out prison sentences, for human rights violations. The few convictions of members of the security forces for human rights violations were immediately annulled. Consequently, eight men who had been imprisoned for the case known as "La Cantuta", some of whom were being prosecuted in the Barrios Altos case, were liberated;

k) On June 16, 1995, pursuant to the Constitution of Peru, which indicates that judges have the obligation not to apply those laws that they consider contrary to the provisions of the Constitution, Judge Antonia Saquicuray decided that article 1 of Law No. 26479 was not applicable to the criminal cases pending in her court against the five members of the National Intelligence Service (SIN), since the amnesty violated constitutional guarantees and the international obligations that the American Convention imposed on Peru. A few hours after this decision had been issued, the Prosecutor General, Blanca Nélida Colán, stated in a press conference that Judge Saquicuray's decision was an error; that the Barrios Altos case was closed; that the Amnesty Law had the status of a constitutional law; and that the prosecutors and judges who did not obey the law could be tried for malfeasance;

l) The lawyers of those accused in the Barrios Altos case appealed Judge Saquicuray's decision. The case was transferred to be heard by the Eleventh Criminal Chamber of the Lima Superior Court, whose three members would be responsible for revoking or confirming the decision. On June 27, 1995, Carlos Arturo Mansilla Gardella, Superior Prosecutor, defended all aspects of Judge Saquicuray's decision declaring Amnesty Law No. 26479 inapplicable in the Barrios Altos case. An audience on the applicability of the said law was arranged for July 3, 1995.

m) Judge Saquicuray's refusal to apply Amnesty Law No. 26479 led to another congressional investigation. Before the public hearing could be held, the Congress of Peru adopted a second amnesty law, Law No. 26492, which "was directed at interfering with legal actions in the Barrios Altos case". This law declared that the amnesty could not be "revised" by a judicial instance and that its application was obligatory. Moreover, it expanded the scope of Law No. 26479, granting a general amnesty to all military, police or civilian officials who might be the subject of indictments for human rights violations committed between 1980 and 1995, even though they had not been charged. The effect of this second law was to prevent the judges from determining the legality or applicability of the first amnesty law, invalidating Judge Saquicuray's decision and preventing similar decision in the future; and

n) On July 14, 1995, the Eleventh Criminal Chamber of the Lima Superior Court of Justice issued a decision on the appeal that was contrary to the decision by the Judge at the lower level; in other words, it decided that the proceeding in the Barrios Altos case should be quashed. In its judgment, this Chamber decided that the Amnesty Law was not contrary to the Constitution of the Republic or to international human rights treaties; that judges could not decide that laws adopted by Congress could not be applied, because that would go against the principle of the separation of powers; and ordered that Judge Saquicuray should be investigated by the Judiciary's internal control organ for having interpreted laws incorrectly.

III. COMPETENCE OF THE COURT

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3. The Court is competent to hear this case. Peru has been a State Party to the American Convention since July 28, 1978, and recognized the obligatory competence of the Court on January 21, 1981.

IV. PROCEEDING BEFORE THE COMMISSION

4. As a result of the petition submitted by the National Human Rights Coordinator on June 30, 1995, against Peru for granting an amnesty to agents of the State who were responsible for the assassination of 15 persons and the injuries inflicted on a further four in the Barrios Altos incident, the Commission starting processing the case, registered as No. 11528, on August 28, 1995. The Secretariat of the Commission notified the State and requested it to transmit any pertinent information on the facts within 90 days.

5. On July 10, 1995, before the Commission started processing the case, the petitioners requested precautionary measures to avoid the application of Law No. 26479 to the events that were the grounds for the instant case and to protect Gloria Cano Legua, the lawyer of one of the survivors of the Barrios Altos massacre in the criminal proceeding initiated against Army General Julio Salazar Monroe and other persons. On July 14, 1995, the Commission requested the State to adopt pertinent measures to guarantee the personal safety and right to life of all the survivors, their next of kin and the lawyers related to the Barrios Altos case.

6. On October 31, 1995, the State answered the Commission's request (supra para. 4), and, on November 8, 1995, the Commission forwarded the communication received from Peru to the petitioners and asked them to submit their comments on this document within 45 days. A few days later, on November 21, the State submitted another communication to the Commission, and this was forwarded to the petitioners on November 30, 1995, so that they could submit their comments on this document within 45 days. On January 17, 1996, the petitioners transmitted their comments on Peru's communications, and these comments were forwarded to Peru on March 28, 1996.

7. On January 29, 1996, the Asociación Pro-Derechos Humanos (APRODEH) submitted a petition to the Commission on behalf of the next of kin of the 15 people who were killed and the four who were injured in the events that occurred in Barrios Altos. On March 26, 1996, the Commission registered this petition as case No. 11601.

Subsequently, on May 23, 1996, the Comisión de Derechos Humanos (COMISDEH) of the National Human Rights Coordinator submitted the case of Filomeno León León and Natividad Condorcahuana, respectively killed and injured, during the Barrios Altos incident.

This information was forwarded to the State on June 21, 1996, so that it could submit its comments.

8. On May 29, 1996, Peru sent its answer to the Commission, and this was forwarded to the petitioners on June 21, 1996, so that they could submit their comments, which they did on

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August 1, 1996. On October 15, 1996, the Commission forwarded the petitioners' communication to the State and gave it 30 days to submit its comments.

9. On September 23, 1996, the Commission received a petition from the Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ), member of the National Human Rights Coordinator, in the name of the next of kin of Javier Manuel Ríos Rojas and Manuel Isaías Ríos Pérez, two of those who died in the events in Barrios Altos. This information was transmitted to Peru on February 12, 1997.

10. The same February 12, 1997, the Commission joined the petition submitted in case No. 11528 and the petitions that were part of case No. 11601, so that they all formed part of case No. 11528.

11. On March 4, 1997, a hearing of this case was held during the Commission's Ninety-fifth session.

12. On May 1, 1997, the State replied to the information that the Commission had transmitted on February 12, 1997 (supra para. 9); this communication was forwarded to the petitioners on May 27, 1997.

13. In a letter of June 11, 1997, the petitioners requested that the Center for Justice and International Law (CEJIL) and the Legal Defense Institute (IDL) should be included as co-petitioners in this case.

14. On June 22, 1997, the petitioners submitted comments on the State's communication of May 1, 1997 (supra para. 12), which were forwarded to Peru on July 28, 1997.

15. On October 9, 1997, during the Commission's Ninety-seventh session, another hearing on the case was held.

16. On January 7, 1999, the Inter-American Commission made itself available to the parties in order to reach a friendly settlement; however, Peru asked it to desist from this initiative and to declare the case inadmissible, owing to failure to exhaust domestic remedies.

17. On March 7, 2000, during its One hundred and sixth session and based on Article 50 of the Convention, the Commission adopted Report No. 28/00, which was transmitted to the State the next day. In this Report, the Commission recommended to the State that:

A. […] it annul any domestic, legislative or any other measure aimed at preventing the investigation, prosecution and punishment of those responsible for the assassinations and injuries resulting from the events known as the "Barrios Altos" operation. To this end, the State of Peru should abrogate Amnesty Laws Nos. 26479 and 26492.
B. […] it conduct a serious, impartial and effective investigation into the facts, in order to identify those responsible for the assassinations and injuries in this case, and continue with the judicial prosecution of Julio Salazar Monroe, Santiago Martín Rivas, Nelson Carbajal García,

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Juan Sosa Saavedra and Hugo Coral Goycochea, and punish those responsible for these grave crimes, through the corresponding criminal procedure, in accordance with the law.
C. […] it grant full reparation, which implies granting the corresponding compensation for the human rights violations indicated in this case to the four surviving victims and the next of kin of the 15 victims who died.

Moreover, the Commission agreed:

To transmit this report to the State of Peru and to grant it a period of two months to comply with its recommendations. This period will be calculated from the date that this report is transmitted to the State, which is not authorized to publish it. The Commission also agrees to notify the petitioners that the report has been approved, in accordance with Article 50 of the Convention.

