Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Las Palmeras v. Colombia
Doc. Type:	Judgment (Merits)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Maximo Pacheco Gomez; Judges: Hernan Salgado Pesantes; Alirio Abreu Burelli; Sergio Garcia Ramirez; Julio A. Barberis Judge Carlos Vicente de Roux Rengifo, a Colombian national, disqualified himself in the present case. Judge Oliver Jackman informed the Court that for reasons beyond his control, he would be unable to be present for the Court's LIII regular session. Hence he did not participate in the deliberations on this case and did not sign the present Judgment.
Dated:	6 December 2001
Citation:	Las Palmeras v. Colombia, Judgment (IACtHR, 6 Dec. 2001)

In the Las Palmeras case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to articles 29 and 55 of its Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the following judgment on the merits of the matter in dispute between the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and the State of Colombia (hereinafter "the State" or "Colombia").

I. INTRODUCTION OF THE CASE

1. The Inter-American Commission submitted this case to the Court via an application dated July 6, 1998, based on a complaint (No. 11,237) received at its Secretariat and dated Bogota, January 27, 1994.

2. In its application, the Inter-American Commission explained the facts upon which its case was based.

On January 23, 1991, the Putumayo Departmental Police Commander ordered members of the National Police to conduct an armed operation in a place known as Las Palmeras, Municipality of Mocoa, Department of Putumayo. Army troopers assisted the National Police.

That morning, children were at the Las Palmeras country schoolhouse, waiting for classes to begin. Two laborers by the name of Julio Milciades Cerón Gómez and Artemio Pantoja, were

working on the repair of a septic tank.The brothers Wilian Hamilton Cerón Rojas and Edebraes Norverto Cerón Rojas were rounding up a head of cattle on a nearby hillside. Hernán Javier Cuarán Muchavisoy, the local teacher, was arriving at the school.

The Army forces opened fire from a helicopter, wounding Enio Quinayas Molina, then a six-year old boy on his way to school.

At and nearby the schoolhouse, Police detained the teacher, Cuarán Muchavisoy, the workers, Cerón Gómez and Pantoja, the Cerón brothers Wilian Hamilton and Edebraes, and one other unidentified person, who might have been either Moisés Ojeda or Hernán Lizcano Jacanamejoy. The National Police extrajudicially executed at least six of these people.

The National Police officers and the Army troopers took several measures in an attempt to justify their action.To that end, they put military uniforms on the bodies of some of those killed, burned their real clothes and threatened a number of witnesses in the case. The National Police also put seven corpses on display, claiming that they were the bodies of subversives killed in the supposed clash. Six of the bodies were of the six people the Police detained that day; the circumstances of the death of the seventh person have never been explained.

Disciplinary, administrative and criminal proceedings were instituted as a consequence of these events. The disciplinary inquiry conducted by the Putumayo National Police Commandant took five days, and cleared all those who participated in the Las Palmeras incident of all blame.Two administrative-law proceedings were instituted wherein it was expressly acknowledged that the victims of the armed operation did not belong to any armed group and, on the day the events transpired, were engaged in their routine activities. These proceedings established that the National Police extrajudicially executed the victims, who were utterly defenseless. After seven years, the military criminal proceeding had not progressed past the investigative phase and not one of those responsible for these events had yet been charged.

3. In its application, the Inter-American Commission petitioned the Court as follows:

[t]he Inter-American Commission respectfully petitions the Honorable Court to:
Adjudge and declare that the State of Colombia has violated the right to life, recognized in Article 4 of the Convention, and Article 3 of the Geneva Conventions, to the detriment of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas, Wilian Hamilton Cerón Rojas and one other person (who could be either Hernán Lizcano Jacanamejoy or Moisés Ojeda).
Establish the circumstances surrounding the death of a seventh person purported to have been killed in combat (Hernán Lizcano Jacanamejoy or Moisés Ojeda), to determine whether the right to life recognized in Article 4 of the Convention and Article 3 of the 1949 Geneva Conventions has been violated.
Adjudge and declare that the State of Colombia has violated articles 8 and 25 of the American Convention, to the detriment of Artemio Pantoja Ordóñez, Hernán Javier Cuarán, Julio Milciades Cerón Gómez, Edebraiz Cerón Rojas, Wilian Hamilton Cerón Rojas, Hernán Lizcano Jacanamejoy [and], and Moisés Ojeda, and their next of kin.

Adjudge and declare that with its violations to the rights to life, to a fair trial, and to judicial protection, the State of Colombia has also violated its obligation under Article 1(1) of the Convention, which is to respect and ensure the rights recognized therein.
Order the State of Colombia:
a) to conduct a rapid, impartial and effective judicial investigation into the facts denounced and punish all those responsible.
b) to determine whether the other person that the National Police extrajudicially executed on January 23, 1991, was Hernán Lizcano Jacanamejoy or Moisés Ojeda. The Honorable Court is also asked to order the State of Colombia to conduct a serious investigation to determine the circumstances under which the seventh fatality occurred. The Commission did not arrive at any finding on this death.
c) to make full reparation to the victims' next of kin, including payment of a just compensation (deducting the amounts already paid in pecuniary damages in the administrative-law cases of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas and Wilian Hamilton Cerón Rojas) and to restore the victims' good name for posterity.
d) to adopt any amendments needed in the regulations and training programs of the Colombian armed forces, so that all military operations are conducted in accordance with the international instruments and international practice in the matter of domestic armed conflicts.
e) to pay the expenses and costs that the victims' next of kin have incurred to litigate this case in local fora and before the Commission and the Court, and the reasonable fees of their attorneys.

II. COMPETENCE

4. Colombia has been a State Party to the American Convention since July 31, 1973. On June 21, 1985, it accepted this Court's contentious jurisdiction. The Court is, therefore, competent under the terms of Article 62(3) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") to take up the merits of the present case.

III. PROCEEDING BEFORE THE COMMISSION

5. On January 27, 1994, the Commission received a petition alleging human rights violations. The aggrieved parties were Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas, Wilian Hamilton Cerón Rojas, one unidentified person (possibly either Moisés Ojeda or Hernán Lizcano Jacanamejoy), and one other unidentified person. The circumstances surrounding the death of the last of these persons were unknown. On February 16, 1994, the Commission forwarded the pertinent parts of the complaint to the State and requested the State's answer.

6. The State submitted its answer on May 25, 1994. The State's brief was forwarded to the petitioners, who submitted their observations on July 21, 1994. The Commission forwarded the petitioners' observations to the State on August 31, 1994; the State responded on December 22. Both the petitioners and the State forwarded other submissions to the Commission concerning

the status of the investigations and domestic court proceedings. The pertinent parts of those submissions were sent to opposing side.

7. On October 8, 1996, the Commission held a hearing where the parties made their oral arguments on the facts in the case and the applicable law.

8. On February 20, 1998, the Commission approved Report No. 10/98, pursuant to Article 50 of the Convention, and forwarded it to the State on March 6 of that year.In the operative part of that report, the Commission recommended the following:

119. That the State of Colombia undertake a serious, impartial and effective investigation of the facts denounced, in order to be able to clarify the events of January 23, 1991, and prepare an official report detailing the circumstances of the violations and the responsibility for them.
120. That the State of Colombia bring to trial all those responsible so that they may be punished.
121. That the State of Colombia adopt measures to properly redress the violations proven, including compensation to the victims' next of kin who have not yet received compensation.

9. On May 12, 1998, the Commission received a note from the State wherein it requested a 45-day extension to reply to Report 10/98. On May 14, the Commission informed the parties that the State had been given a ten-day extension.

10. On May 26, 1998, the State formulated a proposal for a friendly settlement, which the Commission conveyed to the petitioners. They filed their comments on May 29, 1998. In that proposal the State pointed out that it did not agree with "all" the observations and conclusions contained in Report No. 10/98, particularly on the question of exhaustion of local remedies and the application of international humanitarian law. It also indicated that it was planning to set up a committee to move the criminal investigation forward.

11. On June 2, 1998, the State and the petitioners advised the Commission that they had agreed upon a 30-day deadline to begin negotiations aimed at arriving at a friendly settlement; they therefore requested that the time periods running under Article 51(1) of the American Convention be suspended.

12. On July 1, 1998, the petitioners informed the Commission that for the time being, the conditions were not there for arriving at a friendly settlement. They therefore requested that the Commission restart the suspended time periods and resume proceedings in the case. That information was conveyed to the State.

13. The Commission filed the application in this case with the Inter-American Court (supra, paragraph 1) on July 6, 1998.

IV. PROCEEDING BEFORE THE COURT

14. The Commission designated Mr. Robert K. Goldman and Mr. Carlos Ayalo Cora as delegates and Mrs. Verónica Gómez and Mr. David Padilla as advisors. The Commission

accredited Mrs. Luz Marina Monzón and Mr. Gustavo Gallón and Carlos Rodríguez as assistants and petitioners, and Mr. Pablo Saavedra Alessandri and Ms. Viviana Krsticevic as assistants.

15. On July 14, 1998, after the President of the Court (hereinafter "the President") had completed a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") transmitted said application and its appendices to the State and informed it of the time periods it had for filing its brief answering the application, for filing preliminary objections and for designating its Agent in the proceeding before the Court.

16. On August 14, 1998, Colombia designated Mrs. Marcela Briceño-Donn as agent, and Mr. Héctor Adolfo Sintura Varela as alternate agent.

17. On September 14, 1998, Colombia filed five preliminary objections. [FN1] On September 21, 1998, the Secretariat sent the Inter-American Commission a copy of the document in which the State sets out its preliminary objections. The Commission filed its response on November 5, 1998.

[FN1] The five preliminary objections that Colombia filed were: violation of due process for failure to complete information; lack of competence of the Inter-American Commission to apply international humanitarian law and other treaties; the lack of competence of the Inter-American Court to apply international humanitarian law and other international treaties; failure to exhaust domestic remedies, and lack of competence of the Court to act as a trial court.

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18. On December 11, 1998, the President invited Colombia to designate a judge ad hoc, inasmuch as Judge Carlos Vicente de Roux Rengifo, who was a Colombian national, had excused himself in the present case, pursuant to Article 19 of the Court's Statute and Article 19 of its Rules of Procedure.

19. On December 15, 1998, Colombia filed its brief answering the Commission's application. In its answer, the State expressly acknowledged its responsibility for the violation of Article 4 of the Convention, by virtue of the killing of Hernán Javier Cuarán Muchavisoy, Artemio Pantoja Ordóñez, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas and Edebraes Norverto Cerón Rojas. It further stated that it was not acknowledging responsibility in the death of the other two persons, NN/Moisés and Hernán Lizcano Jacanamejoy. It referenced the various legal proceedings instituted into the events in question: disciplinary, administrative, military criminal justice, and ordinary criminal justice.In the case of the military criminal proceedings, it stated that during the initial phase of the investigation, there were difficulties with evidence gathering; but it also argued that a proceeding under the military justice system is not, per se, a violation of human rights. When examining the amount of time that had passed since the events under investigation had occurred, one had to consider the complexity of the case, the procedural activity of the interested party and the conduct of the judicial authorities. The State acknowledged that there were irregularities in the investigation, but argued that those irregularities should not be cause to throw out any and all proceedings conducted thereafter. It argued that the victims' next of kin were not denied access to an "effective recourse," adding that

the case is underway in the ordinary criminal justice system and investigations are being conducted into the circumstances under which the seven people died and the parties suspected in the events. Finally, it pointed out that the reparations awarded in the administrative law proceedings are consistent with the parameters given in the Convention and that the costs were established during those proceedings.

20. On January 12, 1999, the State designated Julio A. Barberis as Judge ad hoc.

21. On March 18, 1999, the Commission requested permission to enter other pleadings in the written proceedings, pursuant to Article 38 of the Rules of Procedure. On June 3, 1999, following the President's orders, the Secretariat extended the time period for the Commission to present its pleadings and the State its rebuttal.

22. On August 9, 1999, the Commission presented its reply. There, it asked the Court to:

Adjudge and declare that the State of Colombia has violated the right to life, recognized in Article 4 of the Convention, and Article 3 of the Geneva Conventions, to the detriment of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas, Wilian Hamilton Cerón Rojas and N/N Moisés.

Establish the circumstances surrounding the death of Hernán Lizcano Jacanamejoy to determine whether there has been a violation of the right to life recognized in Article 4 of the Convention in relation to the State's obligations under Article 1(1) thereof, and the principles recognized in Article 3 of the 1949 Vienna Conventions.

Adjudge and declare that the State of Colombia has violated articles 8 and 25 of the American Convention, to the detriment of Artemio Pantoja Ordóñez, Hernán Javier Cuarán, Julio Milciades Cerón Gómez, Edebraiz Cerón Rojas, Wilian Hamilton Cerón Rojas, Hernán Lizcano Jacanamejoy, N/N Moisés, and their next of kin.

Adjudge and declare that with its violations to the rights to life, to a fair trial and to judicial protection, the State of Colombia has also violated its obligation under Article 1(1) of the Convention, which is to respect and ensure the rights recognized therein.

Order the State of Colombia:

a) to conduct a rapid, impartial and effective judicial investigation of the facts denounced and punish all those responsible.

b) to determine the identity of N/N Moisés, executed on January 23, 1991, by members of the National Police. The Honorable Court is also asked to order the State of Colombia to conduct a serious investigation to determine the circumstances under which Hernán Lizcano Jacanamejoy died ….

c) to make full reparation to the victims' next of kin, including payment of a just compensation (deducting the amounts already paid in the form of pecuniary damages as a result of the administrative contentious cases of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas and Wilian Hamilton Cerón Rojas) and restore the victims' good name for posterity.

d) to adopt any amendments needed in the regulations and training programs of the Colombian armed forces, so that all military operations are conducted in accordance with the international instruments and international practice in the matter of domestic armed conflicts.
e) to order the State of Colombia to pay the expenses and costs that the victims' next of kin have incurred to litigate this case in local fora and before the Commission and the Court, and the reasonable fees of their attorneys.

23. On November 11, 1999, Colombia submitted its rebuttal to the Court. There it argued that the new statements that the Commission added in its reply brief are not in response to the State's reply to the original application and are intended to reformulate the petitions set out in chapter X of the application. For the State, therefore, the original pleadings will continue to dictate the subject matter of the dispute. It added that it was unclear why a single mechanism had to be found within the internal system in order to satisfy the exigencies of the inter-American system for the protection of human rights.Quite the contrary, when faced with a possible violation, States should order all necessary measures to set in motion the proper mechanisms to ensure the observance of the rights under discussion and make any reparation it may owe.It also pointed out that in 1994, in another case separate from the one sub judice, Colombia's Constitutional Court recognized the plaintiffs' right to have recourse to the military criminal justice system. It also noted that in the proceedings that the military criminal justice system has underway petitions to become civil parties to the case have been granted. Finally, it added that the Commission's analyses and conclusions with respect to Hernán Lizcano Jacanamejoy and NN/Moisés are helpful to the State authorities.

24. On February 4, 2000, the Court delivered its judgment on the preliminary objections entered by the respondent State. [FN2]

[FN2] In its Judgment on the preliminary objections, the Court decided to admit the second and third preliminary objections entered by Colombia (supra, note 1) and thus resolved that the Commission and the Court did not have competence to determine whether a given act was in violation of the 1949 Geneva Conventions or other treaties other than the American Convention. On the other hand, it dismissed the objections entered with respect to violation of due process, failure to exhaust domestic remedies and the lack of competence of the Court to act as a trial court for individual facts. See: Las Palmeras Case, Preliminary Objctions. Judgmentt of February 4, 2000. Series C. No. 67.

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25. On April 23, 2001, the President decided to summon the parties to a public hearing, which would be held at the seat of the Court on May 28, 2001, to hear the parties' witnesses and experts.

26. The public hearing was held at the seat of the Court on the date planned.

There appeared:

For the Republic of Colombia:

Marcela Briceño-Donn, agent; and
Héctor Adolfo Sintura Varela, alternate agent.

For the Inter-American Commission on Human Rights:

Robert K. Goldman, delegate;
Verónica Gómez, advisor;
Viviana Krsticevic, assistant;
Luz Marina Monzón Cifuentes, assistant;
Carlos Rodríguez Mejía, assistant; and
Roxana Altholz, assistant.

The witnesses and experts tendered by the parties also appeared.

27. On May 30, 2001, the Court ordered exhumation of the mortal remains of the alleged deceased Hernán Lizcano Jacanamejoy and NN/Moisés. On June 15, 2001, the President ordered appointment of Mr. Daniel Michael O´Donnell to represent the Court at the exhumation. The exhumation proceeding and the subsequent examination of Lizcano Jacanamejoy's remains took place June 24 to 30, 2001. The archeological report on the excavation at the Mocoa Cemetery in Putumayo and the report on the anthropological analysis and forensic examination of Hernán Lizcano Jacanamejoy's remains were received on August 14 and 21, 2001, respectively.

28. The report containing the anthropological analysis and forensic examination recommended that studies be done of the gunshot residue found among the remains of Hernán Lizcano Jacanamejoy, using inductively coupled plasma mass spectometry. The Court followed the experts' recommendation and on September 7, 2001, ordered the testing suggested. It also ordered that the tests be done by the experts from the Technical Investigations Corps with the Office of the Prosecutor General of Colombia. On September 28, 2001, the Commission stated that it believed that Mr. Héctor Daniel Fernández should be present for the procedure as an "observer." That same day, the Secretariat informed the Commission that the President had authorized "Mr. Héctor Daniel Fernández' participation as an observer to the testing procedures."

On October 22, 2001, the expert report was submitted containing the results of the tests done on the bullet residue found among Hernán Lizcano Jacanamejoy's mortal remains.

29. On November 2, 2001, the Commission submitted to the Court its brief of final arguments, which includes, as an appendix, an "expert report" signed by Mr. Héctor D. Fernández concerning the tests done on Mr. Hernán Lizcano Jacanamejoy's mortal remains using "atomic absorption spectometric analysis." On November 13, 2001, the State submitted its comments on that "expert report," within the time period set by the President.

The brief of final arguments consists of two main chapters: the first argues that Colombia is responsible for the death of Hernán Lizcano Jacanamejoy; the second asserts that the State violated the seven victims' right to judicial protection.

In the first chapter, the Commission examines the anthropological report and forensic report concerning the gunshot residue, and Mr. Fernández' "expert report."The latter clearly states that "Hernán Lizcano Jacanamejoy was 'in a kneeling position' at the time he was shot.The brief then attacks the testimony in the case file and in the court records attached thereto, to the effect that the victim died in combat. The Commission argues that by its failure to properly investigate Lizcano Jacanamejoy's death, the State is responsible for his death. Finally, the Commission argues that the way in which Lizcano Jacanamejoy was killed was similar to the method that Colombian security forces were using at that time.

The second chapter examines the problems and obstacles put up by the State in terms of the evidence needed to illuminate the facts, the way in which the investigations were manipulated, the intimidation of the victims' next of kin and the performance of the military justice system.The Commission states the following in this regard:

Based on the evidence supplied to the Court, the conclusion drawn from all these facts is that the State failed to comply with its duty to ensure the victims and their next of kin proper protection under the law and their right to an effective recourse, as they were left completely defenseless against the action of State agents.