18. On May 9, 2000, Peru forwarded its answer to the Commission's Report, which indicated that the promulgation and application of Amnesty Laws No. 26479 and No. 26492, were exceptional measures adopted against terrorist violence. It also pointed out that the Constitutional Court of Peru had declared that the action on unconstitutionality filed against those laws was unfounded, "but it expressly indicated the subsistence of the actions for civil reparation in favor of the injured parties or their next of kin."

19. On May 10, 2000, the Commission decided to submit the case to the Court.

V. PROCEEDING BEFORE THE COURT

20. The application in this case was submitted to the consideration of the Court on June 8, 2000.

21. The Commission appointed Juan E. Méndez and Hélio Bicudo as its delegates; Christina M. Cerna and Andrea Galindo as its lawyers; and Sofía Macher, Executive Secretary of the National Human Rights Coordinator; Germán Alvarez Arbulú, of the Asociación Pro-Derechos Humanos (APRODEH); Iván Bazán Chacón, Executive Director of the Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ); Ronald Gamarra Herrera, of the Legal Defense Institute (IDL); Rocío Gala Gálvez, of the Comisión de Derechos Humanos (COMISDEH); Viviana Krsticevic, Executive Director of the Center for Justice and International Law (CEJIL) and María Claudia Pulido, lawyer of the Center for Justice and International Law (CEJIL) as assistants.

22. On July 4, 2000, on the instructions of the President of the Court (hereinafter "the President") and in accordance with the provisions of Articles 33 and 34 of the Rules of Procedure, the Secretariat of the Court (hereinafter "the Secretariat") requested the Commission to transmit various items of information and documentation that were missing, and also certain attachments to the application that were incomplete or illegible, within 20 days. On July 21, 2000, the Commission forwarded part of the requested documentation. On August 11, 2000, the Secretariat requested the Commission to transmit the documents corresponding to the attachments that had not been duly corrected when it sent its previous communication.

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23. On August 14, 2000, the Secretariat notified the application and its attachments to the State. It also informed the State that it had asked the Commission to transmit some attachments that were still defective and these would be forwarded once they had been received. Furthermore, it advised Peru that it had one month to appoint its agent and deputy agent and designate an ad hoc judge; and four months to answer the application.

24. On August 21, 2000, the Commission sent part of the attachments that the Secretariat had requested on August 11 that year (supra para. 22). On September 1, 2000, the Secretariat informed the Commission that it was still awaiting some pages corresponding to attachments to the application, mentioned in the brief of August 18, 2000.

25. On August 24, 2000, a representative of the Peruvian Embassy before the Government of the Republic of Costa Rica came to the seat of the Court to return the application in the instant case. This official handed the Secretariat Note No. 5-9-M/49 of the Peruvian Embassy dated August 24, 2000, which stated that:

… on the instructions of its Government, it proceeded to return to [the Court] the ... notification [of the application] and its attachments, ... for the following reasons:

1. By Legislative Resolution dated July 8, 1999, ... the Congress of the Republic approved the withdrawal of the recognition of the contentious jurisdiction of the Inter-American Court of Human Rights.
2. On July 9, 1999, the Government of the Republic of Peru deposited with the General Secretariat of the Organization of American State (OAS), the instrument wherein it declares that, pursuant to the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration consenting to the optional clause concerning recognition of the contentious jurisdiction of the Inter-American Court of Human Rights ... .
3. [...T]he withdrawal of the recognition of the Court’s contentious jurisdiction takes immediate effect as of the date on which the said instrument was deposited with the General Secretariat of the OAS, that is, July 9, 1999, and applies to all cases in which Peru has not answered the application filed with the Court.

Finally, the State declared in its letter that:

[...] the notification contained in note CDH-11.528/002, of August 11, 2000, concerns a case in which the Honorable Court is no longer competent to hear the applications filed against the Republic of Peru, under the contentious jurisdiction provided for in the American Convention on Human Rights.

26. On October 19, 2000, the Inter-American Commission submitted a communication concerning Peru’s return of the notification of the application and its attachments. In this document, the Commission requested the Court to “reject the State of Peru’s assertion and proceed to process this case”.

27. On November 12, 2000, the Court transmitted a note signed by all its judges to the Secretary General of the Organization of American States, César Gaviria Trujillo, informing him

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of the situation of some of the cases being processed before the Court in relation to Peru. Referring to the State's return of the application and its attachments in the Barrios Altos case, the Court indicated that:

The decision of the State of Peru is inadmissible, because the purported withdrawal of the recognition of the contentious jurisdiction of the Inter-American Court by Peru was rejected by this Court's judgments on competence of September 24, 1999, in the Ivcher Bronstein and Constitutional Court cases (Ivcher Bronstein case, Competence. Judgment of September 24, 1999. Series C No. 54, and Constitutional Court case, Competence. Judgment of September 24, 1999. Series C No. 55).
In the opinion of the Inter-American Court, the attitude of the State of Peru constitutes a clear failure to comply with Article 68(1) of the Convention, and also a violation of the basic principle pacta sunt servanda (Castillo Petruzzi et al. case, Order of November 17, 1999. Compliance with Judgment. Series C No. 59, operative paragraph 1, and Loayza Tamayo case, Order of November 17, 1999. Compliance with Judgment. Series C No. 60, operative paragraph 1).

28. On January 23, 2001, the Peruvian Embassy before the Government of the Republic of Costa Rica transmitted a facsimile copy of Legislative Resolution No. 27401 dated January 18, 2001, published in the official gazette, El Peruano, on January 19, 2001, by which "Legislative Resolution No. 27152 [was] abrogated" and "the Executive [was] authorized [to execute] all actions necessary to annul the results that may have arisen from this Legislative Resolution, fully re-establishing the contentious jurisdiction of the Inter-American Court of Human Rights for the State of Peru."

29. On February 9, 2001, the Peruvian Embassy before the Government of the Republic of Costa Rica transmitted a copy of Supreme Resolution No. 062-2001-RE of February 7, 2001, published in the official gazette, El Peruano, on February 8, 2001, by which Javier Ernesto Ciurlizza Contreras was appointed agent and César Lino Azabache Caracciolo, deputy agent.

30. On February 16, 2001, the Peruvian Embassy in Costa Rica forwarded a note from the agent and deputy agent, in which they advised that they had been appointed agents and gave the address to which all communications in the instant case should be notified.

31. On February 19, 2001, the agent and deputy agent submitted a communication in which they informed that the State:

1. Recognizes its international responsibility in the instant case, and will therefore initiate a friendly settlement procedure with the Inter-American Commission on Human Rights, and with the petitioners in this case.
2. By virtue of this recognition, […] will transmit communications to the Inter-American Commission on Human Rights and the National Human Rights Coordinator in order to initiate formal discussions and reach the above-mentioned agreement.

32. On February 21, 2001, the President of the Court issued an order, in which he decided:

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To convene the representatives of the State of Peru and the Inter-American Commission on Human Rights to a public hearing to be held at the seat of the Inter-American Court of Human Rights at 9.00 a.m. on March 14, 2001, in order to hear the parties, with regard to the position of the State transcribed in Having Seen 2 of [the said] order.

On February 22, 2001, this order was notified to both Peru and the Commission.

33. On March 14, 2001, a public hearing on this case was held.

There appeared before the Court:

For the State of Peru:

Javier Ernesto Ciurlizza Contreras, agent, and
César Lino Azabache Caracciolo, deputy agent.

For the Inter-American Commission on Human Rights:

Juan E. Méndez, delegate
Christina M. Cerna, lawyer
Viviana Krsticevic, assistant
Germán Alvarez Arbulú, assistant
Robert Meza, assistant
Rocío Gala Gálvez, assistant, and
Miguel Huerta, assistant.

VI. ACQUIESCENCE

The State's arguments

34. In its brief of February 19, 2001, and at the public hearing on March 14, 2001, Peru recognized its international responsibility in the instant case (supra para. 31).

35. During the public hearing, the State's agent stated that:

The Government [of Peru] faces an extremely complex human rights agenda[; as part of this] re-establishing and normalizing its relations with the Honorable Inter-American Court of Human Rights has been and will be an essential priority... .
… [T]he State of Peru.... formulated an acquiescence in a communication of February 19, in which it recognized its international responsibility for the events that occurred on November 3, 1991…
…[T]he Government's strategy in the area of human rights is based on recognizing responsibilities, but, above all, on proposing integrated procedures for attending to the victims based on three fundamental elements: the right to truth, the right to justice and the right to obtain fair reparation.
…

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[With regard to the] Barrios Altos case[, …] substantial measures have been taken to ensure that criminal justice will make a prompt decision on this case. However, we are faced with .... an obstacle, ... we refer to the amnesty laws. The amnesty laws ... directly entailed a violation of the right of all victims to obtain not only justice but also truth. … Consequently, the Government of Peru has suggested to the original petitioners, that is, the National Human Rights Coordinator, the possibility of advancing with friendly settlements, which entail effective solutions to this procedural obstacle...
…
The State proposed to the petitioners the signature of a framework agreement on friendly settlement in the Barrios Altos case. The framework agreement proposed the explicit recognition of international responsibility concerning certain articles of the American Convention. In this respect, it was proposed to put in writing, in an agreement signed by the Commission, the State and the petitioners, that the State recognized its international responsibility for the violation of the right to life embodied in Article 4 of the American Convention on Human Rights, because of the deaths of Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquiñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo. The State also proposed to recognize its international responsibility for the violation of the right to humane treatment embodied in Article 5 of the American Convention on Human Rights in this framework agreement, because of the serious injuries to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez. Lastly, the State would recognize its international responsibility for the violation of the right to a fair trial and to judicial guarantees embodied in Articles 8 and 25 of the American Convention on Human Rights, because it had failed to conduct a thorough investigation of the facts and had not duly punished those responsible for the crimes against the above-mentioned persons....
Based on this recognition of responsibilities ... it suggested that the parties would inform the Court of their willingness to initiate a direct discussion in order to reach an agreement on a friendly settlement, which would seek to satisfy the claims for reparations. This agreement would evidently be submitted to the Honorable Court for official approval, as mandated in the Convention and the Court's Rules of Procedure. ... Furthermore, the State proposed a preliminary agenda based on three points of substance: identification of mechanisms to fully clarify the facts on which the petition was based, including identification of the masterminds and perpetrators of the crime, the viability of criminal and administrative punishments for all those found responsible, and specific proposals and agreements on matters relating to reparations.
… To this end, the State proposed that the parties should request the Inter-American Court to deliver the judgment on merits immediately, establishing the international responsibility as determined by the Court and taking into account the brief on acquiescence that had been submitted. It also proposed that the parties should suggest to the Court that it suspend its decision on the start of the reparations procedure, for a period that the parties themselves would establish and that the Court considered acceptable. Once this period had expired, and if agreement had not been reached, the parties would commit themselves to request the corresponding judgment to be delivered, and also to comply with it and execute it in its entirety.
…[T]he State reiterated its willingness to enter into direct discussions in order to reach an effective solution ... to attack the validity of the procedural obstacles that impede the

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investigation and punishment of those who are found responsible in the instant case; we refer, in particular, to the amnesty laws.
…
…The formula of annulling the measures adopted within the context of impunity in this case is, in our opinion, sufficient to promote a serious and responsible procedure to remove all the procedural obstacles linked to the facts; above all, it is the formula that permits, and this is our interest, recovering procedural and judicial options to respond to the mechanisms of impunity that were implemented in Peru in the recent past, in accordance with the law, and opening up the possibility ... of bringing about a decision under domestic law, officially approved by the Supreme Court, that allows the efforts that... are being made to expedite ... these cases, to be brought to a successful conclusion.

The Commission's arguments

36. In this respect the delegate of the Inter-American Commission began his statement:

congratulating the Government of Peru for its attitude before the system, for its attitude in the numerous cases that it is trying to resolve before the Commission, but, above all, for its attitude in this case, which is exemplary for many reasons [, above all] owing to the positive attitude of the Government towards finding solutions, particularly, because that attitude gives the Commission and the Honorable Court a special opportunity, a truly historic opportunity, to advance international human rights law, based on measures under domestic law that contribute to combat impunity, which is one of the evils of our hemisphere, to which this Court and ... the Commission have accorded fundamental importance. I believe that this attitude of the Government of Peru gives us the opportunity to associate ourselves with the people of Peru, their Government and their civil society, to find creative solutions, which may subsequently be emulated and imitated throughout the hemisphere and beyond it.
…
[This case] is essentially a very serious and very sad case of extrajudicial executions committed by agents of the Government of Peru, acting unlawfully and clandestinely ... But, it is also about ... the deliberate imposition of legislative and judicial mechanisms to prevent the facts being known and prevent those responsible from being punished. This is why ..... it is not only about the gruesome events that occurred in Barrios Altos, but also about the attitude assumed by the former Government of Peru when it violated its international obligations by adopting laws, with the only purpose of granting impunity. ...In the coming days, weeks, months, these obstacles in the Peruvian legislation must be specifically removed so that the Barrios Altos victims may effectively have access to truth and justice and have recourses to enforce their rights before the State of Peru.
…The circumstances are ripe for us to reach an agreement with the Government of Peru on the concrete meaning, the concrete conduct arising from its recognition of responsibility, and for this agreement on compliance to be officially endorsed by the Honorable Court as soon as possible, so that it constitutes an instrument that can subsequently be used, under Peru's domestic laws, as a tool to destroy and remove the remaining obstacles in order to combat impunity in Peru.
…

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…This is a historical moment [and…] we are very grateful and very honored, not only to be in the presence of the Court, but also in the presence of a Government that is taking, has taken and will continue to take important measures to ensure that human rights are fully guaranteed…
…The Inter-American system has played a fundamental role in achieving democracy in Peru. The Inter-American Commission and the Inter-American Court of Human Rights led the international community in condemning the practices of horror, injustice and impunity that occurred under the Fujimori Government. Those of us present at this hearing, recognize the desire of the next of kin and of the Peruvian human rights community to obtain justice and truth in that country. This desire is shared by the whole inter-American system and, in this respect, we would like ... to request the Honorable Court that ... by virtue of the State's acquiescence, it should not only establish the specific violations of the articles of the Convention in which the State incurred ..., but also, in the operative paragraphs of the judgment, specifically establish the need to clarify the events, so as to protect the right to truth, the need to investigate and punish those responsible, ... the incompatibility of amnesty laws with the provisions of the American Convention, and ... the obligation of the State to annul amnesty laws.

***

The considerations of the Court

37. Article 52(2) of the Rules of Procedure establishes that:

If the respondent informs the Court of its acquiescence in the claims of the party that has brought the case, the Court shall decide, after hearing the opinions of the latter and the representatives of the victims or their next of kin, whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

38. Based on the statements of the parties at the public hearing of March 14, 2001, and in view of the acquiescence to the facts and the recognition of international responsibility by Peru, the Court considers that the dispute between the State and the Commission has ceased with regard to the facts that gave rise to the instant case. [FN2]

[FN2] Cfr. Trujillo Oroza case. Judgment of January 26, 2000. Series C No. 64, para. 40; El Caracazo case. Judgment of November 11, 1999. Series C No. 58, para. 41; Benavides Cevallos case. Judgment of June 19, 1998. Series C No. 38, para. 42; Garrido and Baigorria case. Judgment of February 2, 1996. Series C No. 26, para. 27; El Amparo case. Judgment of January 18, 1995. Series C No. 19, para. 20; and Aloeboetoe et al. case. Judgment of December 4, 1991. Series C No. 11, para. 23.