30. On November 2, 2001, the State submitted its brief of final arguments. Its conclusions are as follows

The Government of Colombia is asking the Honorable Court to adjudge and declare that:

a. The right to life, recognized in Article 4 of the American Convention on Human Rights, was not violated to the detriment of HERNÁN LIZCANO JACANAMEJOY;
b. Articles 8 and 25 of the American Convention on Human Rights were not violated in the case of the seven persons included in the instant case and their next of kin;
c. It accepts the State's acknowledgement of responsibility for violation of Article 4 of the Convention, in relation to Article 1(1) thereof, in the deaths of HERNÁN JAVIER CUARÁN MUCHAVISOY, ARTEMIO PANTOJA ORDÓÑEZ, JULIO MELCÍADES CERÓN GÓMEZ, WILIAN HAMILTON and EDEBRAES NORBERTO CERÓN ROJAS and NN MOISÉS OJEDA; and
d. It support the action of the Colombian judicial authorities charged with investigating and prosecuting the responsible parties since, despite the many difficulties and the complexity of the internal situation, their conduct has been helpful in the instant case.

V. PRELIMINARY CONSIDERATION

31. In its rebuttal brief, at the public hearing and in its final written arguments, Colombia objected to the fact that in the Commission's reply, it altered some of the terms of the petitum as drafted in the original application. In its judgment of September 10, 1993, in the Aloeboetoe et al. Case, Reparations, the Court wrote that "in proceedings before an international court a party may modify its application, provided that the other party has the procedural opportunity to state its views on the subject." [FN3] The Court will apply that case law in the instant case. Therefore,

provided the other party has had the procedural opportunity to state its views, it will regard the latest arguments made as the definitive pleadings.

[FN3] Aloeboetoe et al. Case, Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, paragraph 81.

VI. VIOLATION OF ARTICLE 4 (RIGHT TO LIFE)

32. The Commission is asking the Court to adjudge and declare that Colombia has violated the right to life recognized in Article 4 of the Convention, to the detriment, firstly, of five persons it identifies by name: Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas and Wilian Hamilton Cerón Rojas.

Among the documents that the Commission adds to the body of evidence with the Court is a copy of an April 15, 1993 judgment of the Nariño Administrative Law Court that found Colombia to be liable in the deaths of Artemio Pantoja Ordóñez and Hernán Javier Cuarán Muchavisoy, and therefore ordered it to pay compensation for moral and material damages caused to the two victims' next of kin. In a separate ruling, dated February 23, 1995, the Nariño Administrative Law Court also found Colombia liable in the deaths of Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas and Wilian Hamilton Cerón Rojas, and ordered it to pay compensation for the moral and material damages caused to these three victims' next of kin. The Administrative Law Court of the Council of State upheld this judgment in a January 15, 1996 ruling.

Since the Commission was aware of these court decisions when it filed its application on July 6, 1998, one might well ask what the Commission was seeking when it asked the Court to again find Colombia responsible in the death of the above-named persons. The Commission argues that a domestic court can only deliver a finding on the State's domestic responsibility. The finding of international responsibility must come from an international court. The Commission writes the following under point II of its reply:

The administrative law courts established the State's civil liability, under domestic law, for the execution of five of these victims (emphasis added).

Under point II.A of that brief the Commission repeats this language and adds the following:

In its answer of December 26, 1998, the State acknowledged its international responsibility for violation of Article 4 of the American Convention, to the detriment of the persons in question (emphasis added).

Finally, the Commission asked the Court to find that the dispute over the State's responsibility for violation of Article 4 of the Convention is closed.

33. The American Convention is a multilateral treaty under which States Parties undertake to respect and ensure the rights and freedoms recognized therein and to comply with any reparations ordered.The Convention is the cornerstone of the system for the protection of human rights in America. This system is a two-tiered system: a local or national tier consisting of each State's obligation to guarantee the rights and freedoms recognized in the Convention and punish violations committed. If a specific case is not resolved at the local or national level, the Convention provides an international tier where the principal bodies are the Commission and this Court. But as the Preamble to the Convention states, the international protection is "reinforcing or complementing the protection provided by the domestic law of the American states."Consequently, when a question has been definitively settled under domestic law -to use the language of the Convention- the matter need not be brought to this Court for "approval" or "confirmation."

34. In the instant case, Colombia's Council of State, as forum of last instance, held that the State was responsible for the deaths of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas and Wilian Hamilton Cerón Rojas. Because neither of the parties challenged these court rulings, Colombia's responsibility became res judicata.

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35. In its application, the Commission makes reference to a sixth victim, killed under the very same circumstances as the five named victims but whose identity is unknown.In the evidence in the case file, the sixth victim appears as N.N./Moisés or N.N./Moisés Ojeda. At the public hearing held on May 28, 2001, the agent for Colombia acknowledged "that in this case, the State's international responsibility for violation of Article 4 of the American Convention on Human Rights, by virtue of the death of NN/Moisés Ojeda, was conceded." The Commission made note of this acknowledgement. With the latter, the issue concerning the State's responsibility for violation of this person's right to life was settled.

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36. The application states that seven people were killed in the events that occurred in Las Palmeras, the seventh victim being Hernán Lizcano Jacanamejoy. The Commission states that one of the victims was purported to have been killed in combat; the Commission, however, is of the view that neither N.N./Moisés Ojeda nor Hernán Lizcano Jacanamejoy was a combat fatality. In the application, therefore, it asks that the Court

Establish the circumstances surrounding the death of a seventh person purported to have been killed in combat (Hernán Lizcano Jacanamejoy or Moisés Ojeda), to determine whether the right to life recognized in Article 4 of the Convention has been violated [by the State of Colombia] […]

In its answer, Colombia acknowledges its responsibility for the deaths of Hernán Javier Cuarán Muchavisoy, Artemio Pantoja Ordóñez, Julio Milciades Cerón Gómez, Wilian Hamilton and Edebraes Cerón Rojas. It also states that the judgments delivered in the local courts and the

evidence available indicate that one of the seven victims at Las Palmeras "died in a clash with members of the National Police." As for the other person, the State contends that it does not have "sufficient evidence to determine whether his death was or was not a violation of the right to life in the meaning of Article 4 of the Convention."

In its observations on the State's answer, the Commission asserts that based on the evidence Colombia tendered in this case, it has concluded that N.N./Moisés Ojeda was executed by members of the National Police while in their custody.It reasons that:

The testimony given by a number of State agents who participated in the operation confirms that the physical features of the person purported to have died in combat do not match those of N/N Moisés; they are more similar to those of Hernán Lizcano Jacanamejoy.

While the Commission cites the testimony of one of those who took part in the operation to conclude that N.N./Moisés Ojeda was the person that the Police executed once they had him in custody, it also calls into question the testimony of other police involved to the effect that Hernán Lizcano Jacanamejoy died in combat. The Commission "considers that elements are present that make the truth of this aspect of their testimony questionable." Later, the Commission stated that the evidence is not precise enough to confirm the circumstances under which Hernán Lizcano Jacanamejoy died:

based on these observations with regard to the available data, the Commission believes that the circumstances of the death of Hernán Lizcano Jacanamejoy and, therefore, the responsibility of the State for violation of Article 4 [of the American Convention] and Article 3 of the 1949 Geneva Conventions, are still unclear.

The Commission also reserves the right to request exhumation of Hernán Lizcano Jacanamejoy's body and a reconstruction of the events in order to study the trajectory of the bullets.

In its brief of reply, Colombia states simply that the analyses and conclusions that the Commission reached regarding the fate of N.N./Moisés Ojeda and Hernán Lizcano Jacanamejoy are very helpful to the Colombian authorities, have been studied carefully and will be raised at the proper point in the proceedings.

37. At the public hearing held on May 28, 2001, the State admitted responsibility for violation of Article 4 of the Convention in the case of the death of N.N. Moisés Ojeda.

As for the fate of Hernán Lizcano Jacanamejoy, at that public hearing the Commission first asserted that the testimony of the police officers who participated in the operation "is not credible" and analyzed other evidence tendered for this case. The Commission drew the Court's attention to the trajectory of the bullets in Hernán Lizcano Jacanamejoy's body, according to the autopsy conducted. In the Commission's opinion, the trajectory "suggests an extrajudicial execution." As for the evidence concerning the death of Hernán Lizcano Jacanamejoy, the Commission asserted that:

The particular circumstances of this case are such that the burden of proof can be reversed in order to establish the responsibility of the State in the violation of Mr. Hernán Lizcano‘s right to life, from the very special angle of international human rights law.

Colombia relied mainly on the testimony given by Victoria Eugenia Yepes and Pedro Elías Díaz Romero about the evidences tendered in the local proceedings, most of which are attached to the case file. Colombia’s agent concluded that:

Consequently, in this effort to clarify the facts, it should be noted that it has already been shown that the Colombian justice system established -and the Commission assumed in its application- that Mr. Lizcano Jacanamejoy died in combat. The State cannot be held internationally accountable for his death, as this was neither a summary nor extrajudicial execution.