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39. Consequently, the Court considers that the facts referred to in paragraph 2 of this judgment have been admitted. The Court also considers that, as the State has expressly recognized, it incurred international responsibility for violating Article 4 (Right to Life) of the American Convention with regard to Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno

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León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquiñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo, and for violating Article 5 (Right to Humane Treatment) with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez. In addition, the State is responsible for violating Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection) of the American Convention as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492. Finally, the State is responsible for failing to comply with Article 1(1) (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects) of the American Convention on Human Rights as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492 and the violation of the articles of the Convention mentioned above.

40. The Court recognizes that Peru's acquiescence makes a positive contribution to this proceeding and to the exercise of the principles that inspire the American Convention on Human Rights.

VII. THE INCOMPATIBILITY OF AMNESTY LAWS WITH THE CONVENTION

41. This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.

42. The Court, in accordance with the arguments put forward by the Commission and not contested by the State, considers that the amnesty laws adopted by Peru prevented the victims' next of kin and the surviving victims in this case from being heard by a judge, as established in Article 8(1) of the Convention; they violated the right to judicial protection embodied in Article 25 of the Convention; they prevented the investigation, capture, prosecution and conviction of those responsible for the events that occurred in Barrios Altos, thus failing to comply with Article 1(1) of the Convention, and they obstructed clarification of the facts of this case. Finally, the adoption of self-amnesty laws that are incompatible with the Convention meant that Peru failed to comply with the obligation to adapt internal legislation that is embodied in Article 2 of the Convention.

43. The Court considers that it should be emphasized that, in the light of the general obligations established in Articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention. Consequently, States Parties to the Convention which adopt laws that have the opposite effect, such as self-amnesty laws, violate Articles 8 and 25, in relation to Articles 1(1) and 2 of the Convention. Self-amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention. This type of law precludes the identification of the individuals who are responsible for human

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rights violations, because it obstructs the investigation and access to justice and prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation.

44. Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated.

VIII. RIGHT TO THE TRUTH AND JUDICIAL GUARANTEES IN THE RULE OF LAW

The Commission's arguments

45. The Commission alleged that the right to truth is founded in Articles 8 and 25 of the Convention, insofar as they are both "instrumental" in the judicial establishment of the facts and circumstances that surrounded the violation of a fundamental right. It also indicated that this right has its roots in Article 13(1) of the Convention, because that article recognizes the right to seek and receive information. With regard to that article, the Commission added that the State has the positive obligation to guarantee essential information to preserve the rights of the victims, to ensure transparency in public administration and the protection of human rights.

The State's arguments

46. The State did not contest the Commission's arguments in this respect and indicated that its human rights strategy was based on "recognizing responsibilities, but, above all, proposing integrated procedures for attending to the victims based on three fundamental elements: the right to truth, the right to justice and the right to obtain fair reparation".

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The considerations of the Court

47. In this case, it is evident that the surviving victims, their next of kin and the next of kin of the victims who died were prevented from knowing the truth about the events that occurred in Barrios Altos.

48. Despite this, in the circumstances of the instant case, the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention. [FN3]

[FN3] Cfr. Bámaca Vélasquez case. Judgment of November 25, 2000. Series C No. 70, para. 201.

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49. Therefore, this matter has been resolved, since it has been indicated (supra para. 39) that Peru violated Articles 8 and 25 of the Convention, with regard to judicial guarantees and judicial protection.

IX. OPENING OF THE REPARATIONS STAGE

50. Since Peru has recognized its responsibility, the Court considers that it is in order to proceed to the reparations stage. [FN4] The Court considers that it is appropriate that reparations are determined by mutual agreement between the defendant State, the Inter-American Commission and the victims, their next of kin or duly accredited representatives. To this end, it establishes a period of three months from the date that this judgment is notified. The Court also considers it pertinent to indicate that it will evaluate the agreement reached by the parties and this must be entirely compatible with the relevant provisions of the American Convention. Should no agreement be reached, the Court will determine the scope and amount of the reparations.

[FN4] Cfr. Trujillo Oroza case, supra nota 1, para. 43; El Caracazo case, supra nota 1, para. 44; Garrido and Baigorria case, supra nota 1, para. 30; El Amparo case, supra nota 1, para. 21; and Aloeboetoe et al. case, supra nota 1, para. 23.

X.

51. Therefore,

THE COURT,

DECIDES:

unanimously,

1. To admit the State’s recognition of international responsibility.
2. To find, in accordance with the terms of the State’s recognition of international responsibility, that it violated:

a) the right to life embodied in Article 4 of the American Convention on Human Rights, with regard to Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquiñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo; b) the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez; and

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c) the right to a fair trial and judicial protection embodied in Articles 8 and 25 of the American Convention on Human Rights, with regard to the next of kin of Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquiñigo, Odar Mender Sifuentes Nuñez, Benedicta Yanque Churo, and with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez, as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492.

3. To find, in accordance with the terms of the State's recognition of international responsibility, that the State failed to comply with Articles 1(1) and 2 of the American Convention on Human Rights as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492 and the violation of the articles of the Convention mentioned in operative paragraph 2 of this judgment.
4. To find that Amnesty Laws No. 26479 and No. 26492 are incompatible with the American Convention on Human Rights and, consequently, lack legal effect.
5. To find that the State of Peru should investigate the facts to determine the identity of those responsible for the human rights violations referred to in this judgment, and also publish the results of this investigation and punish those responsible.
6. To order that reparations shall be established by mutual agreement between the defendant State, the Inter-American Commission and the victims, their next of kin or their duly accredited legal representatives, within three months of the notification of this judgment.
7. To reserve the authority to review and approve the agreement mentioned in the previous operative paragraph and, should no agreement be reached, to continue the reparations procedure.

Judge Cançado Trindade and Judge García Ramírez informed the Court of their Concurring Opinions, which accompany this judgment.

Done at San Jose, Costa Rica, on March 14, 2001, in the Spanish and English languages, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

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Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I vote in favour of the adoption, by the Inter-American Court of Human Rights, of the present Judgment, of historical importance, on the merits in the Barrios Altos case, as from the recognition of international responsibility expressed by the Peruvian State. As the Court observed (par. 40), such recognition constituted a positive contribution by the respondent State to the evolution of the application of the norms of protection of the American Convention on Human Rights. The oral arguments, both of the Peruvian State and the Inter-American Commission on Human Rights, developed in the memorable public hearing held today, 14 March 2001, in the premises of the Tribunal, opened a new perspective in the experience of the Court in cases of that recognition (allanamiento) [FN1] on the part of the respondent State [FN2].

[FN1] Article 52(2) of the Rules of Procedure in force of the Inter-American Court of Human Rights.
[FN2] Cf., earlier on, the cases Aloeboetoe (1991), Series C, n. 11; El Amparo (1995), Series C, n. 19; Garrido and Baigorria (1996), Series C, n. 26; Benavides Cevallos (1998), Series C, n. 38; Caracazo (1999), Series C, n. 58; and Trujillo Oroza (2000), Series C, n. 64.

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2. Given the high relevance of the legal questions dealt with in the present Judgment, I feel obliged to express, under the always merciless pressure of time, my personal thoughts on the matter. The Court, in any circumstances, including in cases of allanamiento, as from the recognition on the part of the respondent State of its international responsibility for acts in violation of the protected rights, has the full faculty to determine motu proprio the legal consequences of such wrongful acts, such determination no being conditioned by the terms of the allanamiento. By acting in that way, the Court is making use of the powers which are inherent to its judicial function [FN3]. As I have always sustained within the Court, in any circumstances the Court is master of its jurisdiction [FN4].

[FN3] Cf., to this effect, my Dissenting Opinion in the case Genie Lacayo (Revision of Sentence, Resolution of 13.09.1997), Series C, n. 45, par. 7.
[FN4] Cf., e.g., my Concurring Opinion in Advisory Opinion n. 15, on the Reports of the Inter-American Commission on Human Rights (1997), Series A, n. 15, pars. 5-7, 9 and 37; my Concurring Opinion in the Resolution on Provisional Measures of Protection in the case James and Others, of 11.05.1999, pars. 6-8, in Inter-American Court of Human Rights, Compendio de Medidas Provisionales (July 1996/June 2000), Series E, n. 2, pp. 341-342.

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3. In the present case of Barrios Altos, by making free and full use, as it is incumbent upon it, of the powers which are inherent to its judicial function, the Court, for the first time in a case of allanamiento, besides having determined as admissible the recognition of international responsibility on the part of the respondent State, has also established the juridical consequences of such allanamiento, as can be inferred from the categorical paragraphs 41 and 43 of the present Judgment, which provide in an unequivocal way the understanding of the Court in the sense that

- "(...) The provisions of amnesty, the provisions of prescription y and the establishment of factors excluding responsibility which are meant to obstruct the investigation and sanction of those responsible for grave violations of human rights such as torture, summary, extralegal or arbitrary executions, and forced disappearances, are inadmissible, all of them being prohibited for violating non-derogable rights recognized by the International Law of Human Rights.

(...) In the light of the general obligations set forth in Articles 1(1) and 2 of the American Convention, the States Parties have the duty to take measures of all kinds to ensure that no one is deprived of the judicial protection and the exercise of the right to a simple and effective remedy, in the terms of Articles 8 and 25 of the Convention. It is for this reason that the States Parties to the Convention which adopt laws that have such an effect, as do the laws of self-amnesty, incur in a violation of Articles 8 and 25 in connection with Articles 1(1) and 2, all of the Convention. The laws of self-amnesty lead to the defencelessness of the victims and to the perpetuation of the impunity, whereby they are manifestly incompatible with the letter and the spirit of the American Convention. This type of laws obstructs the identification of the individuals responsible for violations of human rights, as obstacles as created to the investigation and the access to justice, impeding the victims and their relatives to know the truth and to receive the corresponding reparation" [FN5].

[FN5] And the Court adds, in the paragraph 44 of the present Judgment: - "As a consequence of the manifest incompatibility between the laws of self-amnesty and the American Convention on Human Rights, the aforementioned laws are devoid of legal effects and cannot keep on representing an obstacle to the investigation of the facts (...) nor to the identification and punishment of those responsible (...)".

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4. These considerations of the Inter-American Court constitute a new and great qualitative step forward in its case-law, to the effect of seeking to overcome an obstacle which the international organs of supervision of human rights have not yet succeeded to surpass: the impunity, with the resulting erosion of the confidence of the population in public institutions [FN6]. Moreover, they meet an expectation which in our days is truly universal. It may be recalled, in this respect, that the main document adopted by the II World Conference of Human Rights (1993) urged the States to "abrogate legislation leading to impunity for those responsible for grave violations of human rights, (...) and prosecute such violations (...)" [FN7].

[FN6] Cf. the criticisms of the "ignored amnesties" in the past, in R.E. Norris, "Leyes de Impunidad y los Derechos Humanos en las Américas: Una Respuesta Legal", 15 Revista del Instituto Interamericano de Derechos Humanos (1992) pp. 62-65.

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[FN7] United Nations, Declaration and Programme of Action of Vienna (1993), part II, par. 60.
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5. The so-called self-amnesties are, in sum, an inadmissible offence against the right to truth and the right to justice (starting with the very access to justice) [FN8]. They are manifestly incompatible with the general - indissociable - obligations of the States Parties to the American Convention to respect and to ensure respect for the human rights protected by it, securing their free and full exercise (in the terms of Article 1(1) of the Convention), as well as to harmonize their domestic law with the international norms of protection (in the terms of Article 2 of the Convention). Moreover, they affect the rights protected by the Convention, in particular the rights to judicial guarantees (Article 8) and to judicial protection (Article 25).

[FN8] Cf. the Joint Separate Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli, in the case Loayza Tamayo (Reparations, Judgment of 27.11.1998), Series C, n. 42, pars. 2-4; and cf. L. Joinet (rapporteur), La Cuestión de la Impunidad de los Autores de Violaciones de los Derechos Humanos (Derechos Civiles y Políticos) - Informe Final, U.N./Commission on Human Rights, doc. E/CN.4/Sub.2/1997/20, of 26.06.1997, pp. 1-34.
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6. It is to be kept in mind, in relation to the laws of self-amnesty, that their legality at domestic law level, in leading to impunity and injustice, is in flagrant incompatibility with the norms of protection of the International Law of Human Rights, bringing about violations de jure of the rights of the human person. The corpus juris of the International Law of Human Rights makes it clear that not everything that is lawful in the domestic legal order is so in the international legal order, and even more forcefully when superior values (such as truth and justice) are at stake. In reality, what came to be called laws of amnesty, and particularly the perverse modality of the so-called laws of self-amnesty, even if they are considered laws under a given domestic legal order, are not so in the ambit of the International Law of Human Rights.

7. This same Court pondered, in an Advisory Opinion of 1986, that the word "laws" in the terms of Article 30 of the American Convention means a legal norm of a general character, tied to the general welfare, formulated according to the procedure constitutionally established, by legislative organs constitutionally foreseen and democratically elected [FN9]. Who would dare to suggest that a "law" of self-amnesty satisfies all these requisites? I cannot see how to deny that "laws" of this kind are devoid of a general character, as they are measures of exception. And surely they do not contribute at all to the common good, but on the contrary: they appear as mere subterfuges to cover up grave violations of human rights, to obstruct the knowledge of truth (however painful this latter might be) and to hinder the very access to justice on the part of the victimized ones. In sum, they do not satisfy the requisites of "laws" in the ambit of the International Law of Human Rights.

[FN9] Inter-American Court of Human Rights (IACtHR), Advisory Opinion on The Expression "Laws" in Article 30 of the American Convention on Human Rights (1986), Series A, n. 6. The Court rightly observed that the word "laws" in the context of a system of human rights protection

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"cannot be dissociated from the nature and the origin of such system", as "the protection of human rights must necessarily comprise the concept of restriction to the exercise of State power" (par. 21).
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8. In my Dissenting Opinion in the case of El Amparo (Interpretation of Sentence, 1997) [FN10], I sustained the thesis that a State can have its international responsibility engaged "by the simple approval and promulgation of a law in conflict with its conventional international obligations of protection" (pars. 22-23), - as it happens, in the present case of Barrios Altos, with the so-called laws of self-amnesty. While such laws remain in force, there occurs a continuing situation of violation of the relevant norms of the human rights treaties which bind the State at issue (in the present case, Articles 8 and 25, in connection with Articles 1(1) and 2 of the Convention).

[FN10] IACtHR, Resolution of 16.04.1997, Series C, n. 46.
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9. As I saw it fit to insist in my recent Concurring Opinion in the case "The Last Temptation of Christ" (Olmedo Bustos and Others) (2001) [FN11], there is a long and vast international case-law clearly oriented in the sense that "the origin of the international responsibility of the State may rest on any act or omission of any of the powers or agents of the State (whether of the Executive, or of the Legislative, or of the Judiciary)" (par. 16). And I stressed, further on, in conformity with a general principle of the law on the international responsibility,

- "(...) The independence of the characterization of a given act (or omission) as illicit in international law from the characterization - similar or otherwise - of such act by the domestic law of the State. The fact that a given State conduct is in conformity with the provisions of domestic law, or even that it is required by this latter, does not mean that its internationally illicit character can be denied, whenever it constituted a violation of an international obligation (...)" (par. 21).

And both in my aforementioned Concurring Opinion in the case "The Last Temptation of Christ" (Merits, 2001, pars. 96-98), and in my previous Dissenting Opinion in the case Caballero Delgado and Santana (Reparationos, 1997, pars. 13-14 and 20) [FN12], I insisted that the modifications in the domestic legal order required, so as to harmonize it with the norms of protection of the American Convention, constitute a form of non-pecuniary reparation under the Convention.