38. As previously noted (supra paragraph 27), the Court ordered exhumation of the remains of Hernán Lizcano Jacanamejoy and the corresponding examinations -anthropological analyses and forensic examination of the remains. The report from these tests states that the victim was shot at least twice. It states the following concerning the trajectory of the bullets:

Even though in this case the precise direction of the bullets could not be established using the mortal remains, those pieces whose possible trajectory could be discerned match what was described in the autopsy […]
The trajectories described in the autopsy, in some respects corroborated and in others acknowledged as a possibility by the anthropological tests, are quite instructive in terms of a hypothesis as to the mode or manner of death, first because both shots are described as posterior-anterior. In particular, the autopsy describes the angle of the bullet as entering the right side of the neck and exiting in the area of the right abdomen; in other words, the trajectory was a vertical drop from the top, down. This may suggest that the person who shot the victim was over the victim, either because he was on higher ground or in the air, or because the victim was in a crouching position in relation to the shooter. From the medical-legal standpoint, the trajectory of the bullets suggests the possibility of homicide as the manner of death.
Unfortunately, there is nothing in the autopsy report about anything that would suggest the distance the bullets traveled, for example, smoke residue, gun powder residue, the size the entry wound, burns, oil residue from the barrel of the gun. The analysis of the exhumed remains failed to reveal any information in this regard.

The expert report ordered by the Court to analyze the bullet fragments found among Hernán Lizcano Jacanamejoy’s remains, using the technique of inductively coupled plasma mass spectometry, failed to reveal any further information about how Lizcano Jacanamejoy died. However, the Commission has relied on an “expert” report prepared by Mr. Héctor Daniel Fernández, the observer designated to be present for the tests at the Commission’s suggestion. He states categorically that “the victim was in a kneeling position at the time he was shot.”

39. In its final brief, the Commission developed two theories concerning Colombia’s responsibility in the death of Lizcano Jacanamejoy. First, it argued that the tests conducted constitute absolute proof that the victim was executed by agents of the State and was absolutely defenseless at the time. Second, invoking various precedents of the European Court of Human

Rights, the Commission asserts that because it failed to conduct a serious investigation into how the events occurred, Colombia is responsible for Lizcano Jacanamejoy's death.

In its final brief Colombia pointed out that the Commission's assertion that Colombia was responsible because of its failure to conduct the proper investigations is based on jurisprudence that the European Court of Human Rights created in cases where the laws and facts were not analogous to the present case. The State challenged the form and substance of Mr. Fernández' expert opinion. It argued, inter alia, that this expert opinion was not prepared by a Court-appointed expert, that it lacked probative value and that the expert testing for which Mr. Fernández was observer was based on a chemical study; it was not a ballistics test.

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40. Summarizing, based on the submissions in these proceedings, the Commission's contention that Colombia is responsible for the death of Hernán Lizcano Jacanamejoy is based on three hypotheses: a) a reversal of the onus probandi, thus requiring the State to prove it is not responsible for Lizcano Jacanamejoy's death; b) failure to investigate the facts, which it argues makes the State responsible for the death; and c) the evidence produced, particularly the expert evidence.

The Court will now proceed to examine each of the three hypotheses.

41. a) As explained previously (supra paragraphs 35 and 36), the Commission has been changing its hypothesis concerning the applicable law in the matter of onus probandi as the proceedings in this case have unfolded.

In its application, the Commission asked the Court to establish the circumstances of the death of a seventh victim, purported to have been killed in combat, in order to determine whether Colombia had violated Article 4 of the American Convention. This means that the Court was to investigate the facts in order to ascertain the evidence of Colombia's responsibility.

In its brief of response, the Commission stated that the circumstances of Mr. Hernán Lizcano Jacanamejoy's death were unclear, which meant that the question of Colombia's responsibility with respect to Article 4 of the Convention was also unclear. Here, the Commission's position begins to change, and it now implies that Colombia would have to prove that it was not responsible.

The Commission's position was spelled out at the public hearing on the merits, held on May 28, 2001.Its contention is that here, because of "the particular circumstances of the case" and "from the very special angle of international human rights law," the burden of proof should be reversed. The Commission does not explain what "the particular circumstances of the case" might be nor does it explain that "special angle of international human rights law."El onus probandi is not up to the court's discretion; instead, it is dictated by the rules of law in force. The Commission has not cited any treaty in support of its argument, nor has it tried to show the existence of some general or specific rule or custom of international law on the subject.

In some cases, a court may have to determine how strong the evidence must be to constitute proof of facts. In the instant case, to prove Colombia's responsibility, it must be shown that State agents executed Hernán Lizcano Jacanamejoy.

42. b) The second line of argument the Commission pursued was to assert that because the State had not conducted a serious investigation of the events that transpired, it had to assume responsibility for the death of Lizcano Jacanamejoy. In its final brief, the Commission states the following in this regard:

The State's omissions in this respect are violations of the victim's right to life by reason of the failure to conduct a serious investigation.

Prior to this, at the public hearing, the Commission had stated the following:

Responsibility for the violation of the right to life is also established by the failure to guarantee protection of this right. The Commission considers that the very fact that there was never the kind of thorough, effective and impartial investigation of the facts that various articles of the American Convention require, is a violation of the State's affirmative obligation to ensure and protect the right to life. This is because the protection of this right does not end upon a person's death and is more than the obligation to respect the right to life. The State must also provide an ex post facto procedure to establish that the facts surrounding a murder perpetrated by its agents were not acts committed by those agents.

While in some cases, the failure to investigate may be construed as an attempt to protect the authors of the crime of murder, [FN4] this reasoning cannot be postulated as a generic rule applicable across the board. Apart from the question of the legitimacy of a rule such as the one postulated by the Commission, the fact is that it would be applicable only if no serious investigation had been conducted. In the instant case, the argument that no serious investigation was conducted cannot be made. There are two judgments from the Administrative Law Court of Colombia's Council of State, dating from 1993 and 1996 –i.e., predating the Commission's application- that find the State responsible for the events that occurred with respect to five of the victims (supra, paragraphs 32 and 34). Although the events occurred on January 23, 1991, while the military criminal justice system's inquiry was underway until early 1998, the State did not embark upon an investigation of the facts. It was at that point that an important change occurred, when the Human Rights Unit of the Office of the Prosecutor General of the Nation took over the criminal investigation. The Commission acknowledged this at the public hearing.

The investigation required under the Convention cannot be identical to the one conducted in the present process; were that the case, the rule would be redundant and pointless. In the Court's view, the prior investigation that the Commission argues is a prerequisite, has been carried out, thereby making this argument irrelevant in the present case.

[FN4] Bámaca Velásquez Case, Judgment of November 25, 2000. Series C No. 70, paragraphs 191, 194 and 200; Durand and Ugarte Case, Judgment of August 16, 2000. Series C No. 68,

paragraphs 122 and 130, and Villagrán Morales et al. Case (The "Street Children" Case), Judgment of November 19, 1999. Series C No. 63, paragraphs 228, 230, 233 and 237.
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43. c) Hernán Lizcano Jacanamejoy's death is the only one in this episode that was not the subject of a criminal case prosecuted in the Colombian courts. The Office of the Prosecutor General of the Nation concluded that the person in question had died in a clash with the police. It based its conclusion on the pretrial statements made by Captain Antonio Alonso Martínez, lieutenants Jaime Alberto Peña Casas and Rafael Ordóñez Merjech and police officers Elías Sandoval Reyes and Wilson Botina Papamija, on the deposition of former police officer Pablo Lugo Herrera, the depositions of campesinos Clodomiro Burgos Acosta and Leonardo Alvarado, and on the testimony of Isidoro Cuarán Muchavisoy and a sister of the victim, María Córdula Mora Jacanamejoy. This was the testimony of Mr. Pedro Elías Díaz Romero at the public hearing, who was coordinator of the Human Rights Unit at the Prosecutor General's Office.

The Inter-American Commission, on the other hand, contends that Colombian forces executed Hernán Lizcano Jacanamejoy. It attempted to challenge the evidence produced by the State by arguing that the testimony of the police officers who participated in the operation was not credible. It also asserted that State authorities had failed to collect shells and bullets at the site where Lizcano Jacanamejoy was killed, that the scrapings had not been taken from the victim's hands to determine whether he had fired a weapon, and that other important procedures had been neglected.

As it states in various passages of its final arguments, the evidence most central to the Commission's case were the expert tests conducted:

As already pointed out, both the forensic report and the ballistics tests produce incontrovertible proof that Hernán Lizcano Jacanamejoy did not die in an armed confrontation. To the contrary, the victim was completely defenseless when executed, and was thus executed arbitrarily while in the custody of the State.

[…]
The trajectory of the bullets established by the experts and the fact that Hernán Lizcano was kneeling at the time of his death, precludes any possibility that Hernán Lizcano died as the State alleged, i.e., in an armed confrontation. The Commission considers that the expert tests unequivocally show that Hernán Lizcano did not die in a clash with agents of the National Police. Instead, he, like the other six victims, was executed while completely defenseless.
[…]
The findings of the forensic examination and ballistics tests, combined with the unmistakable signs of another case of the modus operandi used by agents of the State security forces, are unequivocal proof that Hernán Lizcano was executed arbitrarily, in violation of Article 4 of the American Convention..

44. The Court will now turn its attention to the expert opinions upon which the Commission bases its cases.

The first is the anthropological analysis and forensic examination ordered by the Court. The Commission underscores one passage, cited earlier in this judgment (supra paragraph 38). The report concerns a bullet that entered the victim's body at the right side of the neck and exited in the area of Hernán Lizcano Jacanamejoy's right abdomen. The trajectory of that bullet is a vertical descent. The expert report explains the possible positions between the shooter and the victim that could cause the bullet to follow that trajectory. It states the following:

This may presuppose that the shooter was above the victim, either at a higher height on the ground or in the air, or that the victim was in a crouching position in relation to the shooter.

It is self-evident that the passage allows for three possibilities. The experts do not choose one over the others. Nor do they say that these are the only three possibilities, because those given are by way of example.

45. In response to the findings of the authors of the anthropological report and the forensic report, on September 7, 2001 the Court ordered a study of the shrapnel present in the remains of Hernán Lizcano Jacanamejoy. That study was done through a chemical analysis that employed the technique of inductively coupled plasma mass spectometry. Subsequently, the Commission suggested Mr. Héctor Daniel Fernández serve as an expert to participate in the study. In the end, the President gave authorization for Mr. Fernández to participate in the testing as an observer (supra, paragraph 28).

Mr. Fernández prepared an "expert report" for the Inter-American Commission, which was submitted as an appendix to the Commission's brief of conclusions. Mr. Fernández states the following:

Having carefully evaluated the findings, which are explained in detail in the respective report (Field Mission QA-04590/2001), and replying on the technical and scientific principles of this discipline, I have the following observations:
[…]
6.- The fracture of the left forearm and left hand wounds appear to be from the same shot that I labeled No. 1, which would make it obvious that the victim was in a "KNEELING" position at the time he was shot. Obviously, the projectile that followed that trajectory is the "pointed" bullet; the trajectory can be explained by the force and aerodynamics characteristic of that type projectile.
Finally, my assertions are categorical, as I have done an exhaustive analysis of the medical-legal report and of the minute details provided by the above-referenced study using inductively coupled plasma mass spectometry (QA-04590/2001), whose descriptive pictures are very vivid.

46. An analysis of Mr. Fernández' assertion shows that his remarks are not based on any reasoned logic, and therefore lack any evidentiary value.

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47. The Court has carefully examined the statements and arguments given by the parties and the evidence they offered. It has evaluated them mindful of the time and place wherein they

occurred. It has concluded that the evidence produced during these proceedings has not been sufficient for the Court to find that Hernán Lizcano Jacanamejoy was executed by State forces in violation of Article 4 of the American Convention.

VII. VIOLATION OF ARTICLES 8 AND 25 (RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION)

48. With regard to the violation of articles 8 and 25 of the Convention, given the facts admitted in the instant case the local proceedings need to be examined.

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49. Concerning the disciplinary proceeding that the Office of Investigation and Discipline of the Putumayo Police Department Command instituted against the members of the police force who participated in the operation, the Court notes that from the time the investigating officer instituted the inquiry to the time when the police commandant -who was also the superior of the agents being investigated- declared the investigation closed and cleared the participants in that operation of all wrongdoing, the proceeding lasted a total of five days. The Putumayo Prosecutor's Office, the Office of the Special Prosecutor for the Defense of Human Rights, the Nariño Administrative Law Court and the General Bureau of Police serving as court of first instance, found that the disciplinary proceeding was flawed with irregularities; it was handled in such haste that it precluded any investigation of the facts and ultimately had the effect of foreclosing criminal prosecution for the crime of obstruction of justice. Furthermore, the Court observes that the "judge" in the disciplinary proceeding was both judge and party. This alone was sufficient to deny the victims and their next of kin their right to the judicial guarantees recognized in the Convention. The haste in which this disciplinary proceeding was conducted precluded an examination of evidence and only the parties to participate were the implicated parties (the police officers).

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50. The military criminal proceeding began on January 29, 1991, with the Military Examining Court 75. The case remained in the military justice system until March 25, 1998, when it was transferred to the ordinary criminal justice system. In the military justice system, the judges assigned to hear the case were with the National Police, as were the suspected material authors of the acts. Compounding this is the fact that the National Police was under the Ministry of Defense, which is in the executive branch of government.

51. The Court has already established that in a democratic state of laws, the criminal military jurisdiction is to be restricted and exceptional in scope and intended to protect special juridical interests associated with the functions that the law assigns to the military forces. Hence, military personnel are to be tried for crimes or misdemeanors that, by their nature, harm the juridical interests of the military. [FN5]

[FN5] Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, paragraph 113, and Durand and Ugarte Case, supra note 4, paragraph 117.

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52. The following consideration must be taken into account:

[t]he military jurisdiction is established in several laws, in order to maintain order and discipline within the armed forces. Therefore, its application is reserved for military personnel who have committed crimes or misdemeanors in the performance of their duties and under certain circumstances … when the military courts assume jurisdiction over a matter that should be heard by the regular courts, the right to the appropriate judge is violated, as is, a fortiori, due process, which, in turn, is intimately linked to the right of access to justice. [FN6]

[FN6] Cantoral Benavides Case. Series C No. 69 supra note 5, paragraph 112, and Castillo Petruzzi et al. Case, Judgment of May 30, 1999. Series C No. 52, paragraph 128.

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53. As has been previously stated, the judge hearing a case must be competent, independent and impartial. [FN7] In the case sub judice, the very same military forces engaged in fighting the insurgent groups are those charged with prosecuting their peers for executing civilians, as the State itself has acknowledged. Consequently, from the very outset, the prosecution and punishment of those responsible should have been handled by the ordinary justice system, irrespective of whether the suspected authors were police officers in active service. Nevertheless, the State ordered that the military courts preside over the investigation into the Las Palmeras incident. The military justice system had that investigation underway for more than 7 years, until the case was finally transferred to the ordinary courts. The military courts never succeeded in identifying, prosecuting and convicting the responsible parties.

[FN7] Ivcher Bronstein Case. Judgment of February 6, 2001. Series C No. 74, paragraph 112, and Castillo Petruzzi et al. Case, supra note 6, paragraph 130

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54. In conclusion the use of the military courts in this case did not guarantee due process in the meaning of Article 8(1) of the American Convention, which recognizes the right of the victims' next of kin to a hearing by a competent, impartial and independent court.

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55. In the case of the proceedings in the ordinary criminal justice system, the Human Rights Unit of the Office of the Prosecutor General of the Nation took up the case on May 14, 1998, after the First Criminal Court Prosecutor 233 asked the Inspector General of the National Police to serve as judge of first instance, to prosecute those suspected in the death of the victim in this case in the ordinary criminal justice system. It is important to note that as of the date of this judgment, this proceeding has not concluded, meaning that there is no definitive judgment

naming, convicting and punishing those responsible. The criminal investigation of these events has now been underway for more than ten years, which shows that the administration of justice has been neither rapid nor effective.

56. Despite all the time that has elapsed, and although proceedings have been conducted, the fact is that they have failed to convict and punish the responsible parties, all of which fosters impunity. This Court has defined impunity as follows:

the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of rights protected by the American Convention, [by virtue of the obligation of the State] to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives. [FN8]

[FN8] The "Street Children" Case (Villagrán Morales et al. v. Guatemala). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, paragraph 100. Cf. also Bámaca Velásquez Case, supra note 4, paragraph 211, and Paniagua Morales et al. Case, Judgment of March 8, 1998. Series C No. 37, paragraph 173.

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57. The Court notes that in the instant case, the parties acknowledged that the National Police officers implicated in the events obstructed or refused to properly cooperate with the investigations undertaken to clarify the case, and either tampered with, concealed or destroyed evidence. [FN9]

[FN9] Some of the obstructionist behaviors were as follows: changing the clothing worn by the victims and then destroying the victims' clothes; failing to search the bodies at the scene of the crime; failing to collect evidence; threatening and intimidating relatives and witnesses, and circulating false information concerning the victims' activities. Cf. also Bámaca Velásquez Case, supra note 4, paragraph 200, and Villagrán et al. Case (The "Street Children" Case), supra note 4, paragraphs 229-233. The European Court has written that one of an international court's functions is to determine whether the integrity of the proceedings, and the way in which the evidence was produced, were fair. Cf. inter alia, European Court of Human Rights, Edwards v. United Kingdom, Judgment of 16 December 1992, Series A no. 247-B, p. 34, and European Court of Human Rights, Vidakl v. Belgium, Judgment of 22 April 1992, Series A no. 235B, p. 33.

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58. It is the jurisprudence constante of this Court that it is not enough that such recourses exist formally; they must be effective [FN10]; that is, they must give results or responses to the violations of rights established in the Convention. [FN11] This Court has also held that remedies that, due to the general situation of the country or even the particular circumstances of any given case, prove illusory cannot be considered effective. [FN12] This may happen when, for example, they prove to be useless in practice because the jurisdictional body does not have the

independence necessary to arrive at an impartial decision [FN13] or because they lack the means to execute their decisions; or any other situation in which justice is being denied, such as cases in which there has been an unwarranted delay in rendering a judgment. [FN14]This guarantee of protection of the rights of individuals is not limited to the immediate victim; it also includes relatives who, because of the events and particular circumstances of a given case, are the parties that exercise the right in the domestic system. [FN15] This Court also held that "Article 8(1) of the Convention must be interpreted in an open way so that said interpretation be endorsed both in the literal text of the standard as well as in its essence." [FN16]

[FN10] Cf., Mayagna (Sumo) Awas Tingni Case. Judgment of August 31, 2001. Series C No. 79, paragraphs 111-113; Constitutional Court Case, Judgment of January 31, 2001. Series C No. 71, paragraph 90; Bámaca Velásquez Case, supra note 4, paragraph 191; Cesti Hurtado Case, Judgment of September 29, 1999. Series C No. 56, paragraph 125; Paniagua Morales et al. Case, supra note 8, paragraph 164; Suárez Rosero Case, Judgment of November 12, 1997. Series C No. 35, paragraph 63; Godínez Cruz Case, Judgment of January 20, 1989, Series C No. 5, paragraph 66; Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4, paragraph 63, and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the Americcan Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24.
[FN11] Cf., inter alia, Constitutional Court Case, supra note 10, paragraph 89, and Bámaca Velásquez Case, supra note 4, paragraph 191.
[FN12] Cf., Ivcher Bronstein Case, supra note 7, paragraph 136; Constitutional Court Case, supra note 10, paragraph 89, and Bámaca Velásquez Case, supra note 4, paragraph 191.
[FN13] Cf., Ivcher Bronstein Case, supra note 7, paragraph 115.
[FN14] Cf., Constitutional Court Case, supra note 10, paragraph 93.
[FN15] Cf. Bámaca Velásquez Case, supra note 4, paragraph 196; Durand and Ugarte Case, supra note 4, paragraphs 128-130, and Blake Case, Judgment of January 24, 1998, Series C No. 36, paragraph 98.
[FN16] Cf. Durand and Ugarte Case, supra note 4, paragraph 128, and Blake Case, supra note 15, paragraph 96.
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59. The Court has also written that:

based on Article 8 of the Convention it is understood that victims of violations of human rights, or their relatives, must be able to be heard and act on their respective proceedings, both looking for the clarification of facts and the punishment of the liable parties and a proper compensation. [FN17]

[FN17] Cf. Durand and Ugarte Case, supra note 4, paragraph 129, and Villagrán Morales et al. Case, supra note 4, paragraph 227.
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60. The Court has stated that the scope of Article 25(1) of the Convention includes the principle of the effectiveness of the procedural means or instruments created to guarantee those rights. The Court found that, under the Convention

[S]tates Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction. [FN18]

[FN18] Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 3, paragraph 93; Fairén Garbí and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987. Series C No. 2, paragraph 90, and Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1, paragraph 91.

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61. From the facts admitted in the instant case, it is self-evident that the relatives of the victims did not have an effective remedy that would guarantee the exercise of their rights. One result was that the proceeding prosecuted in the military court and now the proceeding in the regular criminal courts, have failed to identify the responsible parties.

62. As for the time period of the criminal proceeding, Article 8(1) of the Convention speaks of “a reasonable time”. In the instant case, the parties made the relevant arguments. The Court points to its decision in the Judgment on preliminary objections of February 4, 2000, where it wrote that:

The State has not provided a satisfactory explanation regarding the procedural measures between that date and the beginning of 1998. The State’s silence must be evaluated taking into account that, during the first seven years the procedural measures did not get beyond the investigation stage. Colombia has mentioned the progress that took place since the Human Rights Unit of the Office of the Prosecutor General took charge of the matter. But the issue in question is not what happened in 1998, but rather in the first seven years after the facts occurred. That lapse was more than sufficient for a tribunal to pronounce judgment. [FN19]

[FN19] Las Palmeras Case. Preliminary Objections, supra note 2, paragraph 38.

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63. The Court has previously held that a five-year period, counted from the date of the order instituting proceedings, goes beyond what could be construed as a reasonable time. [FN20] The same principle applies in the instant case.

[FN20] Cf., Genie Lacayo Case, Judgment of January 29, 1997. Series C No. 30, paragraph 81.

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64. Based on the foregoing considerations, and after a thorough review of procedures in the domestic criminal justice system, calculating the period that began on January 29, 1991 –the date of the order instituting the military criminal inquiry- to March 25, 1998 –the date on which the case was transferred to the jurisdiction of the regular courts- and then from May 14, 1998 –the date of the order to take up the case, issued by the Regional Prosecutor of the National Human Rights Unit of the Office of the Prosecutor General of the Nation- to the present –without a judgment of conviction being pronounced- this Court finds that in all, the criminal case has gone on for more than 10 years, a period that exceeds the parameters of reasonability referred to in Article 8(1) of the Convention. [FN21]

[FN21] Cf., Paniagua Morales et al. Case, supra note 8, paragraph 152; and Suárez Rosero Case, supra note 10, paragraph 73.

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65. Consequently, Article 8(1) of the American Convention, in relation to Article 25(1) thereof, gives the victims' relatives the right to have the victims' death effectively investigated by the State authorities; to have the persons responsible for these unlawful acts prosecuted; where appropriate, they have the right to have the proper punishment applied to the responsible parties, and they are entitled to be compensated for the damages and injuries they have suffered.

66. For all these reasons, this Court declares that the State violated articles 8(1) and 25(1) of the Convention to the detriment of the relatives of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, Edebraes Norverto Cerón Rojas, NN/ Moisés or NN/Moisés Ojeda and Hernán Lizcano Jacanamejoy.

VIII. APPLICATION OF ARTICLE 63(1)

67. The Commission requests that the State be ordered to make reparation to the families of the victims, pursuant to Article 63(1) of the Convention, through payment of just compensation, and that it order measures of non-recurrence or of satisfaction. It also requests that Colombia change the armed forces' rules and programs to adapt them to the international norms applicable to domestic armed conflicts. It is also asking that the State be ordered to pay the costs and expenses incurred by the victims' relatives to litigate in the domestic courts and before the Commission and the Court, and the reasonable fees of their attorneys, issues that, according to the Commission, should be addressed during the reparations phase.

68. The State, for its part, argues that the formulation of the Commission's request is unclear, particular the reference to the deduction of the amounts already paid in pecuniary damages in the administrative law cases, given that the relatives of Hernán Javier Cuarán Muchavisoy, Artemio Pantoja Ordóñez, Julio Milciades Cerón Gómez, Edebraes Norverto Cerón Rojas and Wilian Hamilton Cerón Rojas filed administrative law suits and the State was ordered to redress the material and moral damages they suffered as a consequence of the death of the named persons. In the case of N.N./Moisés, the State asserts that it will comply with what the Court orders, based on the evidence tendered in the proceeding. It adds that the costs incurred in the administrative-

law proceedings were already determined in the two judgments delivered. On the criminal law side, it explains that there are no costs to reimburse, as court proceedings are gratis and the victims' relatives have not taken specific measures as part of the investigation underway. As for the costs of the international proceedings, the State will abide by whatever the Court should eventually decide. Finally, the State contends that the Commission's request seeking amendment of the armed forces' regulations and programs is not compatible with the Convention's provisions.

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69. The Court believes, pursuant to Article 63(1) of the American Convention, that the State has an obligation to investigate the facts that caused these violations. Even assuming, for the sake of argument, that domestic problems make it difficult to establish the identity of the individuals responsible for crimes of this nature, the relatives of the victims still have a right to know the full facts of what happened.

70. In the instant case, the Court must open the reparations phase, to which end it is authorizing its President to take the necessary measures.

IX. OPERATIVE PARAGRAPHS

71. Now therefore,

THE COURT

unanimously

DECLARES:

1. That the State's responsibility for the deaths of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas and Edebraes Norberto Cerón Rojas, corresponding to the violation of Article 4 of the American Convention on Human Rights, was established in the two definitive judgments delivered by the Administrative Law Court of the Council of State on December 14, 1993 and January 15, 1996.

DECIDES:

2. That the State is responsible for the death of N.N./Moisés or N.N./Moisés Ojeda, in violation of Article 4 of the American Convention on Human Rights.
3. That there is insufficient evidence to determine whether Hernán Lizcano Jacanamejoy died in a skirmish or was extrajudicially executed by agents of the State, in violation of Article 4 of the American Convention on Human Rights.
4. That the State violated, to the detriment of the relatives of Artemio Pantoja Ordóñez, Hernán Javier Cuarán Muchavisoy, Julio Milciades Cerón Gómez, Wilian Hamilton Cerón Rojas, Edebraes Norverto Cerón Rojas, NN/ Moisés or NN/ Moisés Ojeda and Hernán Lizcano

Jacanamejoy, the right to a judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights.

5. To open the reparations phase, to which end it commissions its President to duly adopt any measures necessary.

Judges Cançado Trindade and Pacheco Gómez informed the Court of their Joint Concurring Opinion; Judges García Ramírez, Salgado Pesantes and Abreu Burelli advised the Court of their Joint Concurring Opinion, and Judge Barberis informed the Court of his statement. All three are attached to this Judgment.

Done at San José, Costa Rica, on December 6, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Alirio Abreu-Burelli
Sergio García-Ramírez

Julio A. Barberis
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

JOINT SEPARATE OPINION OF JUDGES A.A. CANÇADO TRINDADE AND M. PACHECO GÓMEZ

1. We have participated of the consensus in the adoption of the present Judgment on the merits delivered by the Inter-American Court of Human Rights in the case Las Palmeras, concerning Colombia, for having established the violations of Articles 4, 8(1) and 25(1) of the American Convention on Human Rights (and, in our view, in relation to Article 1(1) of it). Nevertheless, we feel obliged to leave on the records our reflections pertaining to the questions of substance dealt with by the Court, and particularly to our insatisfaction with the drafting of resolutory point n. 1 of the present Sentence. We would have preferred that this resolutory point,

in order to follow the line of the jurisprudential evolution of this Court, would have had the following drafting:

"THE COURT DECLARES THAT THE STATE IS RESPONSIBLE FOR THE VIOLATION OF ARTICLE 4 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS, IN RELATION TO ARTICLE 1(1) OF IT, TO THE DETRIMENT OF MR. ARTEMIO PANTOJA ORDÓÑEZ, MR. HERNÁN JAVIER CUARÁN MUCHAVISOY, MR. JULIO MILCIADES CERÓN GÓMEZ, MR. WILIAN HAMILTON CERÓN ROJAS AND MR. EDEBRAÍZ NORVERTO CERÓN ROJAS, AS EXPRESSLY RECOGNIZED BY THE STATE IN THE PROCEEDINGS BEFORE THIS COURT".

2. In our understanding, it is indispensable that the Inter-American Court itself determines the international responsibility of the State under the American Convention, without it being necessary to make a renvoi to decisions of national tribunals. Moreover, in the present case the State itself adopted a positive attitude in the proceedings before this international Tribunal, taking the initiative of recognizing its international responsibility under Article 4 of the American Convention, both in its counter-memorial (of 15.12.1998) [FN1] and in the public hearing of 28.05.2001 before this Court [FN2].

[FN1] For the death of Mr. Artemio Pantoja Ordóñez, Mr. Hernán Javier Cuarán Muchavisoy, Mr. Julio Milciades Cerón Gómez, Mr. Wilian Hamilton Cerón Rojas and Mr. Edebraíz Norverto Cerón Rojas (doc. cit., p. 23).
[FN2] For the death of Mr. NN/Moisés; Inter-American Court of Human Rights (IACtHR), Transcripción de la Audiencia Pública sobre el Fondo en el Caso Las Palmeras Realizada en la Sede de la Corte el 28 de Mayo de 2001, p. 3 (restricted circulation).

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3. The responsibility of the State in domestic law does not necessarily coincide with its responsibility in international law. In the cas d'espèce, the two sentences of the Chamber of the Administrative Contentieux of the Consejo de Estado constituted a positive step, in having declared, respectively, the patrimonial responsibility of the State for the death of Artemio Pantoja Ordóñez and Hernán Javier Cuarán Muchavisoy (sentence of 14.12.1993), and the administrative responsibility of the State for the death of Julio Milciades Cerón Gómez, William Hamilton Cerón Rojas and Edebraíz Dimas Cerón Rojas (sentence of 15.01.1996). Nevertheless, in the light of the American Convention, the decision of the contentious-administrative national jurisdiction does not appear to us sufficient, and even less definitive.

4. In principle, the res judicata in domestic law is not binding on an international tribunal like the Inter-American Court. It is incumbent upon this latter to determine motu propio the responsibility of the State Party for violation of the American Convention, an international treaty. The Court cannot abdicate from such determination, not even in the hypothesis that the decision of a national tribunal is entirely coincident with its own as to the merits. Otherwise, this would lead to a total juridical relativism, illustrated by the "endorsement" of a decision of a national tribunal when it is considered in accordance with the Convention, or else the determination that it does not generate, or ought not to generate, legal effects (as decided by this

Court in the recent cases of Barrios Altos, Merits, Judgment of 14.03.2001, and of Cantoral Benavides, Reparations, Judgment of 03.12.2001) when it is considered incompatible with the American Convention.

5. It may be recalled, in this respect, that, in its Judgment on preliminary objections (of 26.01.1999) in the case Cesti Hurtado versus Peru, this Court discarded the objection of the respondent State to its competence to pronounce on the personal freedom of an individual whose juridical situation had already been resolved by a definitive sentence with the authority of res judicata. In rejecting the argument, the Inter-American Court pondered that "in international jurisdiction the parties and the matter in controversy are, by definition, different from those in domestic jurisdiction" [FN3], as the substantive aspect of the controversy before the Court is whether the respondent State has violated the international obligations which it contracted in becoming Party to the Convention.

[FN3] IACtHR, Series C, n. 49, p. 20, par. 47.

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6. From the standpoint of the Inter-American Court, the only thing which is definitive is its own determination of the compatibility or otherwise with the American Convention of administrative acts and practices, national laws and decisions of national tribunals of the respondent State. No one questions the principle of the subsidiarity of the international jurisdiction, which refers specifically to the mechanisms of protection; nor should one lose sight that, at substantive level, in the present domain of protection, the norms of the international and domestic legal orders are in constant interaction, to the benefit of the protected human beings.

7. In the present case, the aforementioned sentences of the contentious-administrative jurisdiction of the respondent State established the (patrimonial and administrative) responsibility of the State, expressly and specifically by "fault of service" ("falla del servicio") of the National Police of Colombia (of the Ministry of Defence), as a result of the death of the victims. We fear that there may arise occasions in which the thin layer of formal juridicism is badly utilized so as to perpetuate impunity. In our understanding, such decisions, though they may constitute a positive step, are manifestly insufficient in the light of the norms of protection of the American Convention, bearing in mind the general duty of the States Parties of guaranteeing the free and full exercise of the protected rights.

8. It is for this reason that we consider indispensable to link expressis verbis - in the resolutory point n. 1 of the present Judgment - the violation of Article 4 of the Convention to the general obligation set forth in Article 1(1) of it, in conformity with the jurisprudence constante of this Tribunal. If one were not to accept the wide scope (encompassing all the rights protected by the Convention) of the general obligation, immediate and of fundamental importance, of guaranteeing the protected rights, set forth in Article 1(1) of the Convention, one would be depriving this latter of its effects in domestic law.

9. It is not at all surprising that the general and fundamental duty of Article 1(1) of the American Convention finds a parallel in other treaties of human rights [FN4] and of International

Humanitarian Law [FN5]. Such obligation of guaranteeing is reinforced, in Article 1(1) of the American Convention, by the additional qualification of the principle of non-discrimination. In the present case, in order to consider as definitive the condemnations of the national contentious-administrative jurisdiction (a hypothesis that we do not accept), one would have to determine whether such condemnations have effectively contributed to put an end to impunity, in order to secure the non-repetition of the wrongful acts, and to guarantee the free and full exercise of the rights protected by the Convention. In the present case, this requires demonstration.

[FN4] V.g., Covenant on Civil and Political Rights, Article 2(1), Convention on the Rights of the Child, Articles 2(1) and 38(1).
[FN5] V.g., the four Geneva Conventions of 1949 on International Humanitarian Law (Article 1) and the Additional Protocol I of 1977 to these latter (Article 1(1)).

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10. Our position coincides, moreover, with the international case-law in this respect, which has considered civil responsibility as insufficient to fulfill the requirements of international protection. Thus, in the case Yasa versus Turkey (Preliminary Objections and Merits, Judgment of 02.09.1998), for example, a chamber of the European Court of Human Rights pondered that

"an administrative-law action is a remedy based on the strict liability of the State, in particular for the illegal acts of its agents, whose identification is not, by definition, a prerequisite to bringing an action of this nature. However, the investigations which the Contracting States are obliged (...) to conduct in cases of fatal assault must be able to lead to the identification and punishment of those responsible (...). That obligation cannot be satisfied merely by awarding damages (...). Otherwise, (...) the State's obligation to seek those guilty of fatal assault might thereby disappear" [FN6].

[FN6] European Court of Human Rights (Chamber), Yasa versus Turkey case, Judgment of 02.09.1998, Reports of Judgments and Decisions, n. 88, p. 2431, paragraph 74.

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11. In the same line of reasoning, in the case Kaya versus Turkey (Preliminary Objections and Merits, Judgment of 19.02.1998), a chamber of the European Court of Human Rights decided that the violation of a right protected by the Convention could not be remedied exclusively by the establishment of civil responsibility (and the payment of compensation to the relatives of the victim) [FN7]. And, in the case Ergi versus Turkey (Preliminary Objections and Merits, Judgment of 28.07.1998), a chamber of the European Court decided that, although there did not exist substantial evidence that the security forces had caused the death of the victim, the State failed in its duty of protection of the right to life of the victim, taking into account the conduct of the forces of security and the lack of an adequate and effective investigation, - and, accordingly, it incurred into a violation of Article 2 of the European Convention [FN8].

[FN7] Paragraph 105 of the Judgment referred to.

[FN8] European Court of Human Rights (Chamber), Ergi versus Turkey case, Judgment of 28.07.1998, Reports of Judgments and Decisions, n. 81, p. 1779, paragraphs 85-86.

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12. In securing the duty of control which the State ought to exert over all its organs and agents in order to avoid successive violations of the rights conventionally protected, the thesis of the objective responsibility of the State (engaged as from the violation of its international obligations) is, in our understanding, the one which most contributes to secure the effectiveness (effet utile) of a human rights treaty and the realization of its object and purpose. On the basis of this thesis, the positive obligations of protection on the part of the State [FN9] are reinforced, with particular vigour, including the guarantee of non-repetition of the wrongful acts.

[FN9] Cf., on the matter, e.g., Jules Basdevant, "Règles générales du droit de la paix", 58 Recueil des Cours de l'Académie de Droit International de La Haye (1936) pp. 670-674; Eduardo Jiménez de Aréchaga, El Derecho Internacional Contemporáneo, Madrid, Ed. Tecnos, 1980, pp. 319-325, and cf. pp. 328-329; Ian Brownlie, System of the Law of Nations - State Responsibility - Part I, Oxford, Clarendon Press, 1983, p. 43; Ian Brownlie, Principles of Public International Law, 4th. ed., Oxford, Clarendon Press, 1995 (reprint), p. 439; Paul Guggenheim, Traité de Droit International Public, tomo II, Genève, Georg, 1954, pp. 52 and 54; L.G. Loucaides, Essays on the Developing Law of Human Rights, Dordrecht, Nijhoff, 1995, pp. 146 and 149-152; Paul Reuter, "Principes de Droit international public", 103 Recueil des Cours de l'Académie de Droit International de La Haye (1961) pp. 592-594 and 598-603; C.W. Jenks, "Liability for Ultra Hazardous Activities in International Law", 117 Recueil des Cours de l'Académie de Droit International de La Haye (1966) pp. 105-110 and 176-196; Karl Zemanek, "La responsabilité des États pour faits internationalement illicites, ainsi que pour faits internationalement licites", in Responsabilité internationale (org. Prosper Weil), Paris, Pédone, 1987, pp. 36-38 and 44-46; Benedetto Conforti, Diritto Internazionale, 5th. ed., Napoli, Ed. Scientifica, 1997, pp. 360-363; J.A. Pastor Ridruejo, Curso de Derecho Internacional Público y Organizaciones Internacionales, 6th. ed., Madrid, Tecnos, 1996, pp. 571-573.

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13. As pointed out in a Dissenting Opinion in a case before this Court almost half a decade ago, "it is one thing to act as an appeals tribunal or a court of review of the decisions of tribunals in the framework of domestic law, which the Inter-American Court cannot do. It is quite another thing, wholly distinct, to proceed, in the context of a concrete contentious case (in which the existence of victims of human rights violations has been established), to the determination of the compatibility or otherwise with the provisions of the American Convention of administrative acts and practices, national laws and decisions of national tribunals, which the Inter-American Court surely can and ought to do" [FN10].

[FN10] IACtHR, case Genie Lacayo versus Nicaragua, Resolution on Revision of Sentence, of 13.09.1997, Dissenting Opinion of Judge A.A. Cançado Trindade, Series C, n. 45, p. 48, par. 25 n. 21.

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14. In the present Judgment in the case Las Palmeras, the Court has pointed out, as to the military as well as ordinary penal process, the obstructions and delays (paragraph 56) which have made the process last for more than ten years and not yet having resulted in a sentence on the part of the Juzgado 41 Penal of the Circuit of Bogotá. The Court has, thus, correctly established the violation of Articles 8(1) and 25(1) of the Convention, - but in our view this occurs also in relation to Article 1(1) of the Convention.

15. The considerations of the Court as to the co-relation between Articles 8(1) and 25(1) fit into the line of jurisprudential construction of the evolution of the due process of law as a whole (with emphasis on the right of access to justice and the realization of this latter). The evolutive character of the due process of law itself was pointed out by the Court in its 16th Advisory Opinion, on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (1999) [FN11], - a pioneering Advisory Opinion, which has served as guidance and inspiration to the international case-law in statu nascendi on the matter.

[FN11] IACtHR, Advisory Opinion n. 16 (of 01.10.1999), Series A, n. 16, pp. 110-112, pars. 117-122, and cf. pp. 108-109, pars. 113-114.

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16. This Court has, moreover, in recent cases, sustained that, although Article 8 of the American Convention is titled "Judicial Guarantees", it is certain that it assumes that any public authority, - whether administrative, legislative or judicial, - ought to respect the guarantees established in the Convention, by means of its resolutions that determine rights and obligations of the persons [FN12]. In relation to the subject-matter of the case sub judice, the Court has also pondered that the discretionality of public power, in any matter, "has unsurmountable limits, one of them being respect for human rights" and the "guarantee of the due process" [FN13].

[FN12] IACtHR, case Baena Ricardo and Others versus Panama (Merits, Judgment of 02.02.2001), Series C, n. 72, par. 124; IACtHR, case Ivcher Bronstein versus Peru (Merits, Judgment of 06.02.2001), Series C, n. 74, par. 102; case of the Constitutional Tribunal concerning Peru (Merits, Judgment of 31.01.2001), Series C, n. 71, pars. 69-71.
[FN13] IACtHR, case Baena Ricardo and Others versus Panama (Merits, Judgment of 02.02.2001), Series C, n. 72, par. 126.

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17. The relationship of Articles 8(1) and 25(1) with Article 1(1) of the Convention in the present case is ineluctable. It may be recalled that, in the recent case of the "Street Children" (Judgment on the Merits, of 19.11.1999), concerning Guatemala, this Court has established that

"Article 25 is closely linked to the general obligation of Article 1(1) of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in

legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities" [FN14].

[FN14] IACtHR, Series C, n. 63, p. 199, par. 237.

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18. In fact, the close link between the obstruction of the duty of investigation and the persistence of the impunity cannot be denied. In the same Judgment in the case of the "Street Children", the Court pointed out that, for the determination of the international responsibility of the States for violations of human rights, it should undertake an examination of "all the domestic judicial proceedings in order to obtain an integrated vision of these acts and establish whether or not it is evident that they violated the standards on the obligation to investigate, and the right to be heard and to an effective remedy, which arise from Articles 1(1), 8 and 25 of the Convention" [FN15].

[FN15] IACtHR, Series C, n. 63, p. 194, pars. 223-224 (emphasis added).

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19. In the present case Las Palmeras, the domestic judicial activity as a whole encompasses both the administrative contentieux as well as the military and ordinary penal process. Such activity ought to produce concrete results, bearing in mind the general duty of the States Parties to the American Convention of guaranteeing the free and full exercise of the protected rights. Only thus will the non-repetition of the wrongful facts be secured. It is possible that, with the developments of contemporary International Law, and as human conscience reaches a higher degree of evolution, the rigid borderlines of civil and penal responsibility established by the legal science of the past began gradually to vanish.

Antônio Augusto Cançado Trindade
Judge

Máximo Pacheco-Gómez
Judge

Manuel E. Ventura-Robles
Secretary

JOINT OPINION OF JUDGES SERGIO GARCIA RAMIREZ, HERNAN SALGADO PESANTES AND ALIRIO ABREU BURELLI

1. The State violated the right to life, protected under Article 4 of the American Convention on Human Rights, to the detriment of Julio Milciades Cerón Gómez, William Hamilton Cerón Rojas, Edebraes Norberto Cerón Rojas, Artemio Pantoja Ordóñez and Hernán Javier Cuarán Muchavisoy.

2. It has been duly proven that the violation was caused by the conduct of agents of the State.

3. The facts in this case cry out for a judgment of conviction. Those of us who signed this opinion all share the view that conviction was the proper judgment.

4. The American Convention states that the function of international protection of human rights is one of "reinforcing or complementing the protection provided by the domestic law of the American States." States must, first of all, rule on the unlawfulness of the acts; the international court is called upon to rule on the unlawfulness of the facts only when a State fails to do so.

5. In the case the Court examined, Colombia's administrative law courts had, in two separate instances, ruled that the conduct was unlawful and that the State was liable, and thus delivered judgments of conviction.

6. The facts in this case and the conduct of the agents of the State are described, in compelling terms, in the February 23, 1995 ruling of the Nariño Administrative Law Court. Excerpts from the judgment appear below:

a) "The National Police have grossly misrepresented the circumstances of time, mode and place that put them (the victims) at the scene of the events, so much so that they (the victims) are presented as anti-social and were treated as such following their unjust execution; the fiction concocted with regard to their deaths is completely at odds with the truth."
b) "It was there, in the house to which the (Mocoa) Provincial Prosecutor refers that these unfortunate citizens were killed. They were then portrayed as criminals. The burning of their clothes would eventually become incriminating evidence of the way in which the respondent (Nation-National Police) has twisted the facts in this case, as the bodies then turned up dressed in uniforms of the National Police."
c) The "regrettable acts perpetrated at the Las Palmeras School (were) not the anti-subversive clash that the Police described. The analysis of the bullet holes in the schoolhouse showed that all were made by bullets fired into the schoolhouse from the outside. Concerning the visibility factor and the direct line of view at the scene of the incident, the record shows that vegetation in the area of this barbarous act is sparse."
d) "The report of the Commandant of the Fourth Company of the Special Armored Force, dated January 23, 1991 (…) is a lie, because there was never any armed clash with subversives at Villa Nueva; (the victims) were not dressed in National Police uniforms before being executed by National Police units; Mr. Julio Milciades Cerón Gómez, who died together with his (sons) Guido William and Edebraes Dimas, were not 'outlaws' and were carrying none of the weapons of war or provisions described in that report."
e) "The body of evidence leaves no doubt in the mind of the court as tog the involvement of anti-subversive forces; the place and the time have been sufficiently established to remove any doubt as to the act perpetrated."
f) The "assault upon personal integrity, protected by law, was caused by an action attributable to police officers on duty at the place and at the time of the event."

g) "There is nothing in the record that would exonerate the respondent institution of blame. The disciplinary decision, which went in favor of the suspect officers, noncommissioned officers and agents appears to denote solidarity within the police ranks more than an objective and impartial culmination of the corresponding action."
h) "Nothing justified the use of this type of action (public force) against defenseless citizens who posed no danger whatever to the military and police forces."

7. In the proceedings before the Inter-American Court, the representative for Colombia acknowledged the facts and admitted the State's responsibility.

8. The judgments pronounced by the Colombian administrative law courts imply, for purposes of the present case, that there is already a verdict of guilt against the State. Had there not been, it would have been proper for the Inter-American Court to rule on this point. The undersigned are convinced that the Court would have found that the right to life recognized in Article 4 of the American Convention had been violated.

9. Furthermore, despite the long period of time that has passed since the events occurred, the State has not complied with its duty to investigate, prosecute and punish the individuals responsible. Quite to the contrary, there have been multiple delays and false representations, all in order to delay or prevent prompt investigation of the facts and punishment of those responsible. It is, therefore, right and proper that the Court should find that the State violated articles 8 and 25 of the American Convention.

Sergio García-Ramírez
Judge

Hernán Salgado-Pesantes
Judge

Alirio Abreu-Burelli
Judge

Manuel E. Ventura-Robles
Secretary

JUDGE JULIO A. BARBERIS MAKES THE FOLLOWING STATEMENT:

I do not agree with Chapter VII of the foregoing decision, "Violation or Articles 8 and 25. Right to Fair Trial and Right to Judicial Protection". The judgment should have based violation of articles 8(1) and 25(1) of the Convention by Colombia, with no further consideration, on the following two facts recognized by Colombia:

a) The period of more than ten years elapsed since the Las Palmeras case took place, without any definitive judgment having been made as yet regarding its authors;
b) The hindrances and obstacles placed by the agents of the State to obstruct criminal prosecution.

Julio A. Barberis
Judge ad hoc

Manuel E. Ventura-Robles
Secretary