[FN11] IACtHR, Judgment of 05.02.2001, Series C, n. 73.
[FN12] IACtHR, Judgment of 29.01.1997, Series C, n. 31.
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10. There is another point which seems to me even graver in relation to the degenerated figure - an offence against the rule of law (État de Droit) itself - of the so-called laws of self-

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amnesty. As the facts of the present case of Barrios Altos disclose - in leading the Court to declare, in the terms of the recognition of international responsibility made by the respondent State, the violations of the rights to life [FN13] and to personal integrity [FN14], - such laws do affect non-derogable rights - the minimum universally recognized, - which fall in the ambit of jus cogens.

[FN13] Article 4 of the American Convention.
[FN14] Article 5 of the American Convention.

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11. This being so, the laws of self-amnesty, besides being manifestly incompatible with the American Convention, and devoid, in consequence, of legal effects, have no legal validity at all in the light of the norms of the International Law of Human Rights. They are rather the source (fons et origo) of an international illicit act: as from their own adoption (tempus commisi delicti), and irrespectively of their subsequent application, they engage the international responsibility of the State. Their being in force creates per se a situation which affects in a continuing way non-derogable rights, which, as I have already indicated, belong to the domain of jus cogens. Once established, by the adoption of such laws, the international responsibility of the State, this is under the duty to put an end to such situation in violation of the fundamental rights of the human person (with the prompt derogation of those laws), as well as, given the circumstances of each case, to provide reparation for the consequences of the wrongful situation created.

12. Last by not least, - in this quite brief couple of hours that I had in order to write my present Concurring Opinion and to inform the Court of it, - may I add one further thought. At this beginning of the XXIst century, I see no sense at all in trying antagonistically to oppose the international responsibility of the State to the individual penal responsibility. The developments, in relation to one and the other, nowadays take place, in my view, pari passu. The States (and any other form of politico-social organization) are composed of individuals, citizens and rulers, these latter taking decisions on behalf of the respective State.

13. The international responsibility of the State for violations of internationally recognized human rights, - including violations which have taken place by means of the adoption and application of laws of self-amnesty, - and the individual penal responsibility of agents perpetrators of grave violations of human rights and of International Humanitarian Law, are two faces of the same coin, in the fight against atrocities, impunity, and injustice. It was necessary to wait many years to come to this conclusion, which, if it is possible today, is also due, - may I insist on a point which is very dear to me, - to the awakening of the universal juridical conscience, as the material source par excellence of International Law itself.

14. As I have warned in this respect in my Concurring Opinion in the Advisory Opinion of the Court on The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (1999) [FN15],

- "(...) The very emergence and consolidation of the corps juris of the International Law of Human Rights are due to the reaction of the universal juridical conscience to the recurrent abuses

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committed against human beings, often warranted by positive law: with that, the Law (el Derecho) came to the encounter of the human being, the ultimate addressee of its norms of protection.

(...) With the dismystification of the postulates of voluntarist positivism, it became evident that one can only find an answer to the problem of the foundations and the validity of general international law in the universal juridical conscience, starting with the assertion of the idea of an objective justice. As a manifestation of this latter, the rights of the human being have been affirmed, emanating directly from international law, and not subjected, thereby, to the vicissitudes of domestic law" (pars. 4 and 14) [FN16].

[FN15] IACtHR, Advirosy Opinion of 01.10.1999, Series A, n. 16.
[FN16] I have reiterated the same point in my Concurring Opinion in the case of the Haitians and Dominicans of Haitian Origin in the Dominican Republic (Provisional Measures of Protection, Resolution of 18.08.2000, par. 12).
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15. More recently, in my Separate Opinion in the case of Bámaca Velásquez [FN17], I allowed myself to insist on the point; in reiterating that the advances in the domain of the international protection of the rights of the human person are due to the universal juridical conscience (par. 28), I expressed my understanding to the effect that

- "(...) in the domain of legal science, I cannot see how not to assert the existence of a universal juridical conscience (corresponding to the opinio juris comunis), which constitutes, in my understanding, the material source par excellence (beyond the formal sources) of the whole law of nations (droit des gens), responsible for the advances of the human kind not only at the juridical level but also at the spiritual one" (par. 16).

[FN17] IACtHR, Judgment on the Merits, of 25.11.2000.
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16. In my view, both the international case-law, and the practice of States and international organizations, as well as the more lucid juridical doctrine, provide elements wherefrom one may detect the awakening of a universal juridical conscience. This allows us to reconstruct, at this beginning of the XXIst century, International Law itself, on the basis of a new paradigm, no longer State-centred, both rather anthropocentric, placing the human being in a central position and bearing in mind the problems which affect humankind as a whole. Thus, as to the international case-law, the closest example lies in the case-law of the two international tribunals of human rights which exist today, the European and Inter-American Courts of Human Rights [FN18]. One may add to it the case-law emerging from the two ad hoc International Penal Tribunals, for ex-Yugoslavia and Rwanda. And the case-law itself of the International Court of Justice contains elements developed as from, e.g., elementary considerations of humanity [FN19].

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[FN18] The first Protocol (de 1998) to the African Charter on Human and Peoples' Rights provides for the creation, - when the Protocol of Burkina Faso enters into force, - of an African Court of Human and Peoples' Rights, which has not yet been established.
[FN19] Cf., e.g., 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 (eds. D. Prémont, C. Stenersen and I. Oseredczuk), Bruxelles, Bruylant, 1996, pp. 73-89.
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17. As to the international practice [FN20], the idea of a universal juridical conscience has marked presence in many debates of the United Nations (above all of the VI Committee of the General Assembly), in the work of the Conferences of codification of International Law (the so-called "law of Vienna") and the respective travaux préparatoires of the International Law Commission of the United Nations; more recently, it has occupied an important space in the cycle of World Conference of the United Nations of the nineties [FN21].

[FN20] This latter meaning no longer the simple "practice of States", inspired by their so-called "vital interests", as in the systematizations of the past, but rather the practice of States and international organisms in search of the realization of common and superior ends.
[FN21] A.A. Cançado Trindade, "Reflexiones sobre el Desarraigo como Problema de Derechos Humanos frente a la Conciencia Jurídica Universal", in A.A. Cançado Trindade y J. Ruiz de Santiago, La Nueva Dimensión de las Necesidades de Protección del Ser Humano en el Inicio del Siglo XXI, San José of Costa Rica, UNHCR, 2001, pp. 66-67.
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18. As to the more lucid doctrine, it may be recalled that, two decades before the adoption in 1948 of the Universal Declaration of Human Rights, already in 1929, in the memorable debates of the Institut de Droit International (New York session), - almost forgotten in our days, - it was pondered, for example, that

- "(...) Dans la conscience du monde moderne, la souveraineté de tous les États doit être limitée par le but commun de l'humanité. (...) L'État dans le monde n'est qu'un moyen en vue d'une fin, la perfection de l'humanité (...). La protection des droits de l'homme est le devoir de tout État envers la communauté internationale. (...)" [FN22].

At the end of the debates referred to, the Institut (22nd. Commission) adopted a resolution containing a "Déclaration des droits internationaux de l'homme", the first considerandum of which affirmed with emphasis that "la conscience juridique du monde civilisé exige la reconnaissance à l'individu de droits soustraits à toute atteinte de la part de l'État" [FN23].

[FN22] Ibid., pp. 112 and 117.
[FN23] Cit. in ibid., p. 298.
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19. In the synthesis of his philosophical thinking on the limits of State power, written in the period of 1939-1945 (during the full agony of what was believed to be "civilization"), Jacques Maritain took as the starting-point the existence of the human person, having roots in the spirit, and sustained that there only is a true progress of humanity when marching towards human emancipation [FN24]. In affirming that "the human person trascends the State", for having "a destiny superior to time", Maritain added that

- "(...) The State has no authority to oblige me to reform the judgment of my conscience, as nor has it the power to impose to the spirits its criterion on good and evil (...).
Therefore, whenever it goes beyond its natural limits in order to penetrate, in the name of totalitarian claims, into the sanctuary of the conscience, it endeavours to violate this latter by monstrous means of psychological poisoning, of organized lies and of terror.(...)" [FN25].

[FN24] J. Maritain, Los Derechos del Hombre y la Ley Natural, Buenos Aires, Ed. Leviatán, 1982 (reimpr.), pp. 12, 18, 38, 43, 50, 94-96 and 105-108.
[FN25] Ibid., pp. 81-82.

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20. More than four decades later, at the end of the eighties, Giuseppe Sperduti did not hesitate to affirm, in an emphatic criticism to legal positivism, that

- "(...) la doctrine positiviste n'a pas été en mesure d'élaborer une conception du droit international aboutissant à l'existence d'un véritable ordre juridique (...). Il faut voir dans la conscience commune des peuples, ou conscience universelle, la source des normes suprêmes du droit international" [FN26].

[FN26] G. Sperduti, "La souveraineté, le droit international et la sauvegarde des droits de la personne", in International Law at a Time of Perplexity - Essays in Honour of Shabtai Rosenne (ed. Y. Dinstein), Dordrecht, Nijhoff, 1989, p. 884, and cf. p. 880.

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21. References of the kind, nowadays surely susceptible of a larger and deeper conceptual development, are not limited to the doctrinal level; they also appear in international treaties. The Convention against Genocide of 1948, e.g., refers, in its preamble, to the "spirit" of the United Nations. Half a century later, the preamble of the Statute of Rome of 1998 of the International Criminal Court bears witness of the fact that, throughout the XXth century,

- "(...) millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity" (second considerandum).

And, at regional level, the preamble of the Inter-American Convention on Forced Disappearance of Persons of 1994, to quote another example, refers to the "conscience of the hemisphere" (third considerandum).

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22. A clause of major importance deserves to be singled out: the so-called Martens clause, which has more than a century of historical trajectory. Originally presented by the Delegate of Russia, Friedrich von Martens, to the I Peace Conference of The Hague (1899), it was inserted into the preambles of the II Hague Convention of 1899 (par. 9) and the IV Hague Convention of 1907 (par. 8), both pertaining to the laws and customs of land warfare. Its purpose - according to the wise premonition of the Russian jurist and diplomat - was to extend juridically the protection to civilians and to combatants in all situations, even though not contemplated by the conventional norms; with that aim, the Martens clause invoked "the principles of the law of nations (droit des gens)" derived from "the usages established", as well as "the laws of humanity" and "the dictates (exigences) of public conscience".

23. Subsequently, the Martens clause was to appear again in the provision, concerning denunciation, common to the four Geneva Conventions of International Humanitarian Law of 1949 (Article 63/62/142/158), as well as in the Additional Protocol I (of 1977) to those Conventions (Article 1(2)), - to quote some of the main Conventions on International Humanitarian Law. The Martens clause is thus endowed, for more than a century, of continuing validity, since, however advanced the codification of the humanitarian norms might be, such codification can hardly be considered as truly complete.

24. The Martens clause thus continues to serve as a warning against the assumption that whatever is not expressly prohibited by the Conventions on International Humanitarian Law could be permitted; quite on the contrary, the Martens clause sustains the continuing applicability of the principles of the law of nations (droit des gens), the laws of humanity and the dictates (exigences) of public conscience, irrespective of the emergence of new situations and the development of technology [FN27]. The Martens clause, thus, does not allow for non liquet, and it exerts an important role in the interpretation of humanitarian norms.

[FN27] B. Zimmermann, "Protocol I - Article 1", Commentary on the Additional Protocols of 1977 to the Geneva Conventions of 1949 (eds. Y. Sandoz, Ch. Swinarski and B. Zimmermann), Geneva, ICRC/Nijhoff, 1987, p. 39.

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25. The fact that the draftsmen of the Conventions of 1899, 1907 and 1949, and of Protocol I of 1977, have reiteratedly asserted the elements of the Martens clause, places this latter at the level of the material sources themselves of International Humanitarian Law [FN28]. Thus, it exerts a continuing influence in the spontaneous formation of the content of new rules of International Humanitarian Law [FN29]. Contemporary juridical doctrine has also characterized the Martens clause as a source of general international law itself [FN30]; and no one would dare today to deny that the "laws of humanity" and the "dictates of public conscience" invoked by the Martens clause belong to the domain of jus cogens [FN31]. The clause referred to, as a whole, has been conceived and repeatedly affirmed, ultimately, to the benefit of all human kind, thus remaining quite up-to-date. It may be considered as an expression of the reason of humanity imposing limits to the reason of the State (raison d'État).

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[FN28] H. Meyrowitz, "Réflexions sur le fondement du droit de la guerre", Études et essais sur le Droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet (ed. Christophe Swinarski), Genève/La Haye, CICR/Nijhoff, 1984, pp. 423-424; and cf. H. Strebel, "Martens' Clause", Encyclopedia of Public International Law (ed. R. Bernhardt), vol. 3, Amsterdam, North-Holland Publ. Co., 1982, pp. 252-253.
[FN29] F. Münch, "Le rôle du droit spontané", in Pensamiento Jurídico y Sociedad International - Libro-Homenaje al Profesor Dr. Antonio Truyol Serra, vol. II, Madrid, Universidad Complutense, 1986, p. 836; H. Meyrowitz, op. cit. supra n. (128), p. 420. It has already been pointed out that, in ultima ratio legis, International Humanitarian Law protects humanity itself, facing the dangers of armed conflicts; Christophe Swinarski, Principales Nociones e Institutos del Derecho Internacional Humanitario como Sistema Internacional de Protección de la Persona Humana, San José of Costa Rica, IIDH, 1990, p. 20.
[FN30] F. Münch, op. cit. supra n. (28), p. 836.
[FN31] S. Miyazaki, "The Martens Clause and International Humanitarian Law", Études et essais... en l'honneur de J. Pictet, op. cit. supra n. (27), pp. 438 and 440.
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26. It is never to be forgotten that the State was originally conceived for the realization of the common good. The State exists for the human being, and not vice versa. No State can be considered to rest above the Law, whose norms have as ultimate addressees the human beings. The contemporary pari passu developments of the law of the international responsability of the State and of the international penal law point effectively towards the prominence of Law, both in the relations between the States and the human beings under their respective jurisdictions, as well as in the interindividual relations (Drittwirkung). It ought to be stated and restated firmly, whenever necessary: in the domain of the International Law of Human Rights, the so-called "laws" of self-amnesty are not truly laws: they are nothing but an aberration, an inadmissible affront to the juridical conscience of humanity.

Antônio A. Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ WITH THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE BARRIOS ALTOS CASE. MARCH 14, 2001.

1. I agree with the judgment on merits unanimously adopted by the members of the Inter-American Court of Human Rights in the Barrios Altos case. I add this concurring opinion in which I offer some considerations that this judgment calls to mind on the following points: a) the characteristics of acquiescence and the legal classification of the facts examined in the instant case; and b) the opposition between the laws of self-amnesty referred to in the judgment and the general obligations of the State under the American Convention on Human Rights (Articles 1(1) and 2), and also the legal consequences of this opposition.

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2. The State acquiesced to the claims of the plaintiff, who in this case is the Inter-American Commission on Human Rights. This acquiescence occurred because the State recognized its international responsibility in the terms of the communication of February 15, 2001. Therefore, the grounds for the case originally filed were eliminated. In other words, the principal dispute described in the Commission's application ceased to exist, although this does not preclude the possibility of filing a contentious action for reparations. Consequently, the Court had to examine the characteristics and scope of the jurisdictional actions in this case, culminating in a judgment on merits.

3. Acquiescence, which is a procedural element established in the Inter-American Court's Rules of Procedure, is a well-know means of settling a lawsuit. It implies a unilateral act of willingness, of a dispositive nature, whereby the defendant party acquiesces to the claims of the petitioner and assumes the obligations inherent in this acquiescence. Now, this act only refers to what the defendant is able to accept, because it is within his natural sphere of decision and acquiescence: the facts invoked in the application, from which defendant's responsibility arises. In this case, the facts violate a binding instrument of an international nature, the American Convention on Human Rights; this engages a responsibility that is also international, and it is the Court's duty to evaluate and declare this. These facts give rise to a particular legal classification and specific consequences of the same nature.

4. In the terms of the provisions applicable to the international prosecution of human rights violations, acquiescence does not necessarily entail the conclusion of the proceeding and the closure of the case, nor does it, in itself, determine the content of the Court's final decision. Indeed, there are cases when the Court may order that the proceeding on the principal issue – the violation of the rights - should continue, even though the defendant acquiesced to the claims of the petitioner, when this is motivated by "its responsibility to protect human rights" (Article 54 of the current Rules of Procedure of the Inter-American Court of Human Rights, approved on September 16, 1996). Therefore, the Court may decide to continue the proceeding, if this is advisable from the point of view of the international judicial protection of human rights. In this respect, it is the Court, alone and exclusively, that must evaluate this.

5. This "responsibility" to protect human rights may be exercised in various ways. The Court might find the version of the facts provided by the petitioner and accepted by the defendant unacceptable, since the Court is not bound – as national courts that hear private law disputes often are – by the presentation of the facts as formulated and/or accepted by the parties. In this context, the principles of material truth and effective protection of subjective rights prevail as a means of true compliance with objective law; and this is indispensable in the case of fundamental rights, since strict respect for them is of interest not only to those who hold such rights, but also to society – the international community – as a whole.

6. Neither is the Court bound by the legal classification of the facts formulated and/or accepted by the parties, a classification that implies analyzing them in the light of the law applicable to the case, which comprises the provisions of the American Convention. In other words, it is for the Court, and only the Court, to classify the facts as violating specific provisions of the Convention and, consequently, the rights that they recognize and protect. It is not enough that the respective acquiescence recognizes the facts, for the Court to classify them in the same

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way that the petitioner does and which the defendant admits or does not reject. The technical application of law, with everything that this implies, is a natural function of the Court – the expression of its jurisdictional powers – and the parties may not exclude, condition or manipulate it.

7. Therefore, it is for the Court to examine certain facts that have been admitted by the party that acquiesces – or rather, under another hypothesis, that have been proven in the regular course of a contentious proceeding – and decide whether they entail the violation of a specific right established in an article of the Convention. This classification, inherent to the work of the Court, is outside the dispositive faculties – unilateral or bilateral – of the parties who brought the dispute before the Court, but do not substitute it. In other words, the function of "stating the law" (decir el Derecho) – establishing the relationship that exists between the fact examined and the applicable norm – corresponds to the jurisdictional organ alone, that is, to the Inter-American Court.

8. The Inter-American Commission indicated that Article 13 may have been violated in the instant case, because the removal of the case from the jurisdiction of the Peruvian authorities (as regards the investigation, prosecution, trial and punishment) impeded the truth from being known. The Court has not rejected the possibility of invoking the right to the truth under Article 13 of the American Convention, but has considered that, in the circumstances of an actionable case – similar to others previously filed before the Court – the right to the truth is subsumed in the right of the victim and/or his next of kin to obtain clarification of the facts that violated human rights and the declaration of the corresponding responsibilities from the competent organs of the State, in accordance with Articles 8 and 25 of the Convention. Accordingly, no explicit statement has been made about Article 13, invoked by the Commission, but rather about Articles 8 and 25, which are the articles applicable to the facts submitted to the Court's consideration, in accordance with the pertinent evaluation.

9. As regards Amnesty Laws No. 26.479 and No. 26.492, referred to in this case, I believe it is relevant to refer to what I have stated at some length in my concurring opinion to the judgment on reparations delivered by the Inter-American Court in the Castillo Páez (ICourtHR, Castillo Páez case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, pp. 60 and ff.). In that concurring opinion, I expanded on the considerations that appear in the judgment itself, which clearly indicate the Court's opinion about these laws, an opinion that is fully applicable in the instant case.

10. In the said concurring opinion, I referred specifically to Amnesty Law No. 26.479, issued by Peru, corresponding to the category of so-called "self-amnesties", which are "promulgated by and for those in power", and differ from amnesties "that are the result of a peace process, have a democratic base and a reasonable scope, that preclude prosecution of acts or behaviors of members of rival factions, but leave open the possibility of punishment for the kind of very egregious acts that no faction either approves or views as appropriate" (para. 9)

11. I am very much aware of the advisability of encouraging civic harmony through amnesty laws that contribute to re-establishing peace and opening new constructive stages in the life of a nation. However, I stress – as does a growing sector of doctrine and also the Inter-American

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Court – that such forgive and forget provisions "cannot be permitted to cover up the most severe human rights violations, violations that constitute an utter disregard for the dignity of the human being and are repugnant to the conscience of humanity" (Opinion cit., para. 7).

12. Therefore, the national system of laws that prevents the investigation of human rights violations and the application of the appropriate consequences does not satisfy the obligations assumed by a State Party to the Convention to respect the fundamental rights of all persons subject to its jurisdiction and provide the necessary means to this end (Article 1(1) and 2). The Court has maintained that the State may not invoke "difficulties of a domestic nature" to waive the obligation to investigate the facts that infringed the Convention and punish those who are found criminally responsible for them.

13. The principle, in international human rights law and in the most recent expressions of international criminal law, that the impunity of conduct that most gravely violates the essential legal rights protected by both forms of international law is inadmissible, is based on this reasoning. The codification of such conduct and the prosecution and punishment of the perpetrators – and other participants – is an obligation of the State, one that cannot be avoided by measures such as amnesty, prescription, admitting considerations that exclude incrimination, and others that could lead to the same results and establish the impunity of acts that gravely violate those primordial legal rights. Thus, extrajudicial executions, the forced disappearance of persons, genocide, torture, specific crimes against humanity and certain very serious human rights violations must be punished surely and effectively at the national and the international level.

14. The democratic system calls for a minimum punitive intervention of the State, which leads to the rational codification of unlawful conduct, but also requires that specific, extremely serious conduct should invariably be included in the punitive legislation, effectively investigated and duly punished. This requirement appears to be a natural counterpart of the principle of minimum punitive intervention. Together, they constitute two ways of putting the requirements of democracy into practice in the criminal system and ensuring that this system is exercised effectively.

15. The Court's judgment makes it clear that the self-amnesty laws referred to in this case are incompatible with the American Convention, which Peru signed and ratified, and which is therefore a source of the State's international obligations, entered into in the exercise of its sovereignty. In my opinion, this incompatibility signifies that those laws are null and void, because they are at odds with the State's international commitments. Therefore, they cannot produce the legal effects inherent in laws promulgated normally and which are compatible with the international and constitutional provisions that engage the State of Peru. The incompatibility determines the invalidity of the act, which signifies that the said act cannot produce legal effects.

16. The judgment establishes that the State, the Inter-American Commission and the victims, their next of kin or their authorized representatives must reach agreement on the corresponding reparations. Thus, the determination of the reparations is subject to an agreement between the parties – a concept that includes the victims, because it refers to acts relating to the procedural stage of reparations, in which they become a party to the proceeding; this is not in itself decisive, but must be revised and approved by the Court. There is, therefore, a first limit to the dispositive

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possibilities of the parties, which is established having regard to the necessary fairness in procedures to protect human rights and which is even extended to friendly settlements before the Inter-American Commission.

17. Evidently, the above-mentioned agreement on reparations only extends to matters that, by their nature, may be stipulated by the parties – with the proviso indicated above – and not to matters that have been removed from this, owing to their social impact and importance. This implies another limit to the dispositive possibilities of the parties: they may agree on compensation, but they may not negotiate or decide on other types of reparation, such as the criminal prosecution of those responsible for the violations that have been recognized – unless it is a case of crimes whose prosecution is subject to a private proceeding, an infrequent occurrence in this sphere – or on the modification of the applicable legal framework in order to bring it into harmony with the provisions of the Convention. These are persisting State obligations, in the terms of the Convention and of the Court's judgment, whatever the settlement agreed between the parties.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary