In the Myrna Mack Chang case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Articles 29, 55, 56 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and to article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") issues the instant Judgment.

I. INTRODUCTION OF THE CASE

1. On June 19, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Guatemala (hereinafter "the State" or "Guatemala"), originating in complaint Nº 10.636, received at the Secretariat of the Commission on September 12, 1990.

2. The Commission filed the application on the basis of Article 51 of the American Convention, for the Court to decide whether the State violated Articles 4 (Right to Life), 8 (Right to Fair Trial), 25 (Judicial Protection) in combination with Article 1(1) (Obligation to Respect Rights) of the American Convention to the detriment of Myrna Elizabeth Mack Chang (hereinafter "Myrna Mack Chang") and her next of kin, "due to the extra-legal execution of Myrna Mack Chang [that took place] on September 11, 1990 in Guatemala City."

3. The Commission also asked the Court to order the State to make all the pecuniary and non-pecuniary reparations stated in the application. Finally, it asked the Inter-American Court to

order Guatemala to pay the costs arising from processing of the case both domestically and internationally before the bodies of the Inter-American System for Protection of Human Rights.

4. According to the Commission, Guatemala is responsible for the arbitrary deprivation of the right to life of Myrna Mack Chang, because the murder of the victim, committed on September 11, 1990, was the consequence of a military intelligence operation, springing from a prior plan and carefully prepared by the high command of the Presidential General Staff. Said plan involved, first, selecting the victim in a precise manner due to her professional activity; second, brutally murdering Myrna Mack Chang; and third, covering up the direct perpetrators and accessories of the murder, obstructing the judicial investigation and insofar as possible ensuring that impunity prevailed with respect to the murder. The Commission added that the State has not resorted to all the means available to it with the aim of conducting a serious and effective investigation that could be the basis for complete elucidation of the facts, prosecution, trial, and punishment of those responsible, both direct perpetrators and accessories, within a reasonable term. This situation has been made worse by the existence of de facto and legal mechanisms, tolerated by the Guatemalan State, that obstruct adequate administration of justice.

II. COMPETENCE

5. Guatemala has been a State Party to the American Convention since May 25, 1978, and it accepted the contentious jurisdiction of the Court on March 9, 1987. Therefore, the Court is competent to hear the instant case, pursuant to the terms of Articles 62 and 63(1) of the Convention.

III. PROCEEDING BEFORE THE COMMISSION

6. On September 12, 1990, the Comisión Guatemalteca de Derechos Humanos [or Guatemalan Human Rights Committee] filed the complaint before the Inter-American Commission and since April, 1991, the Lawyers Committee for Human Rights and Georgetown University continued the case. Several United States law firms participated in the proceeding, as co-applicants, together with the Lawyers Committee for Human Rights.

7. On September 17, 1990, the Commission opened the case as Nº 10.636.

8. On March 5, 1996, the Commission adopted Report Nº 10/96 in which it declared the case admissible. The Commission also made itself available to the parties with the aim of attaining a friendly settlement of the matter, pursuant to Article 48(f) of the American Convention.

9. On March 3, 2000, the Guatemalan State recognized its “institutional responsibility” in the instant case, during a public hearing at the seat of the Inter-American Commission. On that same date, the State and the applicants reached an agreement to advance the criminal proceedings under domestic jurisdiction, for which they established a verification committee in which they agreed to “come together through willingness to reactivate the respective investigation and further the judicial proceeding underway in Guatemala.”

10. On May 26, 2000, the applicants and the State signed an agreement on the way the verification should take place, and on June 22 of that same year they signed an agreement on the framework and the start of the "verification," on impelling reactivation of the judicial proceeding, on verification actions and reports as well as on procedural thrust, communication among the parties, and publication of said reports.

11. On July 25 and 26, 2000, the Inter-American Commission officially appointed Alfredo Balsells Tojo and Gabriela Vásquez Smerilli as the verifiers.

12. On August 23 and October 4, 2000, the verifiers submitted their first and second reports, respectively, to the Commission. In the latter report, the verifiers reached the conclusion "that the proceeding against the military accused of being the accessories of the murder of anthropologist Myrna Elizabeth Mack Chang began in 1994 and to date we cannot envision that it will move forward in the future without judicial obstacles, because from the start there have been all sorts of challenges that have obstructed compliance with due process in the development of the case."

13. On October 5, 2000, during a hearing before the Commission, Gabriela Vásquez Smerilli presented the second verification report regarding the criminal proceeding. At that same hearing, the applicants affirmed that they did not see any serious commitment and willingness of the State to move the case forward so as to try and to effectively punish the accessories of the murder of Myrna Mack Chang, for which reason they would no longer consider the possibility of reaching a friendly settlement in this case.

14. On March 8, 2001, the Commission, pursuant to Article 50 of the Convention, adopted Report Nº 39/01, in which it reached the conclusion that:

[t]he acknowledgment of responsibility by the Guatemalan State has full juridical value in accordance with the principles of international law and place[s] it under to obligation to effectively redress the violations it committed, pursuant to the provisions of the American Convention. Over a year after the acknowledgment of responsibility, the Guatemalan State has undertaken no effective actions to lift the cloak of impunity that still exists regarding the accessories of the extra-legal execution of Myrna Mack. Such inaction by the Guatemalan State leads the Commission to affirm that the State of Guatemala continues to lack a serious willingness to investigate and effectively punish all those responsible for the murder of Myrna Mack Chang in accordance with the provisions of the American Convention on Human Rights.
[…]
Based on these conclusions, the Commission made the following recommendations to the State:
1. To conduct a complete, impartial and effective investigation with the aim of trying and punishing all participants in the murder of Myrna Mack Chang.
2. To adopt all necessary measures for the next of kin of Myrna Mack Chang to receive adequate and timely reparation for the violations found here.
3. To remove all obstacles and de facto and legal mechanisms that maintain impunity in the instant case.
4. To replace the Presidential General Staff as soon as possible in compliance with the agreement and as set forth in the Peace Accord.

15. On March 19, 2001 the Commission sent the aforementioned report to the State and granted it two months to comply with its recommendations. On May 18 of that same year, the State requested of the Commission a ten-day extension to submit its report on compliance with the recommendations, and the request was granted.

16. On May 30, 2001, the State submitted its reply to Report N° 39/01 by the Commission.

17. On June 14, 2001 the Commission decided to submit the case to the jurisdiction of the Court.

IV. PROCEEDING BEFORE THE COURT

18. The Commission filed the application before the Court on June 19, 2001, and attached 52 annexes. The Commission also sent various documents, issued after the application was filed, in connection with the domestic criminal proceeding and press reports.

19. Pursuant to Article 22 of the Rules of Procedure, the Inter-American Commission appointed Claudio Grossman as Delegate, and Ariel Dulitzky as legal advisor. Pursuant to Article 33 of the Rules of Procedure, the Commission also stated the names and addresses of the next of kin of Myrna Mack Chang and informed the Court that the latter would be represented by the sister of the victim, Helen Mack Chang.

20. On July 26, 2001, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application by the President of the Court (hereinafter "the President"), notified the State, including the annexes, and informed it of the terms to answer the application and to appoint its agents in the proceeding. That same day, the Secretariat also informed the State of its right to appoint an ad hoc Judge to participate in consideration of the instant case.

21. On that same date, pursuant to the provisions of Articles 35(4), 35(1)d) and 35(1)e) of the Rules of Procedure, the application was notified to the representatives of the next of kin of the victim, and to Helen Mack Chang, for them to submit their brief with requests, pleadings, and evidence.

22. On August 6, 2001, the representatives of the next of kin of the victim filed a note together with which they forwarded a copy of the power of attorney granted by Helen Mack Chang, who in turn had been appointed as proxy for the other next of kin of Myrna Mack Chang, in favor of Alberto Bovino; Jeff Clark, representing the Lawyers Committee for Human Rights; Elijah Barret Prettyman Jr., Lyndon Tretter, Taylor Lee Burke, Shannon Tovan MacDaniel and David Kassenbaum, of the United States law firm Hogan & Hartson; and Viviana Krsticevic and Roxanna Altholz representing the Center for Justice and International Law (hereinafter "CEJIL") to represent the next of kin of the victim before the Court. They also appointed Taylor Lee Burke as common intervener.

23. On August 23, 2001, the State reported that it had appointed Francisco Villagrán Kramer as Judge ad hoc and Jorge García Laguardia as Agent.

24. On August 31, 2001, the representatives of the next of kin of the victim submitted their brief with requests, pleadings, and evidence. On September 13, 2001, they also submitted the original brief and its annexes. In the aforementioned brief, said representatives asked the Court to find that Guatemala violated Articles 4, 8, 25 and 1(1) of the American Convention to the detriment of the victim and Articles 5, 8, 25 and 1(1) of that same Convention to the detriment of her next of kin. They furthermore requested that the State be ordered to adopt various pecuniary and non-pecuniary measures of reparation, as well as to pay the costs derived from processing of the case both under domestic jurisdiction and before the bodies of the inter-American system for the protection of human rights. On November 1, 2001, the Commission submitted its observations on the brief filed by said representatives, ratifying the application in its entirety and stating that it had no specific objections to their requests.

25. On September 26, 2001, Guatemala submitted its brief answering the application, in which it filed nine preliminary objections, [FN1] together with its annexes. In said brief, the State requested that the Court consider the application answered negatively regarding the non-disputed parts and those on which it did not state an explicit acknowledgment. Furthermore, it requested that, based on the preliminary objections raised, the Court rule the application filed by the Commission inadmissible. On October 30, 2001, the Secretariat, following instructions by the President, granted a 30-day term, beginning on the date of receipt of said brief, for the Commission and the representatives of the next of kin of the victim to submit their written pleadings on the preliminary objections filed by the State.

[FN1] The preliminary objections raised by the State were as follows: "objection regarding non-exhaustion of domestic remedies; invalidity of the purpose of the application; lack of veracity with respect to compliance of the State with its duty to prosecute and punish for the violation stated; lack of a decision regarding the arguments of the State on variations and modifications to the content of the report by the Inter-American Commission on Human Rights; non-appreciation of implementation by the State of the recommendations included in the report by the Inter-American Commission on Human Rights; erroneous and extensive interpretation of the recognition effected by the State of Guatemala; inadmissibility of the application as a consequence of lack of a decision regarding the arguments of the State pertaining to non-exhaustion of domestic remedies at the procedural phase of decision on admissibility of the case by the Inter-American Commission on Human Rights; collision of juridical systems (domestic versus regional inter-American) to the detriment of the right of the State and of the accused; erroneous interpretation by the Inter-American Commission on Human Rights that the remedies and observance of the domestic legal system constitute in and of themselves a violation of the human right to the administration of justice."

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26. On November 29, 2001, the Commission filed its brief with observations on the preliminary objections, in which it requested that they be rejected.

27. On November 30, 2001, the representatives of the next of kin of the victim submitted their brief with observations on the preliminary objections filed by the State and its annexes, and they expressed that the Commission conclusively addressed the considerations that make it necessary to reject all the preliminary objections filed by the State, and they stated their agreement with said arguments.

28. On August 28, 2002, the representatives of the next of kin of the victim filed a brief in which they objected to Francisco Villagrán Kramer as Judge ad hoc in the instant case.

29. On October 3, 2002, the State reported that it had appointed Arturo Martínez Gálvez as Judge ad hoc in the instant case, in substitution of Francisco Villagrán Kramer.

30. On November 8, 2002, the Secretariat asked the Commission and the representatives of the next of kin of the victim to submit a definitive list of witnesses and expert witnesses, respectively, to consider summoning them to a public hearing.

31. On November 21, 2002, the representatives of the next of kin of the victim filed a brief in which they reiterated their offer of six expert witnesses: Mónica Pinto, Katharine Doyle, Bernardo Morales, Alicia Neuburger, Iduvina Hernández, and Javier Llobet Rodríguez, and they desisted from the offer of the following six expert witnesses: Christian Tomuschat, Allan Brewer-Carias, Rodolfo Robles Espinoza, Héctor Rosada, Francisco Chávez Bosque, and Frank La Rue. They also reiterated their offer as witnesses of the following eight persons: Helen Mack Chang, Monsignor Julio Cabrera Ovalle, Virgilio Rodríguez Santana, Rember Larios Tobar, Clara Arenas Bianchi, Henry Monroy Andrino, Lucrecia Hernández Mack, and Carmen de León-Escribano Schlotter, and they desisted from offering the testimony of Rubio Caballeros Herrera. They also offered, for the first time, Nadezhda Vásquez Cucho as a witness. Finally, said representatives requested that Gabriela Vásquez Smerilli appear as a witness rather than as an expert witness, as they had originally proposed.

32. On November 21, 2002, the Commission filed a brief in which it reiterated its offer of expert witness Mónica Pinto and it desisted from its offer of the other expert witnesses proposed. The Commission also reiterated its offer of the following seven witnesses: Helen Mack Chang, Monsignor Julio Cabrera Ovalle, Virgilio Rodríguez Santana, Rember Larios Tobar, Clara Arenas Bianchi, Henry Monroy Andrino, and Lucrecia Hernández Mack, and it desisted from its offer of witness Rubio Caballeros Herrera. For the first time, it proposed Nadezhda Vásquez Cucho as a witness. Finally, the Commission included as a witness in the definitive list Gabriela Vásquez Smerilli, whom they had originally offered as an expert witness.

33. On November 22, 2002, the Secretariat forwarded to the State the definitive list of witnesses and expert witnesses proposed by the Commission and the representatives of the victim, and granted them until the 27th of that same month and year to submit whatever observations they deemed pertinent.

34. On November 27, 2002, Guatemala submitted its observations on the offer of witnesses and expert witnesses made by the Commission and the representatives of the next of kin of the victim. Guatemala stated that it had no objections to the witnesses, but that regarding the expert

witnesses it could not state its position because it did not have any background on them, for which reason it asked the Court to forward the curricula vitae of the expert witnesses proposed "to be able to state its position on [their] participation." In said brief, the State also reserved the right to offer and propose its witnesses and expert witnesses in the instant case, before the ruling on the preliminary objections raised. On November 29, 2002, the Secretariat, following instructions by the President, informed the State that it had already forwarded to the State, on July 26, 2002, the curricula vitae of the expert witnesses proposed by the Commission and by the representatives of the next of kin of the victim.

35. On November 30, 2002 the President issued an Order in which he admitted the testimony and expert opinions offered by the Commission and by the representatives of the next of kin of the victim. He also summoned the parties to a public hearing to be held at the seat of the Inter-American Court, beginning on February 18, 2003, to hear their final oral pleadings on preliminary objections, the merits, and possible reparations, as well as the testimony of Monsignor Julio Cabrera Ovalle, Virgilio Rodríguez Santana, Rember Larios Tobar, Henry Monroy Andrino, Lucrecia Hernández Mack, Helen Mack Chang, Gabriela Vásquez Smerelli, and Nadezhada Vásquez Cucho and the expert opinion of Mónica Pinto proposed both by the Commission and by said representatives. He also decided to hear the expert opinion of Katharine Doyle, Alicia Neuburger, Iduvina Hernández, and Javier Llobet Rodríguez, offered only by the representatives of the next of kin of the victim. Finally, he ordered that the testimony of Clara Arenas Bianchi and Carmen de León-Escribano Schlotter and the expert opinion of Bernardo Morales Figueroa be received in writing.

36. On January 17, 2003, the representatives of the next of kin of the victim asked the Court, based on Article 43 of the Rules of Procedure, to summon Henry El Khoury Jacob as an expert witness during the public hearing ordered, in substitution of Javier Llobet Rodríguez, because the latter was appointed as a Judge of the Criminal Court of Appeal in Costa Rica "[and] his participation [in the public hearing] faces insuperable logistic and ethical difficulties." On January 21, 2003, the Secretariat, following instructions by the President, addressed the Commission and the State for them to submit whatever observations they deemed pertinent regarding the requested substitution of the expert witness, before the 27th of that same month and year. Neither the Commission nor the State objected to said substitution.

37. On January 17, 2003, the representatives of the next of kin of the victim sent the sworn written statements of Carmen de León-Escribano Schlotter and Clara Arenas Bianchi and the expert opinion of Bernardo Morales Figueroa.

38. On January 20, 2003, Helen Mack Chang sent a letter in which she rescinded the previous power of attorney in favor of attorneys Taylor Lee Burke and Jeff Clark and she granted a power of attorney to Alberto Bovino, Robert O. Varenick, Elijah Barret Prettyman Jr., Lyndon Tretter, Shannon Tovan McDaniel, David Kassebaum, Viviana Krsticevic, and Roxana Altholz. She also appointed David Kassebaum as common intervener.

39. On January 30, 2003, the President issued an Order in which he accepted the offer of expert witness Henry El Khoury Jacob as a substitute for Javier Llobet Rodríguez, for him to

render an expert opinion during the public hearing to be held beginning on February 18, 2003, in the instant case.

40. On February 14, 2003, the State submitted a brief in which it stated that it had decided to maintain and reiterate before the Court, in the same and literal terms stated before the Commission in March, 2000, "the international acceptance of its Institutional Responsibility in the Myrna Mack Chang case No. 10,636."

41. On February 17, 2003, the Secretariat, under instructions by the full Court, asked the Commission and the representatives of the next of kin of the victim to submit whatever observations they deemed pertinent regarding the February 14, 2003 communication by the State. Said observations were received on the 17th of that same month and year (infra paras. 76 and 77).

42. On February 18, 2003, during the preliminary meeting before the public hearing summoned for that day, the State submitted a brief entitled "brief modifying the answer of the State of Guatemala to the application filed by the Inter-American Commission on Human Rights in the Myrna Mack Chang Case No. 10,636 of July 26, 2001," in which it desisted from the preliminary objections filed.

43. On February 18, 2003, the Court held the public hearing summoned in the instant case, at its seat, and at which there appeared:

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate;
Eduardo Bertoni, representative; and
María Claudia Pulido, advisor;

for the representatives of the next of kin of the victim:

Alberto Bovino, representative;
Roxanna Altholz, on behalf of CEJIL;
Elijah Barret Prettyman Jr., of Hogan & Hartson L.L.P.;
Lyndon Tretter, of Hogan & Hartson L.L.P.;
Shannon Tovan McDaniel, of Hogan & Hartson L.L.P.; and
David Kassebaum, of Hogan & Hartson L.L.P.;

for the State of Guatemala [FN2]:

Ricardo Alvarado Ortigoza, Ambassador of the State of Guatemala before the Permanent United Nations Mission; and
Cruz Munguía Sosa, Deputy Executive Director of the Presidential Human Rights Committee;

witnesses proposed by the Commission and by the representatives of the next of kin of the victim:

Monsignor Julio Cabrera Ovalle;
Virgilio Rodríguez Santana;
Rember Larios Tobar;
Henry Monroy Andrino;
Lucrecia Hernández Mack;
Helen Mack Chang; and
Gabriela Vásquez Smerilli;
Nadezhada Vásquez Cucho;

expert witness proposed by the Commission and by the representatives of the next of kin of the victim:

Mónica Pinto;

expert witnesses proposed by the representatives of the next of kin of the victim:

Katharine Doyle;
Alicia Neuburger;
Iduvina Hernández; and
Henry El Khoury Jacob.

[FN2] The second day of the public hearing, the agents of the State withdrew from the hearing. Subsequently, they appeared for the presentation of the final oral written pleadings on the case.

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44. At the start of the public hearing, on February 18, 2003, the Stated desisted from all the preliminary objections and reiterated what it stated in the brief submitted before the beginning of that hearing (supra para. 42). The Commission and the representatives of the next of kin of the victim, in turn, referred to the statement by Guatemala.

45. On February 18, 2003, the Court issued an Order in which it decided to receive the waiver by the State of the preliminary objections it had filed, and to continue the public hearing summoned in the Order of the President of November 30, 2002, as well as the procedural actions pertaining to the proceedings on the merits and possible reparations in the instant case.

46. On the second day of the public hearing, on February 19, 2003, after the first four witnesses, the Agent for Guatemala stated before the Court the decision of the State to withdraw from the public hearing and to return during its conclusion “to state its final position regarding this hearing.”

In this regard, the President stated that:

[w]ith respect to what the Agent has stated, I merely wish to read the provision of the Rules of Procedure of the Court in case of inaction. The Rules of Procedure provide, in Article 27, paragraph 1, that when a party abstains from acting the Court will, on its own motion, further the proceedings until their completion. And in paragraph two, "when a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that stage." Therefore, we await the presence of the State to present its final position at the appropriate time in these public hearings.

After this, the Agents of the State withdrew from the public hearing, which continued that same day with the testimonies and expert opinions ordered and presentation of a video recording of an interview with Noel de Jesús Beteta Álvarez. On the following day, February 20, 2003, the Agents of the State appeared once again at the public hearing to make their final oral pleadings. The representatives of the next of kin of the victim and the Commission, in turn, presented their final oral pleadings. The Commission also presented a copy of Communiqué No. 032-2003 of February 19, 2003 of the Ministry of Foreign Affairs entitled "[e]l Estado de Guatemala contribuye a la justicia en el Caso Mack Chang aceptando la responsabilidad institucional ante la Corte Interamericana de Derechos Humanos" ["[t]he State of Guatemala contributes to justice in the Mack Chang Case accepting its institutional responsibility before the Inter-American Court of Human Rights"].

47. On February 24, 2003, the State submitted a brief in which it reported on the "true scope of the acceptance of responsibility by Guatemala in the Myrna Mack Chang case." In this regard, on February 25, 2003, the Secretariat, following the instructions given by the Judges of the Court, granted the Commission and the representatives of the next of kin of the victim until March 3, 2003, to submit their observations on said brief by the State, and these were received that day.

48. On March 3, 2003 the State submitted a brief entitled "Documento aclaratorio del reconocimiento de responsabilidad internacional por parte del Estado de Guatemala en el caso 10.636 'Myrna Mack Chang'" ["Document clarifying the acknowledgment of international responsibility by the State of Guatemala in the 'Myrna Mack Chang' case No. 10,636"]. In said document, the State explained "the mistake made in the note it [sent] on February 14 and, specifically, in the presentation made by the State of Guatemala before the [...] Court at the public hearing on February 18 of this year."

49. On March 14, 2003, the Commission and the representatives of the next of kin of the victim submitted their observations on the aforementioned March 3, 2003 document filed by the State.

50. On May 6, 2003, the Secretariat informed the parties that, following instructions by the President, it granted them until June 9 of that same year to submit their final written pleadings.

51. On June 10, 2003, the representatives of the next of kin of the victim sent their final written pleadings and their annexes.

52. On June 24, 2003, after being granted an extension, the Commission submitted its final written pleadings.

53. The State did not submit final written pleadings within the term allowed for this purpose.

54. On August 6, 2003, the Secretariat, following instructions by the President, pursuant to Article 44 of the Rules of Procedure, asked the Commission, the representatives of the next of kin of the victim and the State to submit the life expectancy indexes for Guatemala from 1990 to the present, as well as the rate of variation of the consumer price indexes from 1998 to the present, as evidence to facilitate adjudication of the case. That same day, it also asked the Commission, as evidence to facilitate adjudication of the case, for the birth certificate of Vivian Mack Chang, and it asked the representatives of the next of kin of the victim for a certification of the marriage of Myrna Mack Chang and Víctor Hugo Hernández Anzueto; a certification of the marriage status of Myrna Mack Chang at the time of her demise; a copy of the case file of the ongoing criminal proceeding on the murder of Myrna Mack Chang from the October 4, 2001 ruling of the Constitutional Court of Guatemala, in which it designated the Second Chamber of the Court of Appeals to decide on the amparo remedy filed by Juan Oliva Carrera on July 23, 2001, to the present time, and copies of several actions carried out within the aforementioned criminal proceeding before October, 2001.

55. On September 4, 2003, the State submitted several documents that were requested as evidence to facilitate adjudication of the case. On September 5, 2003, the Commission and the representatives of the next of kin of the victim submitted the documents requested of them as evidence to facilitate adjudication of the case.

56. On September 4, 2003, the Secretariat, following instructions by the President, asked the State, pursuant to Article 44(1) of the Rules of Procedure, to send the following documents as evidence to facilitate adjudication of the case: a copy of the file of the ongoing criminal proceeding for the murder of Myrna Mack Chang from the October 4, 2001 ruling of the Constitutional Court of Guatemala, in which it designated the Second Chamber of the Court of Appeals to decide on the amparo remedy filed by Juan Guillermo Oliva Carrera on July 23, 2001, to the present time, and copies of several actions carried out within the aforementioned criminal proceeding before October, 2001.

57. On October 15, 2003, the State requested an extension to the period given to send the evidence to facilitate adjudication of the case, requested by this Secretariat (supra para. 54) and it submitted some of the documents requested. In this regard, the Secretariat, following instructions by the President, granted said extension until October 30, 2003. On October 24 and 27, 2003, the State submitted some of those documents.

VI. PROVISIONAL MEASURES

58. On August 9, 2002, the Inter-American Commission filed before the Inter-American Court, pursuant to Articles 63(2) of the American Convention and 74 of the Rules of Procedure of the Commission, a request for provisional measures in favor of Helen Mack Chang and the members of the Myrna Mack Foundation. In said brief, the Commission based its request on several facts that endangered the life and the safety of these persons because “there have been a number of threats and acts of harassment against witnesses, judges, prosecutors, policemen,

attorneys, employees of the [Myrna Mack Foundation], and next of kin and friends of [Myrna Mack].”

59. On August 14, 2002, the President ordered adoption of urgent measures, in which he ordered the State to adopt, forthwith, such measures as might be necessary to protect the life and the personal integrity of Helen Mack Chang and of the members of the Myrna Mack Foundation. [FN3]

[FN3] Cf. Helen Mack Chang et al. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of August 14, 2002. Series E No. 4.

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60. On August 26, 2002 the Court decided to ratify in its entirety the August 14, 2002 Order of the President and to adopt, forthwith, such measures as might be necessary to protect the life and the personal integrity of Helen Mack Chang, Viviana Salvatierra and América Morales Ruiz, of Luis Romero Rivera and of the other members of the Myrna Mack Foundation. [FN4]

[FN4] Cf. Helen Mack Chang et al. Provisional Measures. Order of the Inter-American Court of Human Rights of August 26, 2002. Series E No. 4.

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61. On February 21, 2003, one day after the end of the public hearing held in the instant case, and in connection with a request by the representatives of the next of kin of the victim and the statements by expert witness Iduvina Hernández, the Court decided ex officio to expand the provisional measures. To this end, it ordered the State to adopt such measures as might be necessary to protect the life and personal integrity of the next of kin of Myrna Mack Chang, i.e.: Zoila Chang Lau, the mother; Marco Mack Chang, brother; Freddy Mack Chang, brother; Vivian Mack Chang, sister; Ronald Chang Apuy, cousin; Lucrecia Hernández Mack, daughter; and the latter’s children; as well as that of Iduvina Hernández. [FN5]

[FN5] Cf. Helen Mack Chang et al. Provisional Measures. Order of the Inter-American Court of Human Rights of February 21, 2003. Series E No. 4. Note: in this Order, beneficiary Ronald Chang Apuy is identified as Ronnie Chang Apuy. In the instant Judgment, he is called Ronald Chang Apuy in accordance with his sworn statement. Cf. sworn statement of August 22, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-02, leaf 2243).

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62. On April 17, 2003, the Inter-American Commission filed before the Inter-American Court, pursuant to Articles 63(2) of the American Convention and 25 of the Rules of Procedure, a request for expansion of the provisional measures ordered in this case to protect Jorge Lemus Alvarado, “a witness in the case laid before the domestic courts” regarding the murder of Myrna Mack Chang, and his next of kin. In said brief, the Commission stated that Jorge Lemus

Alvarado "has been suffering a number of grave acts of harassment and aggression by agents of the Guatemalan State."

63. On April 25, 2003, the President of the Court decided to order the State to adopt, forthwith, such measures as might be necessary to protect the life and personal integrity of Jorge Lemus Alvarado and of his next of kin. [FN6]

[FN6] Cf. Helen Mack Chang et al. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 25, 2003. Series E No. 4.

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64. On June 6, 2003, the Court ratified the April 25, 2003 Order of the President and, in turn, ordered Guatemala to maintain the provisional measures in favor of all the persons protected by the previous Orders. [FN7]

[FN7] Cf. Helen Mack Chang et al. Provisional Measures. Order of the Inter-American Court of Human Rights of June 6, 2003. Series E No. 4.

VI. ACKNOWLEDGMENT OF RESPONSIBILITY BY THE STATE

65. In the instant case there has been a dispute between the parties regarding the acquiescence and the scope of the acknowledgment of international responsibility by the State. For this reason, and in light of the provisions of Article 52 of the American Convention, the Court will decide on the validity and scope of the acquiescence and its juridical effects. To this end, it will now summarize the arguments of the State, as well as the respective pleadings of the Commission and of the representatives of the next of kin of the victim.

Arguments of the State and pleadings of the Inter-American Commission and of the representatives of the next of kin of the victim

66. On March 3, 2000, during a public hearing at the seat of the Commission, the State acknowledged its "institutional responsibility" in the instant case, in the following terms: "[t]he Government acknowledges the institutional responsibility of the State in the murder of Myrna Mack Chang, as well as delay and denial of justice." At that time, the parties also signed an agreement that laid out certain commitments of the State with respect to the ongoing criminal proceeding under domestic jurisdiction.

67. At said hearing, the State also pointed out that "the new [G]overnment, echoing these situations, has proclaimed that the commitments undertaken in the Peace Accord are State commitments and due compliance with them is not open to question […]".

68. That same day, in another document issued by COPREDEH, submitted to the Secretariat of the Commission, the State affirmed that:

the Government of Guatemala ratifies and reiterates that in the case of the murder of anthropologist Myrna Mack Chang it is evident, notorious, and there should be no discussion still seeking to question or deny said facts that took place in October, 1990 in the capital city of Guatemala.
[…]
What happened to Anthropologist Myrna Mack and her family is one of the paradigmatic cases ensuing from the our country's legacy of 36 years of internal warfare, it is the past, in a war in which there was no system of law, nor was there an efficient and effective administration of justice. This is one of the many human rights violations that fatidically took place at that time.
In a certain manner, the context of an internal armed conflict in which the armed forces developed their own strategies of counterinsurgency and indiscriminate repression, should be evaluated as a strong probability of subordination of the administration of justice to military influence, as factors that may have had an impact on the difficulties and irregularities in the proceeding, and which the applicant has repeatedly pointed out in the instant case.
The fact that the direct perpetrator of the murder of the anthropologist was, when he committed the act, a specialist of the Guatemalan Army, as was stated in the judgment [that found him guilty], in fact entails possible institutional responsibility of the State, which can also ensue due to the inactivity, delay, and slowness of the proceeding against other Army officers who have been mentioned, opened by order of the Supreme Court of Justice.
Without addressing and analyzing the causes which the applicant gives for slow progress of the proceeding begun in February, 1994, the Government of Guatemala accepts and recognizes as a matter of special concern that after 6 years only the investigative phase has been completed, and that the trial hast not yet begun despite the fact that it was opened in January, 1999.

69. As was pointed out before, in Report Nº 39/01 of March 8, 2001, adopted pursuant to the provisions of Article 50 of the American Convention, the Commission reached the conclusion that the acknowledgment of responsibility made by the State has full legal value in accordance with the principles of international law and places it under the obligation to redress the violations committed by it, pursuant to the provisions of the American Convention. The State, one year after having acknowledged its responsibility, has not carried out actions to eliminate the impunity that still covers the accessories of the extra-legal execution of Myrna Mack Chang. The Commission maintains that Guatemala still lacks a serious will to investigate and punish those responsible for the murder of Myrna Mack Chang (supra para. 14).

70. In its May 30, 2001 brief (supra para. 16), in response to Confidential Report 39/01 of the Commission, the State argued that:

The Government of Guatemala […] explicitly and clearly stated that it would not address the causes of the delay, but rather it expressed its concern regarding said delay.
it does not share the view of the Commission (expressed in paragraph 29 of Confidential Report No. 39/01) that "[i]t is the understanding of the Commission that the acknowledgment of responsibility by the Guatemalan State in the instant case necessarily involves acceptance of the central facts alleged and with respect to which the Commission will carry out the respective analysis […]," because the Commission has misunderstood a clear and precise recognition by the State, from which it is not possible to derive extensive implications that seek to include total

acceptance of the facts and of the allegations as the applicant does. Acknowledgment of institutional responsibility derived from the fact that a domestic court already established the involvement of an agent of the Presidential General Staff, for which fact he was convicted in the trial. The Supreme Court of Justice also left open a proceeding with respect to the accessories of the murder of Myrna Mack Chang.
[…]
Likewise, the Government of Guatemala rejects the view of the Commission with respect to the acknowledgment by the State covering the following points: the high command of the Presidential General Staff at the time of the facts issued explicit orders to Noel de Jesús Beteta Alvarez, to murder Myrna Mack Chang due to the victim's professional activities; 2) Members of the high command of the Presidential General Staff at the time of the facts, together with other officials of that Institution prepared a prior plan to murder Myrna Mack; 3) Taking advantage of their positions at the time, or subsequently through their "subterraneous" influences, it is they who have obstructed effective administration of justice in this case." The State of Guatemala regrets the excessive interpretation that seeks to encompass situations that were not acknowledged by the members of the Guatemalan delegation.

71. The State also objected to the aforementioned points of the Commission's Report, because:

they were never acknowledged, because if said acknowledgment had existed it would have been contrary to the independence of the branches of the State, since the Political Constitution of the Republic of Guatemala establishes that the function of trying and promoting execution of judgments lies exclusively in the Judiciary Body and the Courts of Law. Furthermore, if an acknowledgment such as that argued by the Commission had existed, the Government of Guatemala would have been pre-judging a matter that is still before the courts of law to be studied, analyzed, and decided.
[…]
[T]he Government of Guatemala does not agree, either, with the view of the Commission that "understands" that acknowledgment of responsibility by the State encompasses: 1) that there was obstruction of justice by agents of the State of Guatemala, especially by members of the Army, with the aim of fostering impunity of the accessories of the murder of Myrna Mack; 2) that there have been threats and intimidation carried out by Agents of the State against witnesses, judges, prosecutors, and other legal operators with the aim of fostering impunity in this case; that there has been negligence and unwillingness of the judicial authorities in processing of the judicial proceeding to try and to punish all those responsible for the murder of Myrna Mack, especially what they say regarding punishment of members of the high command of the General Staff at the time of the facts because they deliberately planned and ordered the execution of Myrna Mack.
The Government of Guatemala never acknowledged said points, but rather it pointed out that they might be "factors with a possible impact on the difficulties and irregularities of the proceeding."

Finally, in said brief the State asked the Commission for "a modification of the conclusions" to its Report, bearing in mind that they are based on an acknowledgment that was not expressed in those terms.

72. In the application, the Inter-American Commission made the following statements:

[o]n March 3, 2000, the State of Guatemala acknowledged institutional responsibility in the instant case [for] the murder of Myrna Mack Chang, delay and denial of justice [,which] has full juridical value in accordance with the principles of international law […]
It was the understanding of the Commission, interpreting the acknowledgment of responsibility by the Guatemalan State in good faith, that it necessarily entailed acceptance of the central facts alleged by the applicants. Thus, in light of what the State had expressed in its acknowledgment of responsibility and of what is stated in the [...] evidentiary material included in its file, the Commission pointed out that the acknowledgment of responsibility meant, with respect to the right to life, that: 1) It was the high command of the Presidential General Staff at the time of the facts who issued explicit instructions to Noel de Jesús Beteta Álvarez to murder Myrna Mack Chang due to the professional activities of the victim; 2) Members of the high command of the Presidential General Staff at the time of the facts together with other officials of that institution developed a prior plan to murder Myrna Mack; 3) Members of the high command of the Presidential General Staff at the time of the facts, taking advantage of their positions at the time or subsequently through their "subterraneous" influences, have obstructed efficient administration of justice in this case.
With respect to the acknowledgment of responsibility by the Guatemalan State regarding violation of the rights to fair trial and to judicial protection, the Commission, through an interpretation in good faith and in light of what is stated [in the] existing evidentiary material, pointed out that the acknowledgment of responsibility by the Guatemalan State entailed: 1) that there has been an obstruction of justice by agents of the Guatemalan State, especially by members of the army, to foster impunity regarding the accessories of the murder of Myrna Mack; 2) that there have been threats and acts of intimidation by agents of the State against witnesses, judges, prosecutors and other legal operators with the aim of fostering impunity in this case; 3) that there has been negligence and unwillingness of the judicial authorities in the processing of the judicial proceeding to try and to punish all those responsible for the murder of Myrna Mack, especially with regard to punishing the members of the high command of the Presidential General Staff at the time of the facts, as it was they who deliberately planned and ordered the execution of Myrna Mack […]
In light of the information provided by the Guatemalan State on May 29, 2001, the State seeks to go against the scope of the acknowledgment of responsibility made by the State itself on March 3, 200[0] and the interpretation made by all the parties to the case and the Commission in good faith. The [Commission] notes that the conclusions it reached in Confidential Report No 39/01 and which it reaffirms in the instant application did not derive only from the acknowledgment of responsibility by the Guatemalan State, but rather that the Commission reached those conclusions after an exhaustive investigation of the various items of evidence supplied by the parties […] Nevertheless, the State complied neither with its international obligations derived from its acknowledgment of responsibility nor with the recommendations made by the Commission in its Report No. 39/01.

73. In its reply to the application of September 26, 2001, the State reiterated several of the arguments made in its last brief before the Commission; it asked that the application be deemed answered "negatively regarding the non-disputed parts of [said] brief and those on which it did not state an explicit acknowledgment." Furthermore, it requested that based on the preliminary

objections raised, the Court rule the application filed by the Commission inadmissible (supra para. 25).

74. In its brief with observations on the preliminary objections, the Commission argued that in its application it interpreted in good faith the acknowledgment of responsibility by the State and it understood that the scope of the latter necessarily involved acceptance of the "central facts" alleged by the applicants. In addition, that both in its May 29, 2001 brief and in its brief on preliminary objections, the State once again disavowed its explicit acknowledgment of responsibility and raised an objection regarding the competence of the Court, thus contradicting its previous position. The Commission also requested that the preliminary objections raised by the State be rejected for lack of legal and factual grounds (supra para. 26).

75. As was summarized above (supra para. 40), on February 14, 2003, the State submitted a new brief requesting that the public hearing be called off, and at the same time explaining the scope of the acknowledgment of institutional responsibility, and it affirmed that:

[…] it has decided to maintain and reiterate before [the Inter-American Court of Human Rights], in the same and literal terms stated before the Inter-American Commission on Human Rights in March, 2000, the international acceptance of its Institutional Responsibility in the Myrna Mack Chang case No. 10,636.

76. With respect to the aforementioned brief, on February 17, 2003 the Commission stated that the institutional acknowledgment by Guatemala "reproduces the terms of the acknowledgment of responsibility on March 3, 2000, prior to the decision by the [Commission] to submit the case to the jurisdiction of the [...] Court," and that said acknowledgment "is not generic but partial and therefore it does not tend to fully elucidate the facts, nor is it an effective remedy for the violations that are the object of the application filed by the Commission." Furthermore, the Commission deemed that "fully establishing the facts in [this] case, partly acknowledged by the State as not having been elucidated, constitutes a fundamental function of international monitoring, because it makes it possible to establish the truth of what happened through the inter-American system [...]". Therefore, the Commission asked the Court to continue processing the case, to determine the scope of the acknowledgment of responsibility of the State and the facts that gave rise to the application; to determine the violations to the American Convention; and to order the appropriate reparations (supra para. 41).

77. The representatives of the next of kin of the victim, in turn, stated -referring to the February 14, 2003 brief by the State- that the "acknowledgment" made by the State is a "generic and vague" acquiescence that intends to "leave the case without substance" and "force the Court to move directly into the reparations stage," without allowing the Court to rule on a number of facts directly pertaining to the merits of the instant case. They also stated that, "after twelve years, the next of kin of the victim and Guatemalan society have the right to obtain more than a presumption of responsibility […] they have a right to the truth through full elucidation of the facts" (supra para. 41).

78. On February 18, 2003, during the preliminary meeting with the parties prior to the public hearing summoned for that same day, the State submitted a "brief modifying the answer of the

State of Guatemala to the application filed by the Inter-American Commission on Human Rights in the Myrna Mack Chang Case No. 10,636 of July 26, 2001" (supra para. 42), in which it reiterated several arguments made in its answer to the application and, furthermore, stated the following:

as a consequence of what it has stated before the [...] Commission [...] on March 3, 2000 and of partial ratification of the answer to the application made in the immediately preceding section of this brief, it must desist from the preliminary objections raised on September 26, 2001 […].

With respect to the preliminary objection regarding erroneous and extensive interpretation of the acknowledgment made by the State, it pointed out that it desisted from it "because it was filed as preliminary" objection, but asked the Court to take its content into account when it issues its judgment on the merits.

79. In addition, in said brief the State established that it accepted the following facts:

a) Violation of the rights to life, to humane treatment and dignity of the human person committed against Myrna Mack Chang on September 11, 1990, for which Noel de Jesús Beteta Alvarez was convicted by a competent Court that found him guilty of being the direct perpetrator, and that same court identified him as an agent of the State at the time he committed that act.
b) The institutional responsibility of the State for the infringements of the law incurred by the agent of the State Noel de Jesús Beteta Alvarez in the aforementioned facts, pursuant to Article 155 of the Political Constitution of Guatemala.
c) The institutional responsibility of the State when, in non-compliance with Article 3 of the Political Constitution of Guatemala [...] and Article 4 of the American Convention […], it did not ensure the right to life and to humane treatment of Myrna Mack Chang.
d) The institutional responsibility of the State for the slow progress of the proceeding in which [...] there was evidently:
- Slow progress of the proceeding that began in February, 1994, to identify and punish the accessories of the violation of the right to life of Myrna Mack Chang;
- Unexplainable delay in a judiciary proceeding, stated above, that surpassed the reasonable term set forth in paragraph 1 of Article 8 of the American Convention […];
- Violation of the rights of applicant Helen Mack Chang to access to justice and to respect for the principles of due process and the guarantees set forth in that same first paragraph of Article 8 of the American Convention […].

80. The State, in turn, pointed out that it was making "a partial acceptance of the facts alleged by [Helen Mack Chang], as the latter alleges other [facts] that the State of Guatemala is not institutionally able to accept, such as all those that the Commission has interpreted extensively, in its own manner […]." Derived from the above, the State "can neither ignore nor deny the rights that applicant Helen Mack Chang […] has in substantive and procedural terms." The State also expressed that:

it is necessary to place on the historical record that the State of Guatemala cannot, based on the acknowledgment of the aforementioned institutional responsibilities, violate the independence of

its domestic legal system, and it is not able to decide on the measures of reparation without facing its internal audit and oversight system regarding management of public resources by the General Comptrollership. The above entails the need for said determination to be made by issuing of a judgment by a competent judicial body, either domestic or international, or –if there were the possibility of a friendly settlement approved by a competent authority- an agreement that could be discussed with applicant Helen Mack Chang.

81. Finally, the State pointed out that it submits to the international jurisdiction of the Court for "[d]efinition of the scope of its institutional responsibility in the instant case and the effects derived from it regarding reparations;" that it was appropriate for the Court to continue the reparations stage of the proceeding, and that the public hearing summoned was unnecessary.

82. At the start of the public hearing on February 18, 2003, the State reiterated orally its waiver of all the preliminary objections and it expressed that:

[…] the State of Guatemala deemed it necessary to modify its July 26, 2001 answer to the application, and therefore the object of that modification of the answer to the application is as follows: first, it ratifies what it stated at that time regarding the actions of the State of Guatemala before the Inter-American Commission on Human Rights. That is to say, it ratifies the acknowledgment of responsibility made before the Commission and it ratifies its willingness to establish a committee to monitor and further the domestic criminal proceeding taking place at the time in Guatemala, with the known consequences, that it failed for lack of cooperation by certain bodies the Guatemalan State. Second, it modifies the reply to the application in terms of waiving all preliminary objections raised by the State of Guatemala when it answered the application. Third, it modifies the answer to the application, accepting the facts alleged by the applicant and the Inter-American Commission on Human Rights regarding that same responsibility that the State has with respect to the violations of the right to life of Myrna Mack Chang and denial of justice to applicant Helen Mack Chang. The State of Guatemala explains that it does not refer to the causes or motives stated by the distinguished applicant regarding that denial of access to the system of justice and the violations that may have occurred regarding the principle of due process. Fourth, it accepts the rights of the next of kin of the victim, especially of applicant Helen Mack Chang, and finally, it modifies the answer to the application by expressing that the State of Guatemala reiterates its submission to the international jurisdiction of the […] Inter-American Court of Human Rights for it to decide on the scope of this acknowledgment and, subsequently, to establish the measures of reparation.
[…]
Ratification of the aforementioned aspects is based on the following: even though the Head of State represents national unity according to the Political Constitution of the Republic of Guatemala, the Head of State cannot take on judicial powers, even less so when there is a domestic proceeding that, while slow, institutionally cannot be invaded by the competence of other bodies of the State, circumstances that in any case are to be judged by the […] Inter-American Court of Human Rights. Secondly, intervention by the Inter-American Commission on Human Rights [before] this […] Court is legitimate insofar as it will be, as said Commission has also stated, for this [...] Court to rule on the international responsibility of the State in the facts that gave rise to this case and not on the wrongdoing, guilt and possible responsibility of individuals subject to the jurisdiction of the domestic legal system in Guatemala, a statement

made by the Inter-American Commission in its reply to the objections filed. Therefore, the State of Guatemala waives all the preliminary objections raised in its original answer to the application on June 26, 2001. With respect to the last objection, defined as the erroneous and extensive interpretation of the acknowledgment made by the State of Guatemala, it is necessary to emphatically state that, for true hearing of the instant case, it follows from the statement above that while the State waives the last objection, it does so because it was filed as a preliminary objection. It does not desist thereof because it disagrees with its substantive arguments, which have been reiterated above, and for them to be taken into account when the judgment on the merits in the instant case is issued."

83. During said public hearing, the representatives of the next of kin of the victim referred to the expressions of the State, arguing that it is enabled to "admit its complicity" regarding the acts of its bodies without this involving prejudgment of the rights of specific individuals. Said representatives also pointed out several facts pertaining to the death of Myrna Mack Chang and the investigation and criminal proceeding that, in their opinion, the State did not mention in its acknowledgment of responsibility and that it is necessary to determine so as to establish the truth in this case.

84. In turn, during the public hearing the Inter-American Commission stated that the partial acknowledgment of responsibility by the State before the Court had already occurred before the Commission; that said acknowledgment is based on the Political Constitution of the State and not on International Law; that it does not clearly establish the facts for which it deems that it is responsible; and that it does not specify the rights that it acknowledges were breached. The Commission also pointed out that the Court could consider the scope of this partial and generic acknowledgment when it issues its judgment on the merits.

85. That same day, February 18, 2003, the Court issued an Order in which it established that the State had waived all the preliminary objections raised in its answer to the application; that there continued to be a dispute between the parties regarding the scope of the acknowledgment of responsibility by the State regarding the facts and the rights; and that "partial acceptance of the facts and the rights" expressed by the State did not interrupt the process of receiving the evidence ordered. Therefore, it decide to admit, for all relevant effects, the waiver by the State of the preliminary objections that it had raised, and to continue with the public hearing that was summoned (supra para. 45).

86. On the second day of the public hearing, February 19, 2003, after the first four witnesses had been heard, the State expressed that:

yesterday it accepted, and it respected, rather than accepted, the decision of this [...] Court to continue the public hearing to receive testimonial evidence and expert opinions. The State of Guatemala also noted carefully the content of said statements and it has reached the conclusion that said statements do not refer to disputed facts and, on the other hand, they include points that are still being heard by the domestic legal system in Guatemala. As men of State, the representatives of Guatemala cannot remain in the hall to listen to testimony on facts on which our legal system has not yet decided. Therefore, with all due respect for this […] Inter-American Court of Human Rights and for the representatives of the victim and the representatives of the

Inter-American Commission on Human Rights, the State of Guatemala has decided to withdraw from this stage and it will be present at the conclusion of the public hearing to state its final position with respect to this hearing. In this regard, we wish to ask permission of this Honorable Court to allow us to leave the hall.

After these statements, in connection with the expressions of the Agent of the State, the President of the Court, Judge Cançado Trindade, read the provisions regarding inaction by the parties, set forth in Article 27, paragraphs 1 and 2 of the Rules of Procedure, and he advised the parties of the need for the State to be present at the appropriate time to present its final pleadings at the public hearing. The Agents of the State then withdrew from the public hearing, but in accordance with the indications of the President of the Court, they returned to the hearing at the appropriate time to present the final oral pleadings of the State (supra para. 46).

87. During the public hearing, on February 19, 2003, the Ministry of Foreign Affairs of Guatemala issued a press release entitled "[e]l Estado de Guatemala contribuye a la justicia en el Caso Mack Chang aceptando la responsabilidad institucional ante la Corte Interamericana de Derechos Humanos" ["[t]he State of Guatemala contributes to justice in the Mack Chang case accepting institutional responsibility before the Inter-American Court of Human Rights"], in which it stated the following:

The Rules of Procedure de the Inter-American Court of Human Rights refer –in Article 52- to the general principle according to which a respondent State before this Court may inform the Court of its acquiescence to the claims of the applicant parties, that is, it may decide to accept its responsibility in the case being heard. […] Applying this principle, on last February 14, the State of Guatemala officially communicated to the [...] Court its decision to accept its institutional responsibility in the Myrna Mack Chang Case No. 10,636.
[…] Taking into account the practice of the Inter-American Court in all previous cases in which a respondent State accepted institutional responsibility, and based on the reasoning that this action by the State in fact concludes the evidentiary stage, the Government asked [the] Court to continue processing of the case by moving into the reparations stage foreseen in the proceeding.
On February 18, when they appeared before the Court, the Agents of the State of Guatemala ratified the acknowledgment of institutional responsibility for violation of the right to life of Myrna Mack Chang and for violation of the right of access to justice of the next of kin of the victim.
Despite said acknowledgment, which the State deemed sufficient for the respective judgment to be issued, the Honorable Court decided to continue the case hearing by receiving testimony regarding facts that are no longer disputed, in view of the acceptance of responsibility by the respondent State.
In face of this situation, deeming that they had fulfilled their role and their legal and historical responsibility before the Inter-American system for the protection of human rights, the Agents of the State of Guatemala decided, having received the consent of the [...] Court, to withdraw from the evidence-gathering stage to return at the appropriate time in the [...] hearing to present their final position regarding this case.
The State of Guatemala regrets that the good faith of its acknowledgment of the human rights violations by agents who compromised its institutional responsibility has not been fully appreciated and that, instead, it has been subjected to repetitive statements regarding facts that

have already been accepted and others that are still being heard under domestic legal jurisdiction in Guatemala.

88. Having heard the testimony and expert opinions at said public hearing, on February 20, 2003 the State expressed in its final oral pleadings:

[w]e refrained from examining any of [the witnesses and expert witnesses] because we deem that after the acknowledgment of the State, reiterating its responsibility in the instant case, there is no dispute on the facts and points to which their statements referred. It is important to underline that the points on which testimony was rendered coincide with the acknowledgment by the State, for which reason, since they are not disputed facts, all we can do is await a judgment on the merits and a judgment on reparations, that this Honorable Court will issue.

89. In addition, with respect to a question asked by Judge Salgado Pesantes, on "whether there truly is an acquiescence by the State pursuant to the aforementioned Article 52 of the Rules of Procedure," the State replied:

your honor, in accordance with juridical doctrine and the international rulings issued, no. Acquiescence is not in order when there is no explicit authorization by a State for its Agents. That authorization does not exist.

90. At the end of said hearing, the Inter-American Commission, in turn, stated that:

the State of Guatemala withdrew its preliminary objection regarding non-exhaustion of domestic remedies. Therefore, the issue of whether there are currently ongoing domestic proceedings in Guatemala is not being discussed, today, in the proceeding.

Second, we wish to point out that we are going to include in the procedure official communiqué 032-2003, entitled "el Estado de Guatemala contribuye a la justicia en el caso de Mack Chang aceptando la responsabilidad institucional en la Corte Interamericana," where Article 52 of the Rules of Procedure is invoked, stating that it is an "acquiescence." [S]uch a statement, if it is not denied, if it was not of course falsified, has a juridical value. It is an official statement that is expressly communicated within Guatemala. That is also why these proceedings are important and why we have insisted on the value of the official truth being told. Because if we are told that there is a simple, pure, unconditional acknowledgment, then partial acknowledgment, then acquiescence, and this is communicated, it appears as if the applicants for the victims have adopted a recalcitrant position. Yesterday we heard that it was not an acquiescence and not even absolute acknowledgment, and even now this statement invokes Article 52.

91. On February 24, 2003, the Minister of Foreign Affairs of Guatemala addressed a note to the President of the Court, in which he referred to the "true scope of the acknowledgment of responsibility by Guatemala in the Mack Chang case" (supra para. 47) and he stated:

[…] when I signed the note that I sent on February 14 of this year, I was not aware that the persons to whom I entrusted the drafting misinterpreted my instructions and, therefore, incurred in an unfortunate mistake when they limited the acceptance of international responsibility by

Guatemala in the instant case to "the same and literal terms set forth before the Inter-American Commission on Human Rights in March, 2002."
The instructions I gave in this regard were to simply and straightforwardly acknowledge the facts set forth in the application and, pursuant to the general principle stated in Article 52 of the Rules of Procedure of the Court, to inform [this] Court that Guatemala unconditionally accepted its international responsibility in the case.
I regret that this misunderstanding has caused the erroneous interpretation of my instructions by the Agents of the State of Guatemala, thus giving rise to questioning of the true scope of the acceptance of international responsibility in the Myrna Mack case (furthermore, the controversy regarding this case was extended by the fact that the Representatives of the State temporarily – and also unnecessarily- left the hearing, although I have been informed that they did so with your authorization. In Guatemala, however, this created the false impression that the State was in contempt of the Court).
Given these special circumstances, I wish to request [...] that the true will of the Government of Guatemala, expressed in the instant brief, to acquiesce absolutely, be recorded in the case file.

92. With respect to the aforementioned brief by the State, on March 3, 2003 the Commission filed its observations on that brief (supra para. 47), pointing out that Article 52 of the Rules of Procedure invoked by the State refers to the object of the acquiescence, for which reason the Commission interpreted that:

given the advanced stage of the proceeding, the February 24, 2003 acquiescence of the State does not only encompass the facts referred to in the application, but also all those that have been duly established by the Commission and by the representatives of the alleged victim in the various procedural stages, and specifically those proven in the public hearing.

The Commission also deemed it "crucial" for the Court to expressly issue a ruling on the scope and effects of the acquiescence and to establish that said acquiescence, to be valid, must encompass both the claims stated in the application and the facts proven and the requests made in the public hearings before the Court.

93. That same day, the representatives of the next of kin of the victim, in turn, submitted their observations on the February 24, 2003 brief by the State (supra para. 47), and they asked the Court to rule that said communication is not an acceptable acknowledgment of responsibility under the terms required by Article 52 of the Rules of Procedure of the Court. They deem that said brief "does not state anything substantive regarding the acquiescence and merely invokes said term as if that circumstance, in and of itself, was sufficient to fulfill the requirements of Article 52 of the Rules of Procedure." They deemed that "an absolute acquiescence" consists of complete and unconditional acceptance of the facts and arguments alleged in the application by the next of kin of the victim and proven during the trial and, insofar as the State does not admit them, the dispute among the parties continues and "it must be decided by a ruling of the Court on the merits of the case." In conclusion, they asked the Court:

unless the State sends a complete, unconditional and unqualified acceptance of the facts alleged and proven by the representatives of the next of kin of the victim and by the Commission, […] and a total acknowledgment of its international responsibility for the human rights violations

committed, as they have been alleged and proven, its request must be turned down and the Court must decide on the merits of the matter.

94. On March 3, 2003, at the seat of the Court, the President of the Court, Judge Cançado Trindade, received the Minister of Foreign Affairs of Guatemala, Edgar Gutiérrez, who personally delivered to him the brief entitled "documento aclaratorio del reconocimiento de responsabilidad internacional por parte del Estado de Guatemala en el caso 10.636 'Myrna Mack Chang'" [document clarifying the acknowledgment of international responsibility by the State of Guatemala in the 'Myrna Mack Chang' case No. 10,636," and he explained its content to him (supra para. 48). In said document, the State:

decided, inter alia, pursuant […] to Article 52 of the Rules of Procedure of the Court, to unconditionally accept the international responsibility of the State of Guatemala in the Myrna Mack Chang case. Therefore, he communicated to this [...] Court the acquiescence of Guatemala to the claims of the applicant party.
[…]
Pursuant to the general principle set forth in Article 52 of the Rules of Procedure of the Court, the State of Guatemala acknowledges the facts stated in the application and it unconditionally accepts its international responsibility in the instant case.
Recognition of the violation, in the instant case, of fundamental rights such as the right to life, the right to humane treatment, the right to judicial protection and the right to be heard with due guarantees by a competent judge or court entails, on the one hand, the responsibility already accepted by the State of Guatemala and, on the other, the obligation to investigate the facts that caused the violations, to punish those responsible, and to provide reparation for the damage caused by that grave violation.
[T]he State of Guatemala is willing to promptly, adequately and effectively comply with the pecuniary and non-pecuniary reparations decided at the appropriate time by the […] Court.

95. The State also asked the Court, "[p]ursuant to the instant acknowledgment of responsibility," to disregard the arguments included in the brief answering the application, with respect to reparations for the damage and violation of Article 4 of the Convention. The State also expressed that:

[t]he international responsibility and, therefore, the obligation to redress, pursuant to the provisions of the American Convention […] in this case fall on the State and not on the accused persons who may be found responsible.
[…]
[R]egarding the issue of international responsibility it deems that, in principle, the State (any State) is responsible for violation of its obligations, without necessarily identifying the component of malice or negligence by its agents. In other words, without the necessity of "guilt" or negligence by the person who acted.
[…]
With respect to the issue of the individual responsibility that may fall to the persons mentioned in the application, the State […] deems that the […] Corte and the Inter-American Commission are not competent to rule on the matter, because this is the exclusive responsibility of the Guatemalan authorities.

The State also reiterated "that, in the instant case, excessive delay in the criminal proceeding seriously breaches reasonable term, especially taking into account, in addition to the specifics of the case, the juridical rights, obligations, and values at stake."

96. Finally, the State pointed out that:

[t]he fundamental purpose of this presentation [...] has been to explain the mistake committed in the note address[ed] to you on February 14 and, specifically, in the presentation by the State of Guatemala before the […] Court at the public hearing held on February 18 of this year. In other words, the only purpose of this presentation is to clarify what was the true intention of the State of Guatemala when it acknowledged international responsibility before the […] Court in case 10,636.

Finally, the Minister of Foreign Affairs apologized for the problems caused by "the mistake regarding the acknowledgment of responsibility by the State of Guatemala." The President of the Court, in turn, thanked the Minister of Foreign Affairs for his visit and informed him that the brief delivered would be immediately included in the case file. He also stated that the oral stage of the case had concluded, for which reason the case was in the judgment stage.

97. On March 14, 2003, the Commission filed its observations on the brief by the State mentioned in the previous paragraph, reiterating several of its previous arguments (supra para. 49). The Commission also expressed that:

it appreciates the acquiescence of the State but, due to the procedural stage of the case, it deems it insufficient. The Commission notes that the acquiescence of the State refers to the facts stated in the application, excluding those contained in the brief filed by the representatives of the victim, which complemented the application and reinforced the conclusions of the [Commission], as well as all those duly established at the public hearing before the [...] Court.

The Commission also reiterated its request for the Court to render judgment on the merits in the Myrna Mack Chang case, expressly ruling on the scope and juridical effects of the acquiescence by the State, applying the authority given to it by Article 52(2) of the Rules of Procedure, to ensure legal certainty.

98. On March 14, 2003, the representatives of the next of kin of the victim, in turn, also submitted their observations on the March 3, 2003 brief by the State, in which they reiterated their previous arguments (supra para. 49). They also deemed that this brief by the State is a "new attempt to avoid a ruling by this [...] Court on the merits of the case" and that the State seeks to accept only the juridical consequences derived from the facts, and not the facts established in the application filed by the Commission, in the brief filed by the representatives of the next of kin of the victim and at the public hearing, which contradicts the case law of the Court regarding Article 52 of its Rules of Procedure. Therefore, they asked the Court to reject the acquiescence of the State and to issue a judgment on the merits and reparations to ensure the principle of legal certainty. Finally, they pointed out that in case "the expressions of the State [...] are deemed a

satisfactory acquiescence under the terms of Article 52, […] in accordance with the case law of the Court, [this] does not impede the Court ruling on the merits of the case."

99. In the brief with its final pleadings, the Commission reiterated its request to the Court regarding the need for it to rule on the scope and the effects of the acquiescence of the State (supra para. 52) and pointed out that:

[...] given the various positions adopted by the State during the processing of the case before the Inter-American System for Protection of human rights, as regards the scope of its acceptance of responsibility, the Commission deems that a clear and express ruling by the [...] is necessary to ensure the principle of legal certainty [...]

100. In the brief with the final pleadings (supra para. 51), the representatives of the next of kin of the victim argued that:

[t]he State presented [...] various positions with respect to its "acknowledgment of institutional responsibility" or "acquiescence". Despite [that], the State has never accepted the central facts set forth in our application and in the application by the [...] Commission, or the facts proven at the public hearing, such as the responsibility of the Presidential Security Department of the Presidential General Staff in the murder of Myrna Mack and the denial of justice. Given the procedural stage of the case and the State's pattern of behavior of withdrawing or "reinterpreting" its statements of responsibility, the representatives of the next of kin of the victim, based on the case law of this [...] Court, deem that a general acquiescence is insufficient [...].

Therefore, they asked the Court to issue a judgment on the merits in which it rules on the scope of the acknowledgment of responsibility by the State.

3) Considerations of the Court

101. Article 52(2) of the Rules of Procedure provides that:

[i]f the respondent informs the Court of its acquiescence to the claims of the party that has brought the case, the Court, after hearing the opinions of the other parties to the case will decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

102. Article 54 of the Rules of Procedure of the Court provides that:

[t]he Court, may notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

103. The Court will now state certain considerations pertaining to the scope of the acquiescence by the State and, therefore, its acknowledgment of international responsibility in the instant case. These considerations will be made in view of the fact that throughout the

proceedings before the bodies of the inter-American system for protection of human rights, the State has several times given different extent to its acknowledgment of international responsibility.

104. First of all, the Court, exercising its adjudicatory function, applies and interprets the American Convention and, when a case has been brought before its jurisdiction, it has the authority to find that a State Party to the Convention has incurred international responsibility by violating its provisions. On the other hand, as it has reiterated before, this Court does not investigate or punish the individual behavior of the Agents of the State who may have participated in said violations. [FN8]

[FN8] Cf. "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 223; Castillo Petruzzi et al. Case. Judgment of May 30, 1999. Series C No. 52, para. 90; and "White Van" Case (Paniagua Morales et al.). Judgment of March 8, 1998. Series C No. 37, para. 71.

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105. Second, the Court, exercising its inherent authority of international protection of human rights, can establish whether an acknowledgment of international responsibility by a respondent State offers sufficient basis, in terms of the American Convention, to proceed or not with its hearing on the merits and establishment of possible reparations. To this end, the Court will analyze what has been stated in the specific case.

106. Article 52 of the Rules of Procedure refers to a situation in which a respondent State informs the Court of its acquiescence regarding the facts and the claims of the applicant party and, therefore, accepts its international responsibility for breaching the convention, in the terms set forth in the application, a situation that would give rise to early termination of the proceeding regarding the merits of the matter, as set forth in chapter V of the Rules of Procedure. The Court notes that with the provisions of the Rules of Procedure that entered into force on June 1, 2001, the application brief includes the considerations regarding the facts and the points of law as well as the claims regarding the merits of the matter and the requests for the respective reparations and legal costs. In this regard, when a State acquiesces to the application, it must clearly state whether it does so only regarding the merits of the matter, or whether it also includes reparations and legal costs. If the acquiescence refers only to the merits of the matter, the Court will consider whether it will continue with the procedural stage of determining reparations and legal costs.

107. In light of the evolution of the system for the protection of human rights, where the alleged victims or their next of kin can today autonomously submit their brief with requests, pleadings, and evidence, and wield claims that may or may not coincide with those of the Commission, when there is an acquiescence it must clearly state whether the claims made by the alleged victims or their next of kin are also accepted.

108. On the other hand, the Rules of Procedure of the Court do not establish any specific moment for the respondent party to state its acquiescence. Therefore, if a State resorts to this

procedural act at any stage of the proceeding, this Court, after hearing all the parties, must evaluate and decide its scope in each specific case.

109. The State has submitted several briefs with the intention of defining the scope of its recognition of international responsibility. This Court specifically notes that on March 3, 2003, at the seat of the Court, the Minister of Foreign Affairs of Guatemala gave to the President of the Court a brief in which he clarified the terms of the acquiescence of the Guatemalan State in terms of "unconditionally accepting international responsibility in the Myrna Mack Chang case" and he apologized for the problem caused by "the mistake regarding the acknowledgment of responsibility of the State" (supra paras. 48 and 94).

110. The Commission and the representatives of the next of kin of the victim, in turn, have at all times objected to acceptance of the acquiescence by the State and have asked this Court to establish the facts and the violations to the American Convention. Among other expressions, they have asked the Court to rule on the scope and the effects of the acquiescence (supra paras. 76, 77, 83, 84, 92, 93 and 97 to 100).

111. The Court, taking into account the authority granted to it by Article 52(2) of its Rules of Procedure, takes note of the total and unconditional acquiescence of the respondent State (supra para. 94), which encompasses all the facts stated in the application; exercising that same authority under its Rules of Procedure, the Court also takes into account the requests both of the Inter-American Commission and of the representatives of the next of kin of the victim, in terms of specifying the scope and the juridical effects of said acquiescence (supra para. 110).

112. The Court deems it appropriate to take into account, based on the authority granted to it by Article 54 of its Rules of Procedure, other elements that allow it to establish the truth of the facts and, therefore, their juridical assessment, exercising its responsibility to protect human rights and applying, to this end, the pertinent provisions of conventional and general international law.

113. In light of the above, the Court takes into account, in addition to and alongside the acquiescence of the State, the testimony and expert opinions rendered at the public hearing before this Court, the body of evidence supplied by the Commission, by the representatives of the victim and by the State, the evidence included by the Court to facilitate adjudication, among others, the Report of the Historical Truth-Finding Committee entitled "Guatemala, memoria del silencio" (CEH), the report of the Archbishop's Human Rights Office for the recovery of historical memory, entitled "Guatemala: Nunca más: los mecanismos del horror" (REMHI).

114. After examining all these elements, the Court deems that the international responsibility of the State has been established for violations of the American Convention in the instant case, a responsibility that is worsened by the circumstances under which the facts of the cas d'espèce took place.

115. Since the Court deems that said acquiescence does not encompass reparation of the consequences derived from the violations to the rights protected by the Convention that were

established in the instant case, the Court –applying Article 63(1) of the American Convention- will establish the pertinent reparations and legal costs.

116. The Court also deems that given the nature of the instant case, issuing a judgment that addresses the merits of the matter constitutes a form of reparation for the victim and her next of kin and, in turn, is a way to avoid recidivism of facts such as those suffered by Myrna Mack Chang and her next of kin.

VII. THE EVIDENCE

117. Before beginning its examination of the evidence received, the Court will analyze, in light of the provisions of Articles 43 and 44 of the Rules of Procedure, certain considerations that are applicable to the specific case, most of which have been developed in the case law of the Court.

118. The principle of the presence of parties to a dispute applies to evidentiary matters, and it involves respecting the parties' right to defense. This principle is one of the foundations for Article 43 of the Rules of Procedure, regarding the time when evidence must be offered for there to be equality among the parties. [FN9]

[FN9] Cf. Bulacio Case. Judgment of September 18, 2003. Series C No. 100, para. 40; Juan Humberto Sánchez Case. Judgment of June 7, 2003. Series C No. 99, para. 28; and "Five Pensioners" Case. Judgment of February 28, 2003. Series C No. 98, para. 64.

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119. According to the usual practice of the Court, at the start of each procedural stage the parties must state, at the first opportunity granted them to go on record in writing, what evidence they will offer. In addition, exercising its discretionary authority set forth in Article 44 of its Rules of Procedure, the Court may ask the parties to submit additional evidence to facilitate adjudication of the case, without this possibility granting them a new opportunity to expand or complement their pleadings or to offer new evidence, unless the Court were to allow this. [FN10]

[FN10] Cf. Bulacio Case, supra note 9, para. 41; Juan Humberto Sánchez Case, supra note 9, para. 29; and Las Palmeras Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 17.

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120. The Court has also stated before, regarding receipt and assessment of the evidence, that procedures before the Court are not subject to the same formalities as in domestic judicial proceedings, and that inclusion of certain items in the body of evidence must be done paying special attention to the circumstances of the concrete case, and bearing in mind the limits defined regarding respect for legal certainty and procedural balance among the parties. [FN11] In addition, the Court has taken into account that international case law, deeming that international courts have the authority to appraise and assess evidence based on the rules of competent

analysis, has always avoided rigidly determining the quantum of evidence necessary as the basis for a ruling. [FN12] This criterion is especially valid with respect to international human rights courts, which –to establish the international responsibility of a State for violation of the rights of a person- have ample flexibility in assessment of the evidence submitted to them regarding the pertinent facts, in accordance with the rules of logic and based on experience. [FN13]

[FN11] Cf. Bulacio Case, supra note 9, para. 42; Juan Humberto Sánchez Case, supra note 9, para. 30; and "Five Pensioners" Case, supra note 9, para. 65.
[FN12] Cf. Bulacio Case, supra note 9, para. 42; Juan Humberto Sánchez Case, supra note 9, para. 30; and "Five Pensioners" Case, supra note 9, para. 65.
[FN13] Cf. Bulacio Case, supra note 9, para. 42; Juan Humberto Sánchez Case, supra note 9, para. 30; and "Five Pensioners" Case, supra note 9, para. 65.

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121. Based on the above, the Court will now examine and assess the set of items that constitute the body of evidence in the case, following the rules of competent analysis, within the relevant legal framework.

A) DOCUMENTARY EVIDENCE

122. When it submitted its application, the Commission attached as evidence 52 annexes [FN14] (supra para. 18). Subsequently, the Commission submitted copies of other documents, such as press release No. 032-2003 2003 of the Ministry of Foreign Affairs of Guatemala, of February 19, a copy of the October 3, 2002 judgment issued by the Third Criminal Court of Guatemala, a copy of the May 7, 2003 ruling of the Fourth Chamber of the Court of Appeals of Guatemala and a copy of several press releases and other newspaper reports in connection with the Mack Chang case (supra para. 18).

[FN14] Cf. annexes 1 to 52.5 of the application filed by the Commission on June 29, 2001 (leaves 1 to 1259 of the file with annexes to the application). The Commission also submitted 6 audiocassettes and one videocassette containing interviews with Noel de Jesús Beteta Álvarez. Subsequently, the Commission submitted other documents. Cf. leaves 165 to 167 of volume I of the dossier on the merits and possible reparations; leaves 800 to 803 and 852 to 870 of volume IV of the dossier on the merits and possible reparations; and leaves 8420 to 8752 of the file with annexes submitted by the Commission with its brief of November 5, 2002.

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123. In its brief with requests, pleadings, and evidence, the representatives of the next of kin of the victim offered as evidence numerous documents included in 162 annexes (supra para. 24). [FN15] In the brief with observations on the preliminary objections, said representatives also included copies of various court orders and actions and in the brief with the final pleadings they attached several annexes pertaining to vouchers for expenses (supra paras. 27 and 51).

[FN15] Cf. annexes R-I-01 to R-VII-92 of the brief with requests, pleadings and evidence submitted by the representatives of the victim on September 13, 2001 (leaves 1260 to 4056 of the file with annexes to the brief with requests, pleadings and evidence); and annexes A to E of the brief with the final pleadings of the representatives of the next of kin of the victim submitted on June 10, 2003 (leaves 8753 to 9221 of the file with annexes to the brief with the final pleadings).
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124. The State, in turn, attached several annexes [FN16] to its brief answering the application and filing preliminary objections (supra para. 25). Subsequently, it submitted copies of the writ of indictment and of the order for the trial to commence against the alleged accessories in said criminal proceeding.

[FN16] Cf. annexes 1 to 32 of the brief filed by the State to answer the application and raise preliminary objections (leaves 4057 to 8419 of the file with annexes to the brief answering the application and raising preliminary objections); and leaves 494 to 502 of volume III of the dossier on the merits and possible reparations.
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125. As evidence to facilitate adjudication of the case, the Court received the rate of variation of the consumer price index in Guatemala from 1998 to the present and the life expectancy indexes in said country from 1990 to the present, submitted by the Commission, the representatives of the next of kin of the victim and the State (supra para. 55). It also received copies of several procedural actions from the file of the ongoing criminal proceeding under domestic jurisdiction, filed by the representatives of the next of kin of the victim and by the State; and the birth certificate of Vivian Mack Chang submitted by the Commission and by said representatives. The representatives of the next of kin of the victim also forwarded a certificate of the marriage of Myrna Mack Chang and Víctor Hugo Hernández Anzueto and the marital status certificate of Myrna Mack Chang at the time of her death (supra paras. 55 and 57).

126. Pursuant to the Order of the President (supra para. 35), Carmen de León-Escribano Schlotter and Clara Arenas Bianchi submitted their statements in writing and Bernardo Morales Figueroa submitted his expert opinion in writing, all of them made before a notary public (supra para. 37). The Court will now summarize the significant parts of said statements:

a. Sworn statement by Carmen de León-Escribano Schlotter, a sociologist [FN17]

The displaced population in Guatemala was a consequence of the armed domestic conflict. The displaced and refugee population fled their place of origin out of fear of losing their lives, due to ideological, political, religious or ethnic persecution. During the 1980s, the first civilian government established a special committee for refugees, the Comisión Especial de Atención a Refugiados (CEAR) and in 1987 a decision was reached for CEAR to also address the needs of returning citizens and displaced persons.
CEAR's relationship with Myrna Mack Chang was in connection with her research on internally displaced persons. Staff members of the Committee accompanied her on her visits to the area known as the Ixil Triangle. The Army controlled those visits. CEAR proposed to AVANCSO

that they conduct a study to define the profile of the displaced population. Myrna Mack Chang's work made evident the presence of the military and the role played by the army with respect to the issue of displaced persons.

[FN17] She rendered her statement before a notary public on January 16, 2003, on the displaced population studied by Myrna Mack Chang, on the interest of the Army in said population, and on the relationship of her work as a Government official on the issue of displaced persons and involvement of the Presidential General Staff.

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b. Sworn statement by Clara Arenas Bianchi, founder of AVANCSO [FN18]

Myrna Mack Chang was a member of the board of directors of the Asociación para el Avance de las Ciencias Sociales (AVANCSO), through which she carried out a study on internally displaced persons and coordinated it when she obtained funding from Georgetown University. Myrna Mack Chang focused her work specifically on institutional policies regarding internally displaced persons.

In addressing the issue of internally displaced persons, Myrna and her team entered into a reality unknown to Guatemalans who were unaware that almost a million persons had been displaced as a consequence of the domestic strife. She worked intensely in the area of Alta Verapaz, especially in the municipalities of Cobán and Quiché, in a highly militarized context, as the Army received them in the communities, which were subject to a strict control of their population, deeming them to be insurgents. At that time, the Army had launched scorched earth policies. Myrna and her team always went before the civil and military authorities to explain their presence in the towns and to request information.

At the United Nations International Conference on Central American Refugees, the draft of the report on the research carried out by Myrna was widely distributed, and it was then that the existence of a segment of displaced population was formally recognized.

Her work offered a typology of displaced persons taking into account the forms and destination of their displacement, an assessment of the material and psychological conditions of the persons who returned to the militarized zones, and a proposal on minimum conditions required for a viable process of return and integration, and she even proposed demilitarization of the area. Thus, she made information on an unknown segment of the population available to the public, raising questions on the presence of the Army in areas where there was a confrontation with the guerrilla forces to control the territory.

While preparations were underway to publish this study, Myrna began another one on the problems of returning citizens and their integration and viability, regarding both displaced persons and refugees, funded by the Ford Foundation. She worked in Cobán, in the municipalities Ixiles, Ixcán, Quiché and Nenton and Huehuetenango.

In time it became evident that among the returning citizens there were next of kin of the Comunidades de Población en Resistencia (CPR), groups of non-combatant civilians who sought to survive physically and socially in the mountains outside military control. In 1990 they were seeking to make themselves publicly known.

Myrna was consulted in her work by national and international organizations, and even by the Bishop of Quiché, Monsignor Julio Cabrera, to advise them regarding displacement and return from abroad.

Before she was killed, Myrna had commented to her that when she returned to the Ixil municipalities, someone from the military base went to inquire who that "Chinese woman" was. After the murder, the neighbors reported that AVANCSO had been under surveillance by persons in cars and motorcycles during the 15 days prior to the murder. Deeming it a political assassination, the board of directors of AVANCSO requested meetings with high military commanders and with the President of the Republic. They held a meeting that was attended by colonel Luis Enrique Mendoza, deputy director of the General Defense Staff, general Edgar Augusto Godoy Gaitán, head of the Presidential General Staff, and colonel Cabrera, head of the "G-2." Colonel Mendoza said that they knew neither AVANCSO nor Myrna Mack Chang and that the murder might have come from "the left," which liked to have "martyrs" among its own supporters. That same day, a man in civilian dress came to their offices, identifying himself as "captain Estrada," and said that he had been sent by the Presidential General Staff, in charge of the investigation of the murder. He requested a photograph of Myrna and inquired about her personal life and personality traits. He reached the conclusion that Myrna was murdered for resisting a robbery.

In late September, the board of directors of AVANCSO met with President Marco Vinicio Cerezo Arévalo, who expressed that the murder might have been committed by "obscurantist sectors that [...] still exist[ed] within the security forces."

Between 1992 and 1994, during the trial against Beteta Álvarez, there were several acts of intimidation against AVANCSO employees, including aggression and threats, as well as entries into their offices, demanding that they not cooperate with Helen Mack Chang. The pertinent complaints were filed at the courts and at the Office of the Human Rights Ombudsman. Surveillance of AVANCSO's seat became more obvious when Christian Tomuschat, the UN Human Rights Rapporteur, visited Guatemala and their offices. Despite complaints filed regarding the facts, those responsible for them were never identified or accused.

When Myrna was murdered, AVANCSO lost the most important member of its Board of Directors, who would now be acting as the coordinator of one of the Study Areas at their research center. If that were the case, her monthly income would be Q 12,000.

[FN18] She rendered her statement before a notary public on January 16, 2003, on the importance of and the difficulties faced by Myrna Mack Chang when she conducted an academic research study on displaced persons and the threats and intimidations suffered by the staff of the Asociación para el Avance de las Ciencias Sociales (AVANCSO) and other background pertaining to the object and purpose of the application.

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c. Written expert opinion of Bernardo Morales Figueroa, a mathematician [FN19]

The lost earnings of Myrna Mack Chang add up to US$949,934.78. This result was obtained applying the customary method of establishing the present value of an accrued amount of capital, adding the factor of professional experience.

If one applies the method used by the Inter-American Court to determine lost earnings, the result would be US$561,384.64, so there is a difference of US$388,050.14 with respect to the calculation in his expert opinion. This arises from the differences in the terminal year of life expectancy, from not using average values but rather present values, operating in constant terms and carrying forward the information with the consumer price indexes, adding the use of the factor of professional maturity.

[FN19] A Guatemalan national. He is a civil engineer and has a licentiate degree in mathematics. He rendered an expert opinion in writing on January 4, 2003 before a notary public on the reparations requested by the Mack Chang family.

B) TESTIMONIAL AND EXPERT EVIDENCE

127. The Court heard the testimony of the witnesses and the expert opinions of the expert witnesses proposed by the Commission and by the representatives of the next of kin of the victim (supra para. 43). The Court will now summarize the significant parts of said statements.

a. Testimony of Monsignor Julio Cabrera Ovalle, Guatemalan bishop [FN20]

He is the Bishop of the Diocese of Jalapa, in Guatemala, and during the time of the facts he was the Bishop of Quiché, a position he held fro 15 years, starting in 1987. During the domestic armed conflict in Guatemala, the Diocese of Quiché had the largest population of internally displaced persons and of refugees in Mexico of all the country, and for this reason he decided to seek more information on this phenomenon.

He met with Myrna Mack Chang for the first time on August 21, 1989. At that time, she was conducting a research study on the situation of internally displaced persons in the country, as part of her work as a social investigator for AVANCSO.

At the time of the facts, Myrna Mack Chang was the only person investigating that specific topic, which had serious political implications, because while the armed conflict was a public matter, the Army sought to maintain secrecy regarding the way it treated the civilian population, especially the population of Quiché. He began to have problems with the Army when he interacted with said population.

At first, Myrna Mack Chang was surprised that she was not threatened due to the investigation she was conducting on the situation of the refugees and the internally displaced population and the massacres that gave rise to this phenomenon. However, the threats against Myrna Mack Chang came later.

During the armed conflict, the Army carried out a task of recovery of the populations known as “Comunidades de Población en Resistencia” (CPR), starting with the population of the Sierra, in the area of Nebaj, and then encompassing the population of various areas in northern Chajul. The latter population groups deemed that the only way to save themselves was to make themselves known publicly, and for this they were able to meet in an assembly and draft a document that they wanted to publish and send to various eminent persons in Guatemala, such as the President of the Republic and the President of Congress. Said document was supposed to arrive in Guatemala on June 14, 1990. However, it never arrived. In July, Myrna Mack Chang attended a

meeting on refugees and internally displaced persons held in San José, Costa Rica. At that meeting, it was said that a very important document was going to be published in Guatemala and they asked Myrna to send it to them as soon as she had a copy of the document. However, in August of that year Myrna Mack Chang began to receive phone calls from persons who wanted to know about the document, which made her very fearful, because if her phone was tapped, the Army would link her to said document. In point of fact, on August 18, 1990 and on September 9, 1990, the anthropologist visited his home and told him that she was being followed. On September 7, 1990, said document of the communities of resisting population was published and several days later, on September 11, Myrna was murdered.
After hearing of the murder of the anthropologist, he linked what had happened to publication of the communiqué of the "CPR", and he stated that the Army had killed Myrna Mack Chang, an innocent person.

[FN20] He rendered testimony on his knowledge of the alleged victim and the circumstances of her death, [and on] her work with the displaced population and other background pertaining to the object and purpose of the application.
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b. Testimony of Virgilio Rodríguez Santana, a former newspaper salesman [FN21]

At the time of the facts, he sold newspapers in Guatemala City near the Mack Chang family's house, and he knew the family because he sold them newspapers for almost 15 years. He noted how in August, 1990, three individuals kept watch on the Mack Chang family's house for two weeks, for which reason he decided to warn the "maid" at said house about the surveillance on the family. He heard of Myrna Mack Chang's death on September 12, 1990.
Certain police agents, among them agent Mérida Escobar, asked him to narrate what had happened and to help make "spoken pictures" of the persons who conducted the surveillance. They also asked him, twice, to identify some motorcycles possibly linked to the facts, and to identify the person whose picture they showed him as one of the men who had been watching the Mack Chang's family house, which he refused to do, because he did not want any trouble. The photograph was of Noel de Jesús Beteta Álvarez.
He left Guatemala because he was afraid that the same thing would happen to him that happened to Mérida Escobar. He currently lives in Canada and has only returned once to Guatemala, in response to a request by Helen Mack Chang, to render testimony before the domestic criminal courts in September, 2002, for which he requested protection.

[FN21] He rendered testimony on the surveillance and following of the alleged victim before she was murdered, on the threats he suffered, and on other background pertaining to the object and purpose of the application.
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c. Testimony of Lucrecia Hernández Mack, daughter of Myrna Mack Chang [FN22]

She lives in Guatemala with her common-law spouse, with whom she has been living for six years. She has two children, one who is 2 years old and the other 4 years old.She studied medicine and is currently in a graduate program in Public Health.

Her mother studied social work in Guatemala and then obtained two graduate degrees in Social Anthropology in England. She worked for the Asociación para el Avance de la Ciencias Sociales (AVANCSO), an organization that she herself founded together with other colleagues in 1986 in Guatemala. Her mother was a very hardworking woman who showed great solidarity and was passionate about her work. All her activities were geared toward promoting or supporting some social transformation in her country. Her mother always urged her to also be socially aware.

At the time of the facts she was 16 years old and she lived with Myrna Mack Chang, her mother, in an apartment within her grandparents' home. The last time she saw her was on the morning of the day she died, when she was going to school. That day she was at home and about six p.m. she received a phone call from her mother, letting her know that she would leave the office soon. Afterwards, her aunt Helen received a phone call from the police informing her that apparently something had happened to her mother, and she imagined that it was an accident. She learned what had happened when her grandparents came to their house with a funerary hearse, and an uncle with "mental problems" told her that her mother had been knifed to death. When her mother's body arrived at the funeral parlor, she helped clean it and tried to put on her favorite dress but was unable to, because an autopsy had been performed on her, the body had been sutured from the thorax to the neck, and it had several wounds on the arms, the abdomen, the neck, and the legs.

The family suffered a very heavy blow with the death of her mother, because it was such an abrupt and violent loss. She could not understand that her mother was dead because she did not comprehend what had happened. Due to her mother's death, she felt that she had no one to support her in difficult or happy times.

She graduated from high school one month after her mother's death and entered the university four months later, for which reason she believes that the fact that her mother was not there at a time "when one begins to make important decisions for life" has affected her. Her mother has not been with her when she graduated, nor during all these years while she was at the university, nor when she has had new friends, nor when she had her first boyfriend, nor when she decided to live together with someone, nor when she had her two children; in other words, in all her adult life, while she was establishing her identity and her personality, which takes shape between adolescence and adulthood. Her aunt Helen became her second mother.

She is emotionally affected by seeing the grief and physical deterioration of her grandparents, especially her grandmother who still cries for a daughter who should not have died before her. She is also affected by seeing the way her aunt Helen has suffered, as she not only had to identify her mother's body and suffer much physical and psychological stress, but also the difficulties placed by the judiciary in the search for justice.

After her mother's death, justice is an inherent search in her family. She feels indignant that the State, which should protect them, killed her mother, as it was not merely a member of the State who just decided to kill her, but rather that the murder came from the Presidential Security Department of the Presidential General Staff of the State of Guatemala, and her country, especially the courts, have done absolutely nothing for due and prompt justice.

She thinks of her mother every day, especially of the way she was murdered, of the pain of the 27 knife wounds she suffered, and of how she must have felt lying alone on the street. This makes her feel very indignant and angry.

Her mother was murdered for political reasons, specifically because she was investigating the institutional policies of the State with respect to the internally displaced population groups. In a book that she published, she clearly stated how the army massacred those populations within the country. This was inconvenient for the Army and they saw her mother as a threat.

What little progress there has been in her mother's case has not been out of true goodwill of the State, but rather through the efforts of her aunt, Helen Mack Chang, who was first the private prosecutor under the former Criminal Court and afterwards took on the role of "querellante adhesiva" or private accuser in the trial against the accessories. On the contrary, the State has done everything possible to obstruct the case; they murdered the policeman who was carrying out the investigation and who identified Noel de Jesús Beteta as the direct perpetrator; they have filed numerous amparo remedies and other remedies, exceeding the terms to decide on them; and her family, the case attorneys, the AVANCSO staff and that of the Myrna Mack Foundation have suffered threats and acts of intimidation.

The fact that they are constantly threatened and living in a state of insecurity affects both her and the rest of her family emotionally. The family has all the time been trying to take security measures, to be careful whom they talk to on the phone and who approaches them, among other measures, to avoid another fact like what happened to her mother, and this is an overly heavy emotional burden.

The search for justice has also affected her family financially. In her case, due to the need to spend time on the trials, she turned down job offers because she could not commit to complete presence or stability. In August, for example, she turned down two offers because of the oral trial in September. Over the last five years she has spent roughly four hours a week on the case, depending on whether it was active or adjourned. During the oral trial she spent all her time on the case, starting at nine a.m. when the hearings began until they ended, then going to the office to prepare the case.

In 1999 she went to a psychologist who recommended two appointments per week and that she join a support group, but this was very difficult financially, as she became pregnant with her second child and she had to interrupt the therapy.

What is most important is for the State to acknowledge that her mother's murder was a special intelligence operation coming from the Presidential Security Department of the Presidential General Staff, admitting that it was an institutional order that led to surveillance and following of her mother and then killing her. She also stated that Guatemala must publicly apologize to them through all the mass media. Her family wants the truth to be known and for no one to be able to deny, after the trial, what happened.

She came to render testimony before the Inter-American Court because in this way no one will be able to deny what happened to her mother, thus setting a precedent that will have a great social impact in Guatemala. She does not want them to be seen as victims but rather as actors.

[FN22] She testified on the suffering she has undergone as a consequence of her mother's extra-legal execution, on the many steps she has had to take to seek justice in this case, and on other background pertaining to the object and purpose of the application.

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d. Testimony of Helen Mack Chang, sister of Myrna Mack Chang [FN23]

She always lived with her sister, Myrna Mack Chang, except when she was married. Her sister was an anthropologist and at the time of the facts she was conducting a study on refugees, sponsored by the Georgetown University. Her sister also advised Monsignor Julio Cabrera Ovalle, when he was in charge of the Diocese of Quiché, on the situation of the refugees and internally displaced population in Guatemala, as this was a topic unknown to many and handled almost exclusively by the military.

In one of her studies, her sister reached the conclusion that the return of the refugees should be attained through their integration into the country, discontinuing the war treatment they were receiving. She requested intervention of the Church, of non-governmental organizations and of the International Red Cross, all this to humanize the conflict. Her sister's position was contrary to the counterinsurgency plans of the Army, and this turned her into a military objective.

On September 11, 1990, about a quarter to seven p.m., her sister was attacked by at least two men and received 27 knife wounds.

After the facts, the witness began to make inquiries among the neighbors and other possible witnesses, but they were all afraid to talk. Then, she began to receive the first threats and to be followed, all of which coincided with the visit of the United Nations Rapporteur for Guatemala, Christian Tomuschat, and the perpetrators of the crime sought to avoid a complaint regarding the facts. They also sought to dishonor her family by speculating that her sister's murder was a crime of passion; that she was involved in the foreign currency "black market;" that she took drugs, or that she was a member of the guerrilla forces.

She became involved in the criminal proceedings a month after the facts, when she noted that the investigation did not move forward and that the Magistrates' Court trial did not progress. She had to carry out the investigation nearly alone, as the Public Prosecutor's Office only supported her with briefs when they deemed that it was not dangerous. Otherwise, she looked up some article of the law that would allow her to do it on her own, individually, or she would obtain an attorney's signature, in the understanding that at that time she did not have any funds to pay the attorney, and no one would take the case due to the obvious risks involved and that taking a case for someone who had been murdered would somehow link them to subversion. For this reason, she had to study the law and begin various steps on her own.

At the start, the police investigation of her sister's murder was entrusted to a first team constituted by policemen José Mérida Escobar and Julio Pérez Ixcajop, who prepared a police report dated September 29, 1990, in which they identified Noel de Jesús Beteta Álvarez, a former sergeant major who was a member of the so-called "Archivo" of the Presidential General Staff, as the main suspect of the murder. In said report, they reached the conclusion that the crime was politically motivated. However, this report was not submitted to the courts in Guatemala. Instead, a mutilated report dated November 4, 1990, was submitted to the courts, stating that the motivation of the crime was robbery and that at the time there were no suspects.

The "Archivo" was a military unit mostly composed of the well-known death squads. It originated in the international treaties signed by Guatemala with the United States to apply the national security doctrine, and initially it was known as the "Regional." When the first civilian government was elected, they only changed its name to "Presidential Security Department," part of the "Estado Mayor Presidencial" or Presidential General Staff, but its activities linked to grave human rights violations, disappearances, extra-legal executions and tortures continued.

Mérida Escobar rendered testimony before a court on all that he had investigated and on the conclusions of his September 29, 1990 report, and he recognized his signature on said report and on the daily reports he had prepared. When he completed his statement, the representative of the

Public Prosecutor's Office approached him and told him that he had just signed his death sentence. In point of fact, detective Mérida Escobar began his statement saying that he feared for his life. He was murdered on August 5, 1991, on his way to the Office of the Human Rights Ombudsman.

Both Rember Larios Tobar, the former supervisor of José Mérida Escobar, and his auxiliary colleague in the investigation, Julio Pérez Ixcajop, had to seek exile in Canada. All the witnesses, one journalist and one legal assistant also had to go into exile. In view of this situation, she requested rogatory letters, in the ongoing proceedings, for the witnesses who were in exile to render testimony before the respective national courts. Nevertheless, the authorities in charge took about a year to process the requests, and did so in such a poor manner and they were so defective that when they reached Canada they were rejected because they did not comply with all the requirements, for which reason they had to request them again. The procedural terms expired and it was not possible to execute these rogatory letters, which forced them to seek out the witnesses in Canada and try to obtain all the security measures required for them to render their testimony in Guatemala.

Beteta Alvarez was finally sentenced to 30 years in prison as the direct perpetrator of her sister's murder. However, during the first and second instance judgments they were barred from accusing all those who were responsible, both direct perpetrators and accessories, for which reason they had to resort to an appeal to reverse those decisions and to be able to proceed with the efforts to prosecute the accessories.

In 1994, a second proceeding began against the accessories of Myrna Mack Chang's murder: general Edgar Augusto Godoy Gaitán, head of the Presidential General Staff, Juan Valencia Osorio, director of the Presidential Security Department, Juan Guillermo Oliva Carrera, deputy head of the Presidential Security Department, Juan Daniel Del Cid Morales, Juan José Larios, and an individual whose surname is Charchal. Final judgment is still pending in this trial, and only colonel Juan Valencia Osorio has been convicted. The proceedings took place in six or seven controlling courts, and in twelve or thirteen other courts, including chambers. For this reason, she asked the Inter-American Court to order the appointment of an observer of the proceedings until the final judgment is issued, bearing in mind that in the case of Monsignor Gerardi the judgment that convicted those responsible for his death was overturned in that instance, that the proceeding in the "Masacre de las dos Erres" has been paralyzed for over two and a half years because 31 amparo remedies were filed, and that in the Colotenango case the civil self-defense patrol members are applying pressure to obtain their acquittal.

Fifteen days after the start of the September 3, 2002 trial, there were various threats against the attorney who was helping her. They left messages with death threats and fired against his house, for which reason he had to sent his daughters abroad.

The proceedings have been delayed, among other reasons, due to the use of a series of delay tactics, such as abusively filing multiple amparo remedies. For example, in 2002 the defense counsel for the accused interrupted the trial alleging that she had breached the rights of the daughter of her sister. The chamber accepted the amparo remedy and annulled the trial, despite the fact that they were not even rights of the accused. In another amparo remedy, on the issue of evidence, despite the fact that it was not under the competence of that chamber but rather of the court, they accepted it and even sought to eliminate all the documentary and testimonial evidence supplied by the private accuser. In another amparo, they alleged that the private accuser had not determined the points on which the expert witness would render testimony, and the trial was suspended. At another time in the proceedings, an order was issued for the case to remit from

civil to military courts, which caused years of delays discussing competence. At the start, the case was heard by civil courts, but the defense counsel insisted that they be tried by a military court. The judiciary either would not hear judicial actions or would obstruct them, precisely out of fear. In 1996 they attempted to close the case, to backtrack it and to effect a joinder with the trial against Beteta Alvarez. This discussion lasted three years, and the judges who have attempted to do something have been threatened.

Seeking cover in official secret under Article 30 of the Political Constitution of the Republic, the Ministry of National Defense refused to turn over documents that would have helped prove the responsibility of the accused in this case. The requested information was on normal operating and administrative procedures of the Presidential Security Department, the record of vehicle authorizations of the Presidential Security Department at the time, and her sister's file, which the Historical Truth-Finding Committee stated that they had seen at least in part, but all this was denied. They also requested information on persons holding key positions and especially whether they had been part of the intelligence system, and this was rejected due to security reasons. In this regard, Guatemalan law is quite clear, and it sets forth that the information must be provided when it is requested by a competent judge, and it is for the judge to determine whether it is secret or not. However, none of this information was supplied.

In the proceeding against the accessories, only one person was convicted, colonel Juan Valencia Osorio, and now the appeal process was carried out on February 26, 2003. It cannot be said that all the direct perpetrators and accessories of the murder have been convicted. There are other suspects of being accessories of her sister's murder, but the authorities did not wish to undertake any investigation, mainly due to the risk involved. There is a proceeding opened against other direct perpetrators. It is an obligation of the State to continue the investigation and to try all those who are responsible, for justice to be served in the instant case.

In 1994, a set of cassettes recorded by Noel de Jesús Beteta Álvarez was handed over, in which he describes exactly how he murdered her sister, and he clearly defined how the illegal intelligence operation was carried out to kill those who were deemed enemies of the State. Through his statements, he sought redemption of the sentence. In any case, he expected an amnesty. He stated that the person who gave the order and who gave the "Roman" signal to kill her sister was colonel Juan Valencia Osorio, who had received instructions from general Edgar Augusto Godoy Gaitán.

At the trial that took place from September 3, 2002 to October 3, 2002 before a competent tribunal, Beteta Álvarez recognized that it was he who did the interviews, but that he did them under the influence of drugs, and he accused her of supplying him a daily ounce of cocaine to buy his testimony. Nevertheless, the statements are consistent in terms of space, time and place, so that if Beteta Alvarez were drugged due to consumption of a daily ounce of cocaine for six or four months duration of the interviews, he would not have been capable of making them.

Her family, her sister's colleagues at AVANCSO and the staff of the Myrna Mack Foundation have been threatened. The pattern has always been to threaten after a judicial step has been taken. Recently, the security forces themselves have detected following by suspicious drivers in vehicles around the foundation and near her home. They have also tried to link her brother with drug trafficking activities, and they even began a trial. They also filed legal actions against him. They have also sought to dishonor the Mack Chang family by saying that they are linked to the "black market in foreign currency-" Both her family and AVANCSO have filed complaints regarding these facts, and there are files at the Office of the Human Rights Ombudsman, but they have attained no results.

Once, they asked the Government of the Republic to appoint an investigative prosecutor´s office to look into threats against human rights advocates, and they submitted a project on how to investigate those who threaten, including the legal operators. However, there has been no response.

She had to move to a condominium with a guard service to ensure that entry of individuals to her residence is more adequate. There are security guards and high walls to avoid any control. No one likes to live with security because one never knows when one is betrayed by someone who passes on the information, especially due to their longstanding struggle in this case.

She has been emotionally affected by living with so much anguish and uncertainty. The State has resorted very much to psychological warfare. The attitude of the State of Guatemala at this Court was rather a tactic of psychological warfare. The Agent of the State was a witness in her case and now they want to turn him against her, resorting to the same delay tactics in the international proceeding that they used in the domestic one.

For her family to avoid falling apart and to remain steadfast in their struggle to obtain justice, each one had to go through an individual process. Her sister's case is a paradigmatic one not only for her family but also for many Guatemalans who see themselves reflected in it. It is quite a heavy burden that forced her to give up her personal life and spend all her time representing, with dignity, the thousands of victims who had no chance. She is not an attorney, but rather a business administrator by profession, and previously she had no knowledge on human rights. Between 1990 and 1993 she had to concentrate on the case alone and also work two shifts to obtain money from the work she did for a living. In the last two years, she has spent 100 per cent of her time on the case, and to pay the costs she had to take out a loan.

The Myrna Mack Foundation, established in 1993, struggles to put an end to impunity in the case of Myrna and it also represents the case of many other Guatemalans. Starting from her sister's case, they have seen the deficiencies that affect cases of human rights violations and that now apply to all crimes or offenses committed by organized crime. The abusive use of amparo remedies as well as other remedies, denial of information alleging official secret, and threats and acts of intimidation against witnesses and other involved in the cases are part of this pattern that protects impunity and impedes strengthening of the system of justice.

The main objective of the Myrna Mack Foundation is to strengthen the justice and security system, for which they have requested pertinent reforms in the intelligence system. They make proposals to encourage the judges and prosecutors to believe in their judicial independence and in the autonomy that they must have to be able to exercise criminal prosecution, and to rescue the dignity and self-esteem of the police. The Foundation has spent close to $100,000.00 a year on her sister's case, without including legal costs.

She believes that the Presidential General Staff is responsible for the murder of her sister. Proof of this is the fact that, using as a pretext the riot that took place last week at the preventive detention center in zone 18, and in which they killed the witness in the Gerardi case, the military who have been accused in the Myrna Mack Chang case were transferred to the military headquarters without a court order. It is a notorious and publicly known fact that the Presidential General Staff was taking steps for them to be moved and they were present during the riot, to be able to take them out and to the military headquarters. Another conclusive proof is the conviction of Noel de Jesús Beteta Álvarez, who was a member of the Presidential General Staff.

Finally, they believe that the State wishes to link the outcome of the domestic trial to what is discussed at the Inter-American Court, despite the fact that they are two completely different jurisdictions.

[FN23] She testified on what she knows for a fact regarding the murder of her sister Myrna Mack Chang, the threats she has suffered, as well as the struggle she has headed for over 10 years to combat impunity in this case before the judiciary, her multiple efforts to keep the memory of her sister alive, the suffering caused to her by the execution of the victim, and other background pertaining to the object and purpose of the application.

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e. Testimony of Rember Larios Tobar, former head of the department of criminological investigations [FN24]

In 1978 he began his career in the National Police of Guatemala, where he served for 14 years. At the time of the facts he lived in Guatemala City and worked as the head of the department of criminological investigations. At that time, his supervisor was the Director General of the Police, colonel Julio Caballeros, who between September 14 and 15, 1990, ordered him to fully investigate the Myrna Mack Chang case, no matter who was responsible for it. Therefore, he coordinated and supervised his staff to conduct that investigation.

When he was assigned the case there was a report entitled "Preliminary Investigation, Myrna Mack," with a single page, possible drafted on September 11, 1990. This document contained information gathered at the scene of the crime and it pointed to robbery as the motive of the crime. He did not go to the scene of the crime, but the investigators of the homicide division who went there to cover this case stated that, curiously enough, the Director of the Police, colonel Julio Caballeros, did show up there.

He assigned the case to homicide investigator José Mérida Escobar, who had the necessary knowledge, the training and the experience in homicide investigations, and whom he trusted. He had a strong character and he was tenacious and persistent in the investigations. He authorized José Mérida Escobar to choose who would work with him on the investigation, for which reason he designated Julio Pérez Ixcajop, who currently lives in Canada.

One of the most important witnesses in the investigation, a policeman whose surname is Masariegos, better known as "Troncoso," recognized the direct perpetrator of the murder, and that he worked at the "Archivo" or "G2", and he stated that the murderer had worked for the Investigations Department before. This witness warned both Mérida Escobar and Pérez Ixcajop to be careful regarding this case, as there were cases that should be investigated and others that should not. He told them that they were very young and that they should not investigate.

After the investigation, a report dated September 29, 1990 was prepared and immediately submitted to the Director of the Police, colonel Julio Caballeros, who ordered that it be kept secret and not sent to the court, as their lives were at risk. Said report, based on the interviews to the witnesses, identified Noel de Jesús Beteta Alvarez as the main suspect and stated that the motive of the murder could have been the fact that Myrna Mack Chang had written a book dealing with institutional policies toward the internally displaced population in Guatemala which, at the time, was considered a very sensitive topic in Guatemala. The report also stated that at least three persons had kept watch on Myrna Mack Chang's house and that at least three individuals had murdered her.

Complying with the orders of the Director of the National Police, colonel Julio Caballeros, he kept that file secret. A second report, possible dated November 4, 1990 and prepared by orders of

the Director, was submitted to the courts. The substantive difference between this report and the former one was that the stated motive of the crime was robbery. However, in late December, 1990, the Director of the Police was dismissed, for which reason the witness waited until the new director took office, and then he mentioned the existence of the September 29, 1990 report. The new director general decided to submit that file, and for this he contacted the Attorney General and head of the Public Prosecutor's Office at the time.

Mérida Escobar mentioned several times that he was being watched and followed because of the Mack Chang case investigation, for which reason he asked Mérida Escobar to formally report said surveillance, and he did so. One of Mérida Escobar's reports states that when he arrived to interview one of the witnesses at AVANCSO's offices, the witness told him that a man who said he was an Army Captain, by surname Estrada, had come and told him that he was in charge of the investigation in the Myrna Mack Chang case, and he asked him for the name of the homicide investigator of the National Police who was in charge of the investigation.

Starting on September 29, 1990, Mérida Escobar's life radically changed, as he began to suffer harassment, threats, surveillance, and various types of persecution. The life of the witness also changed. The first reprisal against him was removal from his position as head of criminological investigations and his subsequent appointment to a lesser position, where he was punished and arrested for alleged misdeeds in the performance of his duties, which he had not committed.

Before rendering testimony before the courts, Mérida Escobar stated to him that he feared a second reprisal because he continued to be under surveillance and to receive threats. Despite the fear that he felt, he went to the court and told the truth about what he knew of the Myrna Mack Chang case. Weeks after his testimony, he was killed by assassins, expert shooters, one hundred meters from the headquarters of the National Police, with four shots to the face. There was a complete squad of armed policemen who merely watched how the crime was committed, in full daylight in a park. They left him there on the ground like a wounded animal. His killers left so much evidence at the scene of the crime and so many witnesses that it was possible to know where they came from. José Mérida Escobar was killed by the same persons who killed Myrna Mack Chang, for having rendered testimony in the case. Mérida Escobar's academic qualities and professional performance were excellent.

Before September 29, 1990, the witness only had recognitions and congratulations on his police record for his struggle against crime. After his colleague was murdered, he could not continue to live in his house, which was constantly being watched and was attacked with gunfire. Finally, he decided to go into exile in Canada in 1992.

He asked the Inter-American Court, in its ruling, to vindicate the National Police as an institution and the memory of José Mérida Escobar, who was a symbol of sacrifice and example to others; an example that can be reflected on all the new generations of policemen, and perhaps with this example some day, relatively soon, that mentality of indifference will be changed into a true service vocation with a mentality of respect, adherence to the law, and social justice.

[FN24] He rendered testimony on the investigations carried out by the investigators on the murder of Myrna Mack Chang, on the threats that he and others received, and on the background pertaining to the object and purpose of the application.

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f. Testimony of Henry Monroy Andrino, former Judge [FN25]

In 1990, he lived with his family in Guatemala and he was the regular judge at the Second Criminal Court of First Instance in Guatemala City.
In January, 1999, after an objection and self-disqualification of the previous Judge, he was assigned the Myrna Mack Chang case. He was in charge of the hearing on whether or not to issue an order for trial to commence against the persons identified as those responsible for this crime.Based on that hearing and studying the file, his conclusion as a judge at the time was that there was sufficient evidence to presume the responsibility of the persons who were being accused by the Public Prosecutor's Office for being the instigators or accessories before the fact in connection with the murder of anthropologist Myrna Mack Chang.
Those individuals were three members of the Guatemalan Army: general Godoy Gaitán and two Army colonels, Juan Valencia Osorio and Juan Guillermo Oliva Carrera. The items of evidence for this decision were details regarding the chain of command, as this crime could not have been committed by Noel de Jesús Beteta upon his own initiative.
On January 29, 1999, he issued the order for the trial to commence, and in that trial there was an abusive use of a series of legal remedies recognized by Guatemalan legislation, by means of which the elucidation of the merit of commencement of the trial or the lack thereof was delayed. Several judges heard the cause before, and the judge who heard it previously would not decide the date of the hearing due to the responsibility involved in trying three high military authorities. The file passed on from one court to another without anyone assuming the responsibility of the trial until the Supreme Court of Justice, in a special ruling, decided which court should hear this proceeding.
From the moment the order was issued for the trial to commence, he began to suffer threats and acts of intimidation of various types. He was summoned by the Secretary General of the judicial body that served as a direct link between the decisions of the Guatemalan Supreme Court of Justice and the corps of judges functioning in the country, who told him to be careful because the judges who issued decisions against members of the Army suffered accidents. They also sent packages simulating bombs to his office.
These threats made him fearful, for which reason he sought protection through the presence of the United Nations Mission in Guatemala, as he did not trust the Guatemalan system or the security forces. He felt fear about rendering testimony before the Inter-American Court but he knew that he was doing his duty.
Due to all the events that took place, he had to resign the judgeship and he decided to go into exile in Canada since April, 1999, and to date he has not returned to Guatemala, as there are no guarantees for his personal safety.

[FN25] The witness rendered testimony on what he knows for a fact regarding the murder of Myrna Mack Chang, on the threats he received and on other background pertaining to the object of the case.

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g. Testimony of Gabriela Vásquez Smerilli, attorney [FN26]

She was appointed as verifier together with attorney Alfredo Balsells Tojo in the Mack Chang case, as an outcome of the agreement between the State and Helen Mack Chang before the Inter-

American Commission on March 3, 2003. She was in charge of verifying compliance with commitments two to seven and ten of that agreement. Two reports were submitted as a result of her work. The first report was on August 23, 2000, and the second report was issued on October 4 of that same year.

They asked the Minister of Defense -pursuant to commitment number two regarding exhibition of documents by that Ministry- for eight documents that had been requested several times by the Public Prosecutor's Office and with respect to which they had not obtained a satisfactory reply. On September 7, the Minister answered the request, addressing his reply directly to the special prosecutor in the Mack Chang case. The first document was the "Parte de Novedades" or report on new developments by the Security Department of the Presidential General Staff during 1990. In his reply, the Minister of Defense stated that those documents did not exist because government resolution 228 of 1995 by the President of the Republic of Guatemala ordered the elimination of the Security Department of the Presidential General Staff and that, therefore, the documents were incinerated.

The second document requested was the entry and exit record for motor vehicles, whatever notices or new developments records existed, specifically regarding vehicles used by Noel de Jesús Beteta Álvarez, and who had authorized the use of those vehicles. This time the Minister replied that said information had been provided to the Public Prosecutor's Office in 1996. However, they verified that the information received that year referred to the vehicle record of the Presidential General Staff, but not of the Security Department as requested.

The third document requested was the file on Myrna Elizabeth Mack Chang at the Security Department of the Presidential General Staff. This time the Minister replied that there was no such file at the Security Department or "Archivo" and that the only existing report on this person was one prepared by Juan Eduardo Contreras, which had already been forwarded. However, on May 8, 2000, the Strategic Analysis Secretariat of the Presidency of the Republic published a list of persons that came from the "Archivo," and one of those names was that of Myrna Mack Chang.

They also requested the names, functions and responsibilities of the specialists of the Security Department, of the persons in charge, a description of the functions and responsibilities of the head and deputy head of the Department who were being accused as accessories, and the list of persons who worked for the service, which they did not receive. They also requested an organization chart of the Presidential General Staff and a copy of the book of normal administrative procedures and of the normal operating procedures of the Security Department, but they only received a copy of the manual of the Presidential General Staff.

With respect to the third commitment, pertaining to reduction of the negative effects of inappropriate use of remedies, they met with the President of the Constitutional Court, with the Magistrate of the Supreme Court and with the President of the Third Court. Said authorities recognized the excessive use of remedies that obstructed adequate administration of justice, but they deemed that legislative reforms were required to restrict said abusive use of remedies.

With respect to commitment four, on compliance with the legal terms granted by the judiciary authorities, specifically the eight days granted to submit evidence, this term was not complied with because there was an amparo remedy still pending resolution. The amparo was decided on August 1, 2000, and the notices were only served on August 29 and 30, despite the fact that the murder of Myrna Mack Chang had been classified as very urgent. Therefore, the verifies reached the conclusion that the first legal term had expired and it was impossible to comply with the

second legal term, which would expire in October, because the first one had not occurred within the legal term.
As regards commitment five, on the testimony of persons living abroad, no actions at all were taken to obtain said testimony. With respect to commitment six, to promote actions regarding the issue of security of witnesses for the private accuser in case of threats, during the verification period there were no acts of intimidation.
Regarding commitment seven, for the Government to investigate and, if there were grounds, to punish those responsible for not supplying the documentation requested of the Ministry of National Defense, at a meeting with the commissioner on August 8, 2002, COPREDEH undertook to conduct an investigation within 30 days on the persons who had not complied with the delivery of documents. However, the commitment was not fulfilled, because COPREDEH did not submit the investigation within the term established, nor did it do so afterwards. Finally, as regards commitment ten, pertaining to relations between the parties, she deemed that there has been constant communication.
During the verification period guarantees of due process were not fulfilled, because there were obstructions of justice by the Ministry of National Defense, which limited access to evidence that was important both for the Public Prosecutor's Office and for the private accuser. Furthermore, legislation was inadequate and there was unjustifiable non-compliance with procedural terms.
At the time of verification, there being a resolution in this regard, an amparo remedy was filed for the second time on the objection with respect to lack of competence of civilian jurisdiction and military jurisdiction, for which reason she does not think that there was a political will of the State to fulfill the commitments. Her verification concluded due to a decision of the parties before the Commission.

[FN26] The witness rendered testimony on her role as a verifier in the Mack Chang Chang case within the domestic ambit.
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h. Testimony of Nadezhda Vásquez Cucho, attorney for the Myrna Mack Foundation [FN27]

She has worked at the Myrna Mack Foundation since 1999 as a legal adviser regarding the Myrna Mack Chang murder case and in the investigation on administration of justice in Guatemala.
With respect to the Myrna Mack Chang case, her work consisted of advising, first of all on procedural matters, analyzing and preparing various replies to the remedies filed by the defense counsel and debating with the attorneys for the defense. Secondly, it involved the design of the probatory strategy in the trial against the accessories.
Once the Supreme Court of Justice left the criminal proceeding in this case open in 1995, the investigation against the accessories began but the trial took place on October 3, 2002, that is, eight years later. This delay was due to the fact that all the regular remedies filed in the proceeding were decided with procedural delays. Furthermore, the courts constantly discussed competence to hear the case, as there were several debates regarding whether it should be heard under military or civil jurisdiction. Some decisions of the judges were contradictory and

mistaken. Finally, the delay was also due to the abusive and indiscriminate use of the amparo remedy as a delay tactic, processed with the respective procedural delays.
Fourteen amparo remedies were filed in the proceeding against the accessories. The defense counsel filed "eleven," all of which were found to be inadmissible and nine of them were notoriously irrelevant, for which reason the defense counsel was penalized for lack of good faith. The issues discussed in these amparo remedies were, among others, the cassation ruling that left the proceeding against the accessories open; denial of the benefit of extinguishment of criminal responsibility set forth in the 1996 "National Reconciliation Law in Guatemala;" and admission of evidence of the Public Prosecutor's Office and of the private accuser. There was even an amparo remedy regarding a ruling to deny transfer of the case to military courts, and finally there was an amparo remedy to defend "the interests of the civil actor," who in this case was Lucrecia Hernández Mack, daughter of the victim.
In 1996, when the amnesty law was enacted, the defense counsel for the accused simultaneously filed two requests of extinguishment of responsibility before two different instances. The first request led to processing of two amparo remedies in face of denial of said benefit, and the second one led to processing of another amparo remedy. These amparos were found to be without merit, and two of them reached the Constitutional Court. Each of the amparo remedies was filed by the three accused. Processing of these amparo remedies lasted approximately 15 months. All the amparos filed exceeded the legal term set forth in the "Ley de Amparo y Exhibición Personal" or Amparo and Habeas Corpus Remedy Law, due to excess in processing.
The "Amparo, Habeas Corpus and Constitutionality Law" foresees the possibility of in limine rejection of an amparo remedy. A simple amparo remedy would last approximately 12 days, and an amparo remedy that involves, for example, submitting evidence, would last approximately 25 days. None of the amparo remedies filed was decided within the legal term. On average, each amparo remedy lasted approximately 170 days.
The courts fostered disputes over competence to avoid hearing the case regarding the accessories. The issue of whether a civil or military court should be competent was discussed four times, for which reason it went through six examining judges, two trial courts, and five different appellate courts. In Guatemala, judges are afraid to hear a case such as this one, in which high military officers are involved.
One of the first doubts regarding competence was filed by Helen Mack Chang herself because the case was under military jurisdiction, but in 1996 the Congress of the Republic annulled that jurisdiction, for which reason the case fell under civil jurisdiction. As of 1999, the defense counsel began once again to discuss this issue by filing various remedies, which lasted approximately 3 years.

[FN27] The witness rendered testimony on the development, obstacles, and outcomes of the criminal proceedings under domestic jurisdiction against the direct perpetrators and the accessories of the extra-legal execution of Myrna Mack Chang. She referred to the de facto and legal obstacles that have held back the normal processing of the case from the start to date.

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i. Expert opinion of Mónica Pinto, former United Nations Rapporteur for Guatemala [FN28]

From 1993 until April, 1997, due to an appointment by the Secretary General of the United Nations, she worked as an independent expert to examine the human rights situation in Guatemala, with the obligation to submit yearly reports to the United Nations Human Rights Committee. She visited Guatemala four times on investigative missions.

When she was appointed to this position, she became aware of the Myrna Mack Chang case. She mentioned the case in the four reports that she wrote for the United Nations Human Rights Committee.

Summary executions in Guatemala, according to the expert witness, have had different profiles over time. After a stage of massive or collective summary executions, which could be included under the "Scorched Earth" policy, there were more selective summary executions. As of the 1990s, one cannot say there were massive summary executions, save in very specific cases, such as the "Chaman" one, which was an episode in which the Army entered a village of returnees and killed every person there.

As of 1994, in the cases of summary executions, it was found that members of the Army were involved. In 1995, the right to life continued to be the right that was abridged most often in Guatemala, and summary executions continued, but at that time they began to take on another nuance, which was that summary executions began to occur against other groups, such as street children. Summary executions tended to get rid of those who due to their activities might compromise a system that should not be questioned.

Myrna Mack Chang was working in a politically sensitive ambit. The way she was executed, with 27 knife wounds, showed that it was not a traditional homicide. The four reports that the expert witness submitted to the United Nations Human Rights Committee showed that a broad sector of those in power in Guatemala considered the issue of refugees to be synonymous with membership in the guerrilla forces. Myrna Mack Chang was working on the issue of the refugees and internally displaced population, for which reason she became a threat, like all those who had somehow questioned the existing system. Basically, the members of the "Comunidades de Población en Resistencia" (CPR) were considered terrorists or subversives, and all those who helped them in any way were immediately harassed.

At the time in which the first report was drafted, all the circumstances pointed to the conclusion that Myrna Mack Chang's death could not be due to a simple homicide, nor to a matter of passion, but rather to a policy that with premeditation decided to eliminate her.

When she visited Guatemala the first time, there was a judgment of first instance, with a 30-year prison sentence against an Army specialist, Beteta, who was the direct perpetrator of the murder of Myrna Mack Chang. It is obvious that she was murdered due to the direction of her work and the issues that she was studying.

Helen Mack Chang was the private accuser and she requested legal action against those whom it was thought were prima facie the accessories of the murder. This was turned down and in 1993 it was appealed, with a favorable decision in 1994, for which reason legal action began against five persons: three military and two policemen. In 1995 there was no progress in the case, and in 1996 the only emblematic case in Guatemala that had a final judgment with respect to the direct perpetrator was that of Myrna Mack Chang.

The file contains a routine of merely procedural steps or matters that augment the size of the file, but all these procedures are irrelevant regarding the merits, to elucidate the truth.

The issue of administration of justice was a recurring theme in the four reports that she submitted to the Committee. It was a complex problem, because things did not function effectively. Justice at the time was terribly slow, much discredited in the eyes of the population, and it did not issue

effective rulings or ones that put an end to a situation in which the crimes were not punished. Actions by the judiciary, in the context in which she was entrusted with verifying the human rights situation in Guatemala, were not breaking the circle of impunity.
Guatemala at a given time experienced a "culture of threats." All Guatemalan society that sought to somehow react suffered threats and even attacks. For example, prosecutors who took on important cases and furthered the investigation were threatened. This included the people who were in charge of the Myrna Mack Chang case: Helen Mack Chang, the Myrna Mack Foundation, and even AVANCSO. These threats tended to deteriorate the social fabric, to curtail the capacity to make complaints and to act. Every time a prosecutor was threatened, he or she had to be replaced by another one, and the file had to be studied anew.

[FN28] An Argentinean national, with a doctorate in Law; she is a tenured professor at the University of Buenos Aires and is currently a visiting professor at the School of Law at Columbia University in New York. She gave her expert opinion on Guatemalan reality in the early nineties, on her knowledge of the extra-legal execution of Myrna Mack Chang, on the deficiencies of administration of the justice in Guatemala, and on other background information pertaining to the object and purpose of the application.

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j. Expert opinion of Henry El Khoury Jacob, attorney [FN29]

Article 30 of the Constitution of Guatemala regulates confidentiality of information in the relations between private citizens and judicial or administrative offices, and not relations among the bodies of the State. Therefore, it is not possible for any body of the executive branch of government, in face of a request by a criminal court, to reply that it does not send the information based on that article. Procedural legislation in Guatemala establishes a procedure to be followed by a judge to assess official secret in these cases. It is for the judge to decide whether they are essential for the proceeding, and if so the judge establishes the need to disclose them. In this case, the judge is the sovereign authority, and the public office cannot refuse.
The Amparo, Habeas Corpus and Constitutionality Law in Guatemala is a broad one regarding the possibility of filing amparo remedies with respect to almost any procedural act by a criminal judge. In other words, based on that law, the parties have the possibility of filing amparo remedies regarding almost any decision of the court. For example, amparo remedies can be filed with respect to rejection of evidence requested by the civil actor or by the private prosecutor, or to denial of a request for photocopies of a file for the defense counsel or the civil actor or the private prosecutor, or against a measure restricting liberty, or against any other protective measure imposed upon the accused. Amparo remedies can also be filed regarding orders for investigative steps such as identity parades, search and entry orders, phone taps, mail seizure or interception.
Nevertheless, the amparo remedy is a key institution for protection of individuals' rights, but its exaggerated use can cause a "hypertrophy" of the proceedings, which can even lead to denial of justice. This danger stems from the legal text, and not from judicial practice.

[FN29] A Costa Rican national, he is an attorney. He is a full professor of criminal and procedural law, penal policies and criminology at Universidad de Costa Rica. He was a legislative advisor and a Deputy Justice of the Supreme Court of Justice. He gave his expert opinion on procedural matters pertaining to processing of the amparo remedies, determination of the scope of official secret, and on criminal cases under the domestic jurisdiction.

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k. Expert opinion of Katharine Doyle, researcher [FN30]

She did not meet Myrna Mack Chang, but in 1994 she met her sister Helen. She also rendered testimony in the domestic criminal proceeding in the Mack Chang case, regarding declassified United States documents submitted by the attorneys in the case, where they came from, why they were made available to the public, and their importance for the criminal proceeding. She testified on the role of Guatemalan military forces during the war, on the information that the United States had regarding their participation in human rights violations, and on various aspects of the military intelligence institutions.

In 1994, the "Guatemala Documentation Project" was set up and she was its director for seven years. This project was created before the establishment of the truth-finding committee, subsequently known as the " Comisión para el Esclarecimiento Histórico," with the aim of having access to the secret files of the United States of America and to obtain the documentation required by the investigators of said committee. She worked for the truth-finding committees in El Salvador and Honduras, and she recognized the difficultes they face to obtain information about the military who were the center of violence. The United States agencies constantly record information on these allied military forces. This was the origin of the project to try to enter the secret files of the United States of America to obtain useful information for the Guatemalan investigators, anticipating the future establishment of a truth-finding committee.

In addition to secondary sources, such as human rights reports and books, analysts of the "National Security Archives" resort to available legislation such as the "Freedom of Information Act" that authorizes obtaining declassified documents of the government of the United States, to disseminate them and create further debate on said policies. This law was passed in 1966, allowing any person to make a formal request to the United States national security and foreign policy agencies, such as the Central Intelligence Agency (CIA), the Pentagon, the Defense Intelligence Agency, the State Department, and the Agency for International Development, for them to supply information on their policies in operations. Backed by this law, in the framework of the "Guatemala Documentation Project," they requested information on human rights cases from these agencies, especially regarding the military, the training they received, and the United States government policies. They have often had confrontations with that Government regarding requests for declassification of certain materials, and they have even had to go to court.

The information found in the declassified documents was verified through a vast collection of secondary and primary sources. After six years of research, she prepared a report on the history, structure, organization, and doctrine of the Guatemalan Army as an institution and its role during the 30-year "civil war." Specifically, the documents analyzed contain numerous references to the role of the "Archivo" and of the Presidential General Staff or "Estado Mayor Presidencial" (EMP) in human rights violations in Guatemala. The "Archivo" in Guatemala is the name of an intelligence unit of the Presidential General Staff, created with the help of the United States. At that time, it was known as the "Regional" or as the regional telecommunications center for

Central America, and it operated as an intelligence network. Its name changed in the seventies and eighties to the "Archivo" or "Archivos," and in 1986, when a civilian took office in Guatemala, its name was changed to "Dirección de Seguridad Presidencial" or Presidential Security Directorate.

In Guatemala there were various units with intelligence responsibilities, especially: the "D2"; the "Archivo", which operated within the EMP; the "G2" that was an intelligence unit within the armed forces that conducted field operations; and the "S2" that was a military unit in the conflict zone. The EMP is an intelligence organization and one of the branches of the armed forces. The "Archivo" is an operations unit within the EMP. If the EMP decided that a given operation, such as a murder or a kidnapping, must be carried out, the "Archivo" carried it out.

The investigation demonstrated that the main feature of the intelligence apparatus was its corporate nature and integrity, not only during the 30 years of war, but also in 1990. The intelligence community per se was a type of brotherhood. The persons who worked in the intelligence units changed positions and transferred from one unit to another, despite the fact that the units carried out different operations and policies.

The three military officers accused in the Mack Chang case were members of this intelligence brotherhood. They began their careers very early and worked in various intelligence units. General Godoy Gaitán was the director of the "D-2" and later on he was the director of the EMP. In 1990, when Myrna Mack Chang was murdered, Godoy Gaitán was the head of the "Estado Mayor Presidencial", Valencia Osorio was the director of the "Archivo" and Oliva Carrera was second in the chain of command at the "Archivo." It is impossible for Noel de Jesús Beteta Alvarez to have carried out the assassination of the anthropologist upon his own initiative due to the strict command structure and hierarchy within the Army. Therefore, it is inconceivable for a low-ranking soldier or "military specialist," as Beteta Alvarez was called, to murder someone so well known upon his own initiative.

The "Military Diary" is a document created by the "Archivo" that recorded the kidnappings, interrogations and murders of dozens of Guatemalans in the mid-eighties. This book contains photographs of the victims, notes on the "subversive" activities of the suspects, details on their kidnappings, the time they were detained and whether or not they were murdered. Given the lack of Guatemalan sources of material ascribing the responsibility for the murder of Myrna Mack Chang, she analyzed the United States documents on the topic. They attributed the responsibility to the security forces, to military intelligence, and to the presidential security commandoes. In this case, it was necessary to establish which military officers were involved in an order such as the one to murder Myrna Mack Chang.

It is not true that the State of Guatemala does not have the documents requested by Helen Mack Chang, that they allege do not exist, were destroyed or cannot be supplied due to national security reasons or official secret. There is an example of the documents requested by the Mack family that were already made public without causing any damage to national security. These are general orders of the Armed Forces of Guatemala, consisting mainly of a list of staff, officers, and positions held during the time covered by said general order.

In the declassified documents there are specific references to Myrna Mack Chang as a "leftist anthropologist" or as a member of the community of non-armed opposition that constituted a threat to the Government of Guatemala, together with other persons who sought to create new political parties, anthropologists or researchers who revealed matters that were inconvenient for the State of Guatemala.

Some of the documents analyzed were contributed to the judicial proceeding. The Guatemalan judicial authorities accepted and attached validity to these documents, underlining their usefulness to determine the institutional structure of the Armed Forces, the importance of the chain of command, and the fact that the murder of Myrna Mack Chang was set within a pattern of selective violence that identified an objective considered to be a threat to the State.

[FN30] A United States citizen. Since 1990, she has worked for the non-governmental organization "National Security Archives," where she is a senior analyst and heads the documentation project on Guatemala. She studies United States foreign policy, specifically with respect to human rights in countries that underwent periods of violence such as El Salvador, Honduras and Guatemala. She gave her expert opinion on the reality of Guatemala in the early nineties, on the extra-legal execution of Myrna Mack Chang and on declassification of documents that demonstrate that the State was involved in selective homicides at the time when Myrna Mack Chang was murdered.

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l. Expert opinion of Iduvina Hernández, a journalist [FN31]

From 1992 to 1995 she worked in the national section of "Revista Crónica" in Guatemala, for which reason she studied the operation of the intelligence systems in Guatemala and especially of the Presidential General Staff. Her sources included interviews with two heads of the Presidential General Staff, intelligence directors and military officials of the various governments at the time. She also knew of the Mack Chang case.

The counterinsurgency doctrine is a modality undertaken by application of the doctrine of national security to the specific case, positing that the State is the main axis of security and acting by defining a given person as an internal enemy of this State because he or she is considered a dissident. The State also assigns to the armed forces, to the Army, the responsibility for that doctrine.

This doctrine was applied in Guatemala, especially during the armed domestic conflict. When Guatemala signed the Inter-American Treaty of Reciprocal Assistance (TIAR), it adopted special military training manuals (for intelligence, interrogation, and source management), within the framework of the national security doctrine, which defined the contents of the campaign plans that governed the activities of the Army and the intelligence objectives of all units, including the Presidential General Staff. This doctrine, contrary to international humanitarian law, defined the combat structure of the armed forces and set the frame for selection of intelligence objectives, defining the work methods, the structure and the deployment of the various organizations in the intelligence system.

Any person or any organization whose activity might be deemed contrary to the State and to the established order was classified as an "internal enemy." In this case, an academic field research study that might encompass areas or spaces that were of interest as military or intelligence objectives within the counterinsurgency process would fall under this definition of an "internal enemy."

During the 1980s and early '90s, the intelligence systems in Guatemala had a structure with hierarchical responsibilities, down to the operational units of the various sections or levels of intelligence, in each of the military departments. In addition to their legal intelligence functions,

they conducted absolutely illegal and clandestine intelligence operations and activities. An intelligence channel is a mechanism by which an intelligence structure establishes the lines of communication with its various units, independently of the normal hierarchical structure of an army. In other words, there is an established hierarchical structure from the general commander, through the high command, down to he heads of the Presidential General Staff and then the military zones. This is the normal military channel.

The governing law for the Guatemalan Army establishes several General Staffs, including the Presidential General Staff. While the legal mission of the Presidential General Staff, which still exists today with no changes in its functions and structures, is to ensure the security of the President of the Republic, of the Vice-President and of their next of kin, the Presidential General Staff has always had an intelligence unit, under various names, which committed many illegal acts that especially violated human rights in Guatemala.

The "Archivo" is one of the names given to said intelligence unit, and it is probably the name by which it is known most often, although it was also called Regional Telecommunications Office and Presidential Security Department. The "Archivo" carried out intelligence operations based on the fieldwork of the intelligence units in geographic areas in the interior of the country or in the city; it also gathered information on the activities of any person or institution that had been defined as an "internal enemy." Once a person or an institution had been selected, they were labeled as objectives for intelligence units.

The hierarchical structure of the Presidential General Staff, as regards its officers and those in charge of the various sections, was based on a first and second officers in charge. It has analysis sections that are technical in nature, operational and administrative sections. Therefore, no intelligence agent, whatever his rank, can autonomously plan, prepare and implement a special intelligence operation, as any operation would require a specific plan and a written or verbal order. The murder of Myrna Mack Chang fits into this systematic pattern of an intelligence operation, as she was followed after a file had been received with her profile, and the intelligence unit of the Presidential General Staff used a set of resources.

At that time, the director of the National Police had previously been the director of the "Archivo." This person was at the scene of the crime and he eliminated any possibility of obtaining any type of prints, when usually lower-rank agents, and not the director, analyze any crime scene.

The police took no prints arguing that it had rained, but it was proven that at the time of the crime that day it had not rained. They also cleaned whatever residues might be on Myrna's fingernails, demonstrating an attitude that altered the scene of the crime. The data reporting certain entries to and exits from the offices of the Presidential General Staff on the day of the murder were manually altered. The authorities of the Guatemalan Ministry of Defense refused to provide the information to the judges to learn in detail the entries and exits of vehicles, activity reports, among others, an action that breached the Guatemalan legal order that establishes, in the Criminal Procedures Code, a mechanism for the judges to obtain classified information and maintain due confidentiality. Possible classification of a document as secret does not and cannot justify not providing such material to the judges.

From the time when she was summoned to render her expert opinion before the Inter-American Court, she has feared for her personal safety. Specifically, her computer was examined on December 22 and 26, outside business hours and during vacations. She also received a number of threatening phone calls in February, 2003. She filed complaints regarding all the above. She is

afraid that some entity linked to the Guatemalan State may react violently because she has given her expert opinion.

[FN31] A Guatemalan national. She is currently the executive director of a non-governmental organization in Guatemala that promotes reform of the security and intelligence services and democratic control over them in Guatemala, to avoid abuse and violations of human rights. In 1999, she was a consultant for the Myrna Mack Foundation. Her expert opinion was on the organization and functioning of the military intelligence structures.

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m. Expert opinion of Alicia Neuburger, a psychologist [FN32]

The grieving process begins with the irruption of a very painful or violent fact that causes a trauma, for which reason it is necessary for the psyche to begin to invest energy to overcome that event. It goes through several stages, starting with perplexity and denial, a necessary period for the psyche to adjust to that irruption. Then, when the person is aware of what happened, there is a period of great grief and depression with a whole set of symptoms that includes somatic aspects. There are bursts of indignation, extreme anger, there will probably be denial once again, and feelings of guilt. If the event is a natural one, the grieving process has a chronological timeframe with a more or less determined duration; instead, if that is not the case, as happened to the Mack Chang family, it may never be fully completed.

The psychological consequences of State violence, and specifically of extra-legal executions, for the next of kin of the victim vary and they depend on the age of each person and his or her relationship with the victim. Such a violent death is not natural. Depressive states are quite frequent, and they often become chronic, with some type of remission, aggressiveness, and character changes. There are several symptoms, such as bursts of irritability and aggression, difficulty to concentrate, nightmares, problems sleeping, difficulties or alterations with respect to eating, a generally low motivation, extreme tiredness, and symptoms that are called psychosomatic, or directly related to the emotional state.

Some of these effects are suffered by all the next of kin. The siblings may have major feelings of guilt. For the children it is quite different. If the children are small or adolescents, it is even more difficult, it is very hard for them to understand. The family does not understand either, and they also try to protect them, which creates a circle of mistrust, an affective withdrawal. The children, especially during adolescence, as in this case, face a sudden interruption of their process of building an adult life project.

All these consequences worsen when there is no justice. Another damage is added when those responsible are not punished. The brutal form of the facts is another aggravating factor with respect to the emotional state. Lack of protection by the State interrupts and impedes the process of grieving of the whole family. Impunity causes a feeling of disbelief, first regarding institutions and then toward all of society, including the most intimate relations. There are feelings of powerlessness and indignation that affect the individuals' whole lives because they have to invest a great amount of energy to overcome that indignation, that powerlessness. Therefore, punishment of those responsible helps the grieving process take place.

Based on this, a general psychological diagnosis was carried out. The whole Mack Chang family has been affected in all areas of its life; they had to set aside or truncate life projects, they

suffered and continue to suffer, especially the mother, a chronic process of depression. They had to isolate themselves, set friendships and social life aside. They all have a feeling of great mistrust toward Guatemalan society in general and toward the world. They are hesitant to express feelings, to avoid feeling more vulnerable and to be able to continue. There were other organic symptoms of the emotional state, such as deafness in the case of Myrna Mack Chang's brother and a problem in her brother's head.
The fact that those responsible were not punished gave rise to a pattern of permanent grieving. For this reason, it is essential for those responsible to be punished for this not to become an eternal grieving. The murder was an act of public, institutional violence. The family suffered horrible intimidation and still suffers false accusations. The need to reestablish Myrna Mack Chang's good name is a necessary symbolic reparation for the peace of mind of all the family. It is also necessary for the family to receive psychological assistance individually and as a family.
She interviewed the family of Myrna Mack Chang in Guatemala, as a group and individually. To complement her general expert opinion, she submitted to the Court the individual psychological reports for Zoila Chang Lau, Marco Mack Chang and his wife, Helen Mack Chang, Ronald Chang Apuy, and Lucrecia Hernández Mack.

[FN32] An Argentinean national. She worked at Universidad de Buenos Aires and is currently a professor at Universidad de Costa Rica. Her expert opinion was on the psychological damage suffered by the alleged victims.

C) EVIDENCE ASSESSMENT

Evaluation of the Documentary Evidence

128. In this case, as in others, [FN33] the Court accepts the probatory value of those documents that were submitted by the parties at the appropriate procedural moment or as evidence to facilitate adjudication of the case, which was not disputed nor challenged, and the authenticity of which was not questioned. On the other hand, pursuant to Article 43 of the Rules of Procedure, the Court admits the evidence submitted by the parties regarding the supervening events that occurred after the application was filed.

[FN33] Cf. Bulacio Case, supra note 9, para. 57; Juan Humberto Sánchez Case, supra note 9, para. 45; and "Five Pensioners" Case, supra note 9, para. 84.

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129. It should be recalled that the body of evidence in a case is unique and indivisible and is composed of the evidence submitted during all stages of the proceeding, [FN34] so the documents contributed by the parties with respect to the preliminary objections are also part of the evidence in the instant case, even if the State subsequently withdrew said objections (supra paras. 25 and 27).

[FN34] Cf. Bulacio Case, supra note 9, para. 68; Juan Humberto Sánchez Case, supra note 9, para. 60; and Las Palmeras Case. Reparations, supra note 10, para. 34.

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130. With respect to the written sworn statements rendered by Clara Arenas Bianchi and Carmen de León-Escribano Schlotter, as well as by expert witness Bernardo Morales Figueroa, the Court deems them pertinent inasmuch as they are in accordance with the object defined by the Court in the Order to receive them (supra para. 35).

131. As regards the documents requested by this Court on the basis of Article 44 of the Rules of Procedure and that were submitted by the parties (supra paras. 55 and 57) the Court includes them in the body of evidence in the instant case, pursuant to the provision of paragraph one of that Article. The Report of the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" (hereinafter "CEH Report"), the "Informe para la Recuperación de la Memoria Histórica" of the Human Rights Office of the Archbishopric, "Guatemala: Nunca más: los mecanismos del horror (hereinafter "REMHI Report"), the December 29, 1996 Peace Accord, "Acuerdo de Paz Firme y Duradera entre el Gobierno de la República de Guatemala y la Unidad Revolucionaria Guatemalteca," the Political Constitution of the Republic of Guatemala and the Criminal Procedures Code in force at the time of the facts, are deemed useful documentation to decide on the instant case, for which reason they are added to the body of evidence, pursuant to the provisions of Article 44(1) of the Rules of Procedure. The documents submitted by the Commission and by the State after the application and the answer to the application were filed, respectively (supra paras. 122 and 124), as well as the annexes submitted by the representatives of the next of kin of the victim together with their final pleadings (supra para. 51), are also included in the body of evidence, in accordance with said Article of the Rules of Procedure. As regards the press documents submitted by the Commission (supra paras. 18 and 122), while they are not documentary evidence, they are important insofar as they express publicly known and notorious facts that corroborate aspects pertaining to the instant case. [FN35]

[FN35] Cf. Juan Humberto Sánchez Case, supra note 9, para. 56; Cantos Case, Judgment of November 28, 2002. Series C No. 97, para. 39; Baena Ricardo et al. Case. Judgment of February 2, 2001. Series C No. 72, para. 78.

Evaluation of the Testimonial Evidence and Expert Opinions

132. With respect to the testimony rendered by Lucrecia Hernández Mack and Helen Mack Chang (supra paras. 127.c and 127.d), the Court admits it insofar as it is in accordance with the object of the examination proposed by the Commission and the representatives of the next of kin of the victim. In this regard, the Court notes that, in general, the statements of the next of kin of the victims are especially useful in matters pertaining both to the merits and to reparations inasmuch as they can provide very pertinent information on the damages caused by the violations. [FN36] However, since the next of kin have a direct interest in the instant case, their statements cannot be assessed in an isolated manner, but rather within the whole set of evidence in the proceeding.

[FN36] Cf. Bulacio Case, supra note 9, para. 66; Juan Humberto Sánchez Case, supra note 9, para. 57; and "Five Pensioners" Case, supra note 9, para. 85.

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133. Regarding the testimony of Monsignor Julio Cabrera Ovalle, Virgilio Rodríguez Santana, Rember Larios Tobar, Henry Monroy Andrino, Gabriela Vásquez Smerelli, and Nadezhda Vásquez Cucho, as well as the expert opinions of Katharine Doyle, Henry El Khoury Jacob, Iduvina Hernández, Mónica Pinto, and Alicia Neuburger (supra paras. 127.a, 127.b, 127.e, 127.f, 127.g, 127.h, 127.i, 127.j, 127.k, 127.l and 127.m), which were neither disputed nor challenged, the Court admits them and gives them value as evidence.

VIII. PROVEN FACTS

134. Based on what was stated above regarding acknowledgment of responsibility by the State in the instant case, the facts set forth in the application, the documentary evidence, the statements of the witnesses, the expert opinions of the expert witnesses, and the statements by the Commission, by the representatives of the next of kin of the victim and by the State, the Court deems the following facts proven:

With respect to Myrna Mack Chang

134.1. Myrna Mack Chang was born in Retalhuleu, Guatemala, on October 24, 1949. [FN37] She was an anthropologist who graduated in Social Science from Universidad de San Carlos de Guatemala; she obtained an advanced diploma in economic and social science at Victoria University of Manchester, England, and a Masters degree in social anthropology from the University of Durham, England; [FN38]

[FN37] Cf. birth certificate of Myrna Mack Chang (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-1, leaf 2228).

[FN38] Cf. curriculum vitae of Myrna Mack Chang and photocopies of the diplomas obtained at Victoria University of Manchester and the University of Durham (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-4, leaves 2249 to 2252) (file with annexes to the application, annex 11, leaves 240 to 244).

134.2. Myrna Mack Chang studied the phenomenon of internally displaced persons and of the Comunidades de Población en Resistencia (CPR) in Guatemala during the armed conflict. She was a founding member of the Asociación para el Avance de las Ciencias Sociales en Guatemala (AVANCSO), established in 1986 with the aim of conducting research on the causes and consequences of the displacement of rural indigenous communities, the living conditions of the victims of this phenomenon, and government policies toward the displaced population. Based on

her research, Myrna Mack Chang reached the conclusion that the main cause of the internal displacements of the Guatemalan indigenous communities was the Army's counterinsurgency program. She deemed the efforts of the Government to solve these problems "minimal," and she criticized the Army's policies toward the displaced population; [FN39]

[FN39] Cf. sworn statements by Carmen de León-Escribano Schlotter and Clara Arenas Bianchi before a notary public on January 16, 2003; testimony of Monsignor Julio Cabrera Ovalle, Lucrecia Hernández Mack and Helen Mack Chang rendered before the Court on February 18 and 19, 2003; statement by Clara Arenas Bianchi before the Third Criminal Trial Court of first instance on August 24, 1992 (file with annexes to the application, annex 13, leaves 308 to 316); Asociación para el Avance de las Ciencias Sociales en Guatemala, "Política Institucional hacia el Desplazado Interno en Guatemala" of January, 1990, Cuaderno Nº 6, Guatemala (file with annexes to the application, annex 14, leaves 318 to 368); and report by the Comisión para el Esclarecimiento Histórico or Truth-Finding Committee, "Guatemala, memoria del silencio," volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793).

134.3. for several days prior to the extra-legal execution and on dates that have not been determined, Myrna Mack Chang had been under surveillance and followed by a group of men, including Noel de Jesús Beteta Álvarez, who was the Sergeant Major Specialist of the group at the Security Section of the Presidential General Staff (EMP); [FN40]

[FN40] Cf. Ruling on appeal for review by the Supreme Court of Justice of Guatemala of February 9, 1994 (file with annexes to the application, annex 19, leaves 488 to 552); Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451); report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, page 190.

134.4. on September 11, 1990, at approximately 20:00 hours, when she left her office at AVANCSO, located on 12th street and 12th avenue of Zone 1 in Guatemala City, Myrna Mack Chang was attacked by at least two persons. The victim died at the scene of the facts due to 27 cutting wounds to the neck, thorax and abdomen, caused by a "cutting and thrusting weapon," which caused a "hypovolemic shock" and her death; [FN41]

[FN41] Cf. certification of the death certificate of Myrna Mack Chang (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-42, leaf 3220 and file with annexes to the application, annex 16, leaf 400); Ruling on appeal for review by the Supreme Court of Justice of Guatemala of February 9, 1994 (file with annexes to the application, annex 19, leaves 488 to 552); and Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451).

134.5. one of the direct perpetrators of the murder was Noel de Jesús Beteta Álvarez (infra para. 134.22); [FN42]

[FN42] Cf. Ruling on appeal for review by the Supreme Court of Justice of Guatemala of February 9, 1994 (file with annexes to the application, annex 19, leaves 488 to 552); and Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451).

134.6. Myrna Mack Chang was placed under surveillance and extra-legally executed in a military intelligence operation developed by the high command of the Presidential General Staff; [FN43]

[FN43] Cf. testimony by Helen Mack Chang and Henry Monroy Andrino rendered before the Court on February 18 and 19, 2003; expert opinions of Katharine Doyle an d Iduvina Hernández rendered before the Court on February 18 and 19, 2003; report by the Procurador de los Derechos Humanos or Human Rights Ombudsman of Guatemala dated November 9, 1992 (file with annexes to the application, annex 47, leaves 882 to 896); report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793); and report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: el entorno histórico," volume III, pages 292 to 294 (file with annexes to the application, annex 52.4, leaves 1128 to 1129 and file with annexes to the brief with requests, pleadings and evidence of the representatives of the next of kin of the victim, annex R-VII-64).

134.7. the extra-legal execution of Myrna Mack Chang was politically motivated, due to the research activities that she carried out with the Comunidades de Población en Resistencia (CPR) and the policies of the Guatemalan army toward them. This situation was viewed as a threat to national security and to the Guatemalan Government; [FN44]

[FN44] Cf. testimony by Julio Cabrera Ovalle, Helen Mack Chang and Henry Monroy Andrino rendered before the Court on February 18 and 19, 2003; expert opinions of Mónica Pinto, Iduvina Hernández and Katharine Doyle rendered before the Court on February 18 and 19, 2003; report by the Human Rights Ombudsman of Guatemala of November 9, 1992 (file with annexes to the application, annex 47, leaves 882 to 896); report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793); statement by Clara Arenas Bianchi before the Third Criminal Trial Court of first instance on August 24, 1992 (file with annexes to the brief with requests, pleadings and evidence of the representatives of the next of kin of the victim, annex R-VII-33, leaves 3050 to 3057); and report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: el entorno histórico," volume

III, pages 292 to 294 (file with annexes to the application, annex 52.4, leaves 1128 and 1129 and file with annexes to the brief with requests, pleadings and evidence of the representatives of the next of kin of the victim, annex R-VII-64).

Political, social, and juridical context at the time of the death of Myrna Mack Chang

134.8 at the time of the facts pertaining to this case in 1990, Guatemala was in the midst of an internal armed conflict; [FN45]

[FN45] Cf. Peace accord "Acuerdo de Paz Firme y Duradera," signed on December 29, 1996 by the Government of Guatemala and the representatives of the Unidad Revolucionaria Nacional Guatemalteca (URNG); "Informe del Experto independiente, Sr. Christian Tomuschat, sobre la situación de los derechos humanos en Guatemala, preparado de conformidad con el párrafo 14 de la resolución 1990/80 de la Comisión de Derechos Humanos" (United Nations) of January 11, 1991 (file with annexes to the application, annex 52, leaves 961 to 969); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 20 to 145 (file with annexes to the application, annex 52.3, leaves 1052 to 1115).

134.9. in December, 1996, the State of Guatemala and the representatives of the Unidad Revolucionaria Nacional Guatemalteca (URNG) signed the peace accord "Acuerdo de Paz Firme y Duradera," with the aim of ending the armed conflict. Said Accord validated the twelve agreements reached during previous negotiations. One of these, signed in Oslo, Norway, on June 23, 1994, referred to "the establishment of the 'Comisión para el Esclarecimiento Histórico' to elucidate the human rights violations and acts of violence that have caused suffering to the Guatemalan population." This truth-finding committee rendered its report on February 25, 1999; [FN46]

[FN46] Cf. "Acuerdo de Paz Firme y Duradera," signed on December 29, 1996 by the Government of Guatemala and the representatives of the Unidad Revolucionaria Nacional Guatemalteca (URNG); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume I, page 23.

134.10. from the second half of the 1980s until the formal end of the armed conflict in 1996, there were selective extra-legal executions in Guatemala with the aim of "social cleansing" to "exterminate those whom [the State] deemed enemies," that is, all those individuals, groups or organizations that, allegedly, worked to break down the established order. [FN47] Through the systematic practice of arbitrary execution, "agents of the State physically eliminated their opponents, while they also sought to repress, silence, and control the population as a whole, through terror, both in the urban and in the rural areas;" [FN48]

[FN47] Cf. expert opinions of Mónica Pinto, Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 339, 317 to 368 and volume I, pages 193 to 201; and report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, pages 1 to 47.
[FN48] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, page 356; testimony by Helen Mack Chang and Lucrecia Hernández Mack rendered before the Court on February 18 and 19, 2003; and expert opinions of Mónica Pinto, Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003.

134.11. selective arbitrary executions, in general, were operations carried out by the intelligence bodies of the State and they had common patterns and characteristics. First, they identified the individual or individuals who would be the target of the intelligence action. Subsequently, they gathered detailed information on that person, monitored the individuals' communication, and followed the person to establish his or her daily routine. The information obtained was evaluated and interpreted, with the aim of planning the operation. The staff who would participate, their functions, who would be responsible, the vehicles and the weapons to be used would be established, as well as whether the operation would be public or clandestine. The orders were verbal and there were no written records of the decision or of the planning, so as to ensure the covert nature of the operation; [FN49]

[FN49] Cf. expert opinions of Mónica Pinto, Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 337 to 339; Report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, pages 189 to 190.

134.12. the decision to execute certain persons was accompanied by acts and maneuvers that sought to obstruct the judicial proceedings directed at elucidating the facts and punishing those responsible; [FN50]

[FN50] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, page 369.

134.13. during the armed conflict and even today, the courts in Guatemala have been incapable of effectively investigating, prosecuting, trying, and punishing those responsible for human rights violations. [FN51] The courts have often subordinated their actions to the executive branch or to military influence, "applying legal provisions or rules that are contrary to due process or not applying those they should have;" [FN52]

[FN51] Cf. expert opinion of Mónica Pinto rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume V, page 45; and "Informe del Experto independiente, Sr. Christian Tomuschat, sobre la situación de los derechos humanos en Guatemala, preparado de conformidad con el párrafo 11 de la resolución 1991/51 de la Comisión de Derechos Humanos" (United Nations) of January 21, 1992 (file with annexes to the application, annex 52, leaves 1020 to 1024).
[FN52] Cf. testimony by Helen Mack Chang, Nadezhda Vásquez Cucho and Henry Monroy Andrino rendered before the Court on February 18 and 19, 2003; expert opinions of Iduvina Hernández and Mónica Pinto rendered before the Court on February 18 and 19, 2003; report by the Comisión de Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume III, pages 113 to 114; and "Informe del Experto independiente, Sr. Christian Tomuschat, sobre la situación de los derechos humanos en Guatemala, preparado de conformidad con el párrafo 11 de la resolución 1991/51 de la Comisión de Derechos Humanos" (United Nations) of January 21, 1992 (file with annexes to the application, annex 52, leaves 1020 to 1024).

With respect to the structure of military intelligence and the functions of the Presidential General Staff

134.14. the intelligence services in Guatemala have been responsible for multiple human rights violations; [FN53]

[FN53] Cf. expert opinions of Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; report by the Comisión de Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 74 to 76; Report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, page 65; and Edgar Gutiérrez, "Hacia un paradigma democrático del sistema de inteligencia en Guatemala" of October, 1999, pages 56 to 61 (file with annexes to the brief with requests, pleadings and evidence of the representatives of the next of kin of the victim, annex R-VII-92).

134.15. the intelligence services have changed their structure and internal organization over time, in response to government policies, to military dynamics proper, and to evolution of the armed conflict. Guatemalan intelligence has been designed, and its operations directed and executed mainly by two bodies: the Intelligence Section of the Army, subsequently called Intelligence Directorate of the General Staff of the National Defense and generally known as "D-2", and the intelligence unit of the Presidential General Staff, where there have been levels of operational coordination; [FN54]

[FN54] Cf. expert opinions of Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; Report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, page 65; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II,

pages 83 to 86; and Edgar Gutiérrez, "Hacia un paradigma democrático del sistema de inteligencia en Guatemala" of October, 1999, pages 51 to 61 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-92).

134.16. the Presidential General Staff is a special team of military personnel assigned to the President of the Republic, formally entrusted with his security and that of his family. It is composed of various departments, among which the intelligence unit called Presidential Security Department, also known as "La Regional" or the "Archivo" stands out; [FN55]

[FN55] Cf. expert opinions of Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 83 to 86; Edgar Gutiérrez, "Hacia un paradigma democrático del sistema de inteligencia en Guatemala" of October, 1999, pages 58 to 61 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-92); and report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, pages 94 to 98.

134.17. the "Archivo" was a secret operational unit entrusted with executing the orders of the Presidential General Staff. It conducted clandestine intelligence operations: control, detentions and interrogations and executions. The "Archivo" was headed by an intelligence officer, with the assistance of another officer called deputy head or second head, generally a major. The unit included a substantial number of specialists and civilians, and had a vast network of informants; [FN56]

[FN56] Cf. expert opinions of Iduvina Hernández and Katharine Doyle rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume II, pages 83 to 86; Edgar Gutiérrez, "Hacia un paradigma democrático del sistema de inteligencia en Guatemala" of October, 1999, pages 58 to 61 (file with annexes to the brief filed by the representatives, annex R-VII-92); and report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II pages 94 to 98.

134.18. in 1990, general Edgar Augusto Godoy Gaitán was the Head of the Presidential General Staff; Juan Valencia Osorio was the Head of the Presidential Security Department of the Presidential General Staff, and Juan Guillermo Oliva Carrera was the Deputy Head of the Presidential Security Department of the Presidential General Staff; [FN57]

[FN57] Cf. Judgment of October 3, 2002 of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court, Guatemala (file with additional annexes to the application, annex 8, leaves 9430 to 9511); and expert opinion of Katharine Doyle rendered before the Court on February 19, 2003.

With respect to the judicial proceedings

134.19. lack of diligence in processing of the criminal proceeding and its obstructions make it obvious that the courts have not demonstrated their will to elucidate all the facts pertaining to the extra-legal execution of Myrna Mack Chang and to try and punish all the direct perpetrators and accessories, as well as others who are responsible for depriving the victim of the right to life and for covering up the extra-legal execution and the other facts in the instant case;

Criminal proceeding against Noel de Jesús Beteta Álvarez

134.20. on September 11, 1990, the Justice of the Peace on Duty ordered the pre-trial investigative procedure to begin, and visited the scene of the occurrence, where he conducted a judicial inspection of the body of Myrna Mack Chang and then ordered the respective necropsy. The Public Prosecutor's Office also appeared in the proceeding. Once the competence of the Justice of the Peace had been exhausted, he forwarded all the proceedings to the Second Criminal Trial Court of First Instance; [FN58]

[FN58] Cf. Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451); and report issued by the Criminological Investigations Department of the National Police of September 29, 1990 (file with annexes to the application, annex 43, leaves 795 to 840; and file with annexes to the brief with requests, pleadings and evidence of the representatives of the next of kin of the victim, annex R-VII-38, leaves 3100 to 3121).

134.21. on October 10, 1990, Helen Mack Chang filed charges before the Second Criminal Court of First Instance against all those who were found responsible for the murder of her sister Myrna Mack Chang. Once the preliminary proceedings had been completed, the Secretariat of the Supreme Court designated the Third Criminal Trial Court of First Instance to continue hearing the proceeding; [FN59]

[FN59] Cf. Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 239 to 240 (file with annexes to the application, annex 42, leaves 790 to 791).

134.22. on February 12, 1993 the Third Criminal Trial Court of First Instance sentenced Noel de Jesús Beteta Álvarez, specialist of the Presidential General Staff, to 25 incommutable years in prison for the crime of murder against Myrna Mack Chang. The conviction was based on the "premeditation and extreme cruelty, in the course of several days, on unspecified dates, [Beteta] kept watch on the movements of Myrna Elizabeth Mack Chang together with other unknown individuals, whose plans were deliberately organized with the intention of physically eliminating her, an act that they carried out on September eleventh, nineteen ninety." The Court, "for lack of evidence at the current time," abstained from leaving the proceeding open against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, and other perpetrators of the murder "until the Human Rights Ombudsman specifie[d] [...] the other participants responsible for the death of Myrna Elizabeth Mack Chang;" [FN60]

[FN60] Cf. Judgment of the Third Criminal Trial Court of February 12, 1993 (file with annexes to the application, annex 17, leaves 402 to 451).

134.23. on May 3, 1993, the Public Prosecutor's Office filed an expansion remedy against this conviction, so as to leave the proceeding open and for the Judge of first instance to take new steps to identify the other direct perpetrator of the murder of Myrna Mack Chang. [FN61] On May 4, 1993, the Fourth Chamber of the Court of Appeals decided that the expansion "remedy is out of order because it is time-barred." [FN62] The Public Prosecutor's Office filed an application for reconsideration before that same Chamber, [FN63] which was dismissed on May 21, 1993; [FN64]

[FN61] Cf. expansion remedy before the Third Criminal Trial Court of First Instance of May 3, 1993 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10721 to 10723).
[FN62] Cf. Order of the Fourth Chamber of the Court of Appeals of May 4, 1993 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaf 10724).
[FN63] Cf. application for reconsideration before the Fourth Chamber of the Court of Appeals of May 7, 1993 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaf 10728 to 10732).
[FN64] Cf. Order of the Fourth Chamber of the Court of Appeals of May 21, 1993 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10743 to 10744).

134.24. private accuser Helen Mack Chang filed an appeal before the Court of Appeals against the February 12, 1993 judgment of the Third Criminal Trial Court of First Instance, without participation of the Public Prosecutor's Office. In said remedy, she requested that the proceeding remain open against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, Juan José Larios, Juan José del Cid Morales and an individual whose surname is Charchal, as accessories in the murder of her sister Myrna Mack Chang. [FN65] The

defense counsel for Noel de Jesús Beteta Álvarez also filed an appeal for annulment of said conviction. On April 28, 1993, the Fourth Chamber of the Court of Appeals rejected the remedy filed by the private accuser, confirming the contested judgment. [FN66] The private accuser filed an expansion remedy for the Court of Appeals to explain "the legal and doctrinary grounds" for not leaving open the proceeding against the other persons accused. [FN67] This remedy was rejected on June 14, 1993 by the Fourth Chamber of the Court of Appeals, [FN68] for which reason the private accuser filed an appeal for annulment of the respective decision before the Supreme Court of Justice; [FN69]

[FN65] Cf. Judgment of the Fourth Chamber of the Court of Appeals of April 28, 1993 (file with annexes to the application, annex 18, leaves 453 to 486); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793).
[FN66] Cf. Judgment of the Fourth Chamber of the Court of Appeals of April 28, 1993 (file with annexes to the application, annex 18, leaves 453 to 486).
[FN67] Cf. extension remedy before the Fourth Chamber of the Court of Appeals of April 30, 1993 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10749 to 10752).
[FN68] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 23).
[FN69] Cf. Ruling on appeal for review by the Supreme Court of February 9, 1994 (file with annexes to the application, annex 19, leaves 490 to 552).

134.25. on February 9, 1994 the Supreme Court of Justice found the appeal for annulment filed by the private accuser to be in order; it found the remedy filed by Noel de Jesús Beteta to be out of order; it annulled the decision of the Fourth Chamber of the Court of Appeals, and it left open the proceeding against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, Juan José Larios, Juan José del Cid Morales, and an individual whose surname is Charchal. In this ruling, the Supreme Court of Justice established that Helen Mack Chang's right to due process was abridged, because "she was inhibited from continuing to exercise her right to accuse, so that the possible participation of all the accused could be established in a single proceeding, especially because the records lead to infer suspicions of their possible involvement in committing said crime;" [FN70]

[FN70] Cf. Ruling on appeal for review by the Supreme Court of February 9, 1994 (file with annexes to the application, annex 19, leaves 490 to 552).

Delays in the criminal proceeding against the alleged accessories

134.26. the parties have filed at least fifteen amparo remedies –the private accuser filed three and the defense counsel filed twelve- and numerous objections to judges, applications for reconsideration, requests for amnesty and constitutional motions, throughout the proceeding

against the alleged accessories of the murder of Myrna Mack Chang; there were also appeals against several of the rulings that rejected said remedies. Both the processing of the remedies and of the appeals and non-compliance with procedural teams and disputes over competence have led to substantial delays in the criminal proceeding; [FN71]

[FN71] Cf. testimony by Nadezhda Vásquez Cucho, Helen Mack Chang, Henry Monroy Andrino and Gabriela Vásquez Smerilli rendered before the Court on February 18 and 19, 2003; and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 242 to 243 (file with annexes to the application, annex 42, leaf 792).

Continuation of the criminal proceeding against the alleged accessories

134.27. on March 10, 1994, the accused Juan Valencia Osorio, Juan Guillermo Oliva Carrera, and Edgar Augusto Godoy Gaitán filed three amparo remedies before the Constitutional Court against the February 9, 1994 ruling of the Supreme Court of Justice, which had left open the judicial proceeding against them for the murder of Myrna Mack Chang. [FN72] On December 6, 1994, the Constitutional Court rejected said amparo remedies, [FN73] and this decision was notified on March 9, 1995; [FN74]

[FN72] Cf. Judgment by the Constitutional Court of December 6, 1994 (file with annexes to the application, annex 20, leaves 554 to 565).
[FN73] Cf. Judgment by the Constitutional Court of December 6, 1994 (file with annexes to the application, annex 20, leaves 554 to 565).
[FN74] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 24).

134.28. on March 29, 1995, the Third Criminal Trial Court of First Instance decided to remit the proceeding to the Military Court of First Instance of the Department of Guatemala for it to continue hearing the proceeding in accordance with the new Criminal Procedures Code; [FN75]

[FN75] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 25).

134.29. on December 6, 1995 the private accuser filed a "query on competence" before the Military Court of First Instance of the Department of Guatemala, arguing that the proceeding should be heard under civil rather than military jurisdiction. [FN76] On December 11, 1995, the Military Court flatly rejected the query on competence, deeming it to be out of order. [FN77] On December 18, 1995 the private accuser filed an appeal against the previous ruling and requested that the case record be forwarded to the Supreme Court of Justice for it to rule on the appeal.

[FN78] On February 1, 1996 the Fourth Chamber of the Court of Appeals overturned the December 11, 1995 ruling and ordered the judge hearing the case to forward the case record to the Supreme Court of Justice for the respective Chamber to "hear the query on competence." [FN79] On March 18, 1996 the Criminal Chamber of the Supreme Court of Justice decided to return the case record to the Military Court of First Instance of Guatemala because "this Court cannot hear a query on competence that does not exist because it was not raised before the respective Judge;" [FN80]

[FN76] Cf. query regarding competence before the Military Court of First Instance of the Department of Guatemala of December 6, 1995 (file with annexes to the brief answering the application and raising preliminary objections, leaves 4091 to 4099).
[FN77] Cf. ruling of the Military Court of First Instance of the Department of Guatemala of December 11, 1995 (file with annexes to the application, annex 21, leaves 567 to 571).
[FN78] Cf. appeal before the Military Court of First Instance of the Department of Guatemala of December 18, 1995 (file with annexes to the brief by the State of September 26, 2001, leaves 4106 to 4114).
[FN79] Cf. Order of the Fourth Chamber of the Court of Appeals of February 8, 1996 (file with annexes to the application, annex 22, leaves 573 to 574).
[FN80] Cf. Order of the Criminal Chamber of the Supreme Court of Justice of March 18, 1996(file with annexes to the application, annex 23, leaves 576 to 579).

134.30. on June 6, 1996, the Public Prosecutor requested a "writ of indictment" against the accused, arguing that the motivation for the murder was political, derived from the work carried out by Myrna Mack Chang as a social anthropologist; that the issue of displaced population was politically sensitive for the Government, including the Army, insofar as Myrna Mack Chang's research affected the military strategy of counterinsurgency and restricted the freedom with which military operations were carried out with respect to these population groups; that Myrna Mack Chang was known to the Army and due to her work she had been identified as a person close to the insurgency; that the public appearance of the communities of resisting population was attributed to the Bishop of Quiché and to Myrna Mack Chang, and this was closely linked to her murder; that the execution of Myrna Mack Chang was carried out by the Presidential General Staff and that the order to murder her was issued by the accused; [FN81]

[FN81] Cf. request by the Public Prosecutor's Office filed before the Military Court of First Instance on June 6, 1996, requesting the writ of indictment of the members of the Estado Mayor Presidencial or Presidential General Staff, Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, and Juan Guillermo Oliva Carrera (file with annexes to the application, annex 24, leaves 582 to 607).

134.31. on June 11, 1996, Helen Mack Chang asked the Military Judge to issue a "writ of indictment" against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera and a "preventive commitment order" against these same persons, arguing that

there were sufficient reasons to believe that the defendants participated as accessories in the murder of Myrna Mack Chang; [FN82]

[FN82] Cf. request by the private accuser filed before the Military Court of First Instance on June 11, 1996 (file with annexes to the application, annex 25, leaves 609 to 628).

134.32. it was only then, on June 11, 1996, that the Military Court issued a "writ of indictment as possible accessories of the murder of Myrna Elizabeth Mack Chang" against the three accused persons. [FN83] The Judge did not order detention of the detainees, but instead, as a an alternative measure, he set a bail bond of fifty thousand quetzales each and the obligation to sign the respective book at the Court every fifteen days. [FN84] On June 17, 1996, the private accuser appealed against this ruling, as the accused had demonstrated an obvious will to alter the evidence and obstruct the action of the legal system, for which reason they should be remanded in custody. [FN85] The accused appealed the ruling, based on the argument that there were not sufficient grounds to issue the order against them. [FN86] The ruling of the Military Court was upheld on July 1, 1996 by the Fourth Chamber of the Court of Appeals; [FN87]

[FN83] Cf. writ of indictment by the Military Court of First Instance of June 11, 1996 (file with annexes to the application, annex 26, leaves 629 to 632 and file with annexes to the brief answering the application and raising preliminary objections, leaves 5274 to 5275).
[FN84] Cf. ruling by the Military Court of First Instance on June 11, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5272 to 5273).
[FN85] Cf. appeal by the private accuser filed before the Military Court of First Instance on June 17, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5343 to 5351).
[FN86] Cf. appeal by Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva filed before the Military Court of First Instance on June 17, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5353 to 5370).
[FN87] Cf. Order of the Fourth Chamber of the Court of Appeals on July 1, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5386 to 5387).

Transfer of the case to civilian jurisdiction in view of Decree No. 41-96

134.33. in July, 1996, a Congressional decree established that military jurisdiction would only apply to members of the armed forces who committed military crimes that affected the Army. [FN88] All applicable cases pending before military courts were transferred by the Supreme Court of Justice to civil courts; [FN89]

[FN88] Cf. Decree No. 41-96 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-11, leaves 2753 to 2754).
[FN89] Cf. Agreement No. 26-96 of the Supreme Court of Justice (file with annexes including requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-III-28, leaves 2216 to 2217).

134.34. on July 24, 1996, the Supreme Court of Justice forwarded the case records of the Military Court of First Instance of the Department of Guatemala to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, which was a civil court. [FN90] On July 30, 1996, the latter Court decided to disqualify itself from hearing the case and forwarded the case records to the First Criminal Trial Court of First Instance, which was a specially designated court to hear cases under the former criminal procedures court that had been repealed, as it was deemed that that the proceeding against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera was a continuation of that against Noel de Jesús Beteta Álvarez, in which an order for the trial to commence had already been issued and therefore the rest of the proceeding should take place under the procedural code that had been repealed; [FN91]

[FN90] Cf. Order of the Supreme Court of Justice of July 24, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaf 5439).
[FN91] Cf. ruling by the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of July 30, 1996 (file with annexes to the application, annex 27, leaves 634 to 636 and file with annexes including answer to the application and filing of preliminary objections, leaves 5440 to 5442).

134.35. on August 9 and 12, 1996, the Special Prosecutor [FN92] in the case and the private accuser, [FN93] respectively, filed appeals against the ruling on self-disqualification of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, based on the fact that the proceeding against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera began with the cassation judgment, for which reason it is juridically impossible to argue that their proceeding and that against Noel de Jesús Beteta Álvarez are one and the same. The accused filed an application for reconsideration against that ruling. [FN94] The Court processed the appeals filed by the Public Prosecutor's Office and the private accuser, and declared the application for reconsideration file by the accused out of order. [FN95] The Third Chamber of the Court of Appeals heard the appeals filed by the Public Prosecutor's Office and by the private accuser and found them inadmissible on August 21 and September 4, 1996, respectively; [FN96]

[FN92] Cf. appeal to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on August 9, 1996 (file with annexes to the brief including answer to the application and filing of preliminary objections, leaves 5466 to 5472).

[FN93] Cf. appeal to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on August 12, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5459 to 5464).
[FN94] Cf. application for reconsideration before the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of August 10, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5474 to 5481).
[FN95] Cf. rulings of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of August 13, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5465, 5473 and 5480).
[FN96] Cf. Order of the Third Chamber of the Court of Appeals of August 21, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5488 to 5491; and Order of the Third Chamber of the Court of Appeals of September 4, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5503 to 5506).

134.36. on October 20, 1996 the private accuser filed an amparo remedy before the Supreme Court of Justice against the Justices of the Third Chamber of the Court of Appeals. [FN97] On February 24, 1997, the Supreme Court of Justice found the amparo remedy to be notoriously inadmissible because it was time-barred; [FN98]

[FN97] Cf. amparo remedy filed before the Supreme Court of Justice on October 20, 1996 (file with annexes including answer to the application and filing of preliminary objections, leaves 6326 to 6334).
[FN98] Cf. Order of the Supreme Court of Justice of February 24, 1997 (file with annexes to the brief including answer to the application and filing of preliminary objections, leaves 6381 a 6387).

134.37. on October 15, 1996, the private accuser filed an amparo remedy before the Third Chamber of the Court of Appeals against the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance regarding the latter's ruling in which it disqualified itself from continuing to hear the proceeding. [FN99] On February 27, 1997, the Third Chamber of the Court of Appeals found this remedy inadmissible. [FN100]On March 14, 1997, the private accuser filed an appeal against that ruling and the case records were forwarded to the Constitutional Court; [FN101]

[FN99] Cf. amparo remedy filed before the Supreme Court of Justice on October 15, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6390 to 6402).
[FN100] Cf. writ issued by the Third Chamber of the Court of Appeals on March 14, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaf 6274).

[FN101] Cf. writ issued by the Third Chamber of the Court of Appeals on March 14, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaf 6274).

134.38. on September 13, 1996, since the appeal filed against the Ruling of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance had been found inadmissible, the Special Prosecutor in charge of the case filed an inhibitory "query on competence" before that same Court, for the proceeding to be heard pursuant to the Criminal Procedures Code in force. [FN102] This Court received the writ and forwarded it to the First Criminal Trial Court of First Instance without issuing a decision or ruling on it; [FN103]

[FN102] Cf. query regarding competence before the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on September 13, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5517 to 5521).
[FN103] Cf. ruling by the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on September 17, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaf 5522).

134.39. on September 19, 1996, the First Criminal Trial Court of First Instance, which had received the case file from the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, when it analyzed the case records, filed a "query on competence" and therefore it forwarded the case records to the Supreme Court of Justice for it to decide. [FN104] It also forwarded to the Supreme Court the "inhibitory query on competence" that had been filed by the Public Prosecutor in the case; [FN105]

[FN104] Cf. query regarding competence by the First Criminal Trial Court of First Instance of September 19, (file with annexes to the brief answering the application and raising preliminary objections, leaves 5515 to 5516).
[FN105] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 30).

134.40. on October 15, 1996, the Supreme Court ruled that the case should be processed according to the provisions of the Criminal Procedures Court that had been repealed, based on the fact that the order to commence trial had already been issued when the proceeding against the current defendants was left open. [FN106] On November 19 and December 10, 1996, the private accuser and the Public Prosecutor's Office, respectively, filed amparo remedies before the Constitutional Court against that ruling; [FN107]

[FN106] Cf. ruling by the Supreme Court of Justice of October 15, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5536 to 5538).

[FN107] Cf. Judgment of the Constitutional Court of August 12, 1997 (file with annexes to the application, annex 33, leaves 676 to 697 and file with annexes to the brief answering the application and raising preliminary objections, leaves 6221 to 6242).

134.41. pursuant to the rulings, all the case records were forwarded to the First Criminal Trial Court of First Instance. [FN108] On November 12, 1996, this Court ordered the joinder of the proceeding against Beteta Álvarez and that against the alleged accessories, as well as continuation of the proceeding in the state in which it was at that time. [FN109] The Public Prosecutor filed an expansion and clarification remedy against that ruling, as in the proceeding against Beteta Álvarez there was res judicata and there was no certainty regarding the procedural stage at which the joinder of both proceedings would take place. [FN110] On December 3, 1996, the Court found the remedy to be in order and ruled that the joinder would be effective with respect to defendants Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera, and not with respect to Noel de Jesús Beteta Álvarez; it also annulled all actions in the case carried out under the new Criminal Procedures Code, including the investigation carried out by the representative of the Public Prosecutor's Office under the new Code, as it was conducted by an authority who was not competent for this. [FN111] The private accuser [FN112] and the Public Prosecutor's Office [FN113] filed appeals against this ruling. Both appeals were found inadmissible by Tenth Chamber of the Court of Appeals [FN114];

[FN108] Cf. writ issued by the First Criminal Trial Court of First Instance of October 23, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaf 5540).

[FN109] Cf. ruling by the First Criminal Trial Court of First Instance of November 12, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5550 to 5552).

[FN110] Cf. expansion and clarification remedy (file with annexes to the brief answering the application and raising preliminary objections, leaves 5559 to 5562).

[FN111] Cf. ruling by the First Criminal Trial Court of First Instance of December 3, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5582 to 5587).

[FN112] Cf. appeal before the First Criminal Trial Court of First Instance (file with annexes to the brief answering the application and raising preliminary objections, leaves 5606 to 5609).

[FN113] Cf. appeal before the First Criminal Trial Court of First Instance (file with annexes to the brief answering the application and raising preliminary objections, leaves 5594 to 5596).

[FN114] Cf. Order of the Tenth Chamber of the Court of Appeals of April 3, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5814 to 5816).

134.42. on August 12, 1997, the Constitutional Court decided to grant the amparo remedies requested by the private accuser and the Public Prosecutor's Office (supra para. 134.40) regarding the matter of which court was competent to continue the proceeding with respect to the murder of Myrna Mack Chang and it decided that the proceeding should continue

to be processed under the rules of the Criminal Procedures Code in force. The Constitutional Court decided to grant the amparo to the applicants and to "definitively suspend" the October 15, 1996 ruling of the Supreme Court of Justice, according to which the First Criminal Court of First Instance was the competent court to hear the criminal proceeding, as well as to "definitively suspend" all subsequent actions carried out under the Criminal Procedures Code that had been repealed; [FN115]

[FN115] Cf. Judgment of the Constitutional Court of August 12, 1997 (file with annexes to the application, annex 33, leaves 676 to 697 and file with annexes to the brief answering the application and raising preliminary objections, leaves 6221 to 6242).

134.43. with this ruling, and since it was the same issue of the query on competence, on September 2, 1997 the private accuser desisted from continuing the appeal against the Third Chamber of the Court of Appeals that had confirmed the self-disqualification of the Criminal, Drug Trafficking and Environmental Crimes Court of First Instance. [FN116] The steps being taken before the First Trial Court regarding the main proceeding conducted under the provisions of the Criminal Procedures Code that had been repealed were also finalized; [FN117]

[FN116] Cf. request to the Constitutional Court on September 18, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6289 to 6291).
[FN117] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 36).

134.44. the case file was forwarded by the judicial authorities to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance [FN118] and a closing date of June 23, 1998 was set for the preliminary proceedings investigative phase; [FN119]

[FN118] Cf. Order of the Supreme Court of Justice of September 2, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5802 to 5804); and ruling by the First Criminal Trial Court of First Instance of January 13, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaf 5840).
[FN119] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 37).

134.45. on June 18, 1998, Lucrecia Hernández Mack appeared as a "partie civile" in the criminal proceeding; [FN120]

[FN120] Cf. brief filed before the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on June 18, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6033 to 6043).

134.46. on June 23, 1998, the Public Prosecutor filed charges against the alleged accessories of the murder of Myrna Mack Chang before the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance and requested opening of the oral and public trial phase; [FN121]

[FN121] Cf. accusation by the Public Prosecutor's Office on June 23, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 8179 to 8205).

134.47. on June 22, 1998, the private accuser filed an objection against the Judge of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance in which she requested that he be separated from the case due to his irregular actions in processing of the case and due to obvious prejudice in favor of the defendants. [FN122] That Judge found the objection inadmissible on June 23, 1998 and forwarded the case file to the Third Chamber of the Court of Appeals. [FN123] On September 17, 1998, the Third Chamber of the Court of Appeals decided to remove the Judge of First Instance from the case and ordered the proceedings transferred to the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, for it to continue processing the case; [FN124]

[FN122] Cf. objection to the Judge of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on June 22, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6069 to 6081).

[FN123] Cf. ruling by the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on June 23, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6072 to 6075).

[FN124] Cf. Order of the Third Chamber of the Court of Appeals on September 17, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6818 to 6823).

134.48. the Judge of the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, Henry Monroy Andrino, was left in charge of the case and he ordered that the hearing of the intermediate stage be held on January 27, 1999. At this hearing, the new Public Prosecutor [FN125] ratified the charges filed before the First Criminal Court of First Instance; [FN126]

[FN125] Cf. brief filed before the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on January 19, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7690 to 7691).
[FN126] Cf. record of the intermediate hearing of the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of January 27, 1999 (file with annexes to the application, annex 34, leaf 701 to 713 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7702 to 7714); and writ issued by the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on November 19, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaf 8250).

134.49. on January 28, 1999, the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance issued the order for the trial to commence against Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera as possible accessories of the murder of Myrna Mack Chang, deeming that "there are serious grounds to try the defendants in an oral and public trial due to the probability of their participation in the facts that they are accused of committing." It was established that the competent court to continue the trial in this new stage was the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court; [FN127]

[FN127] Cf. ruling by the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of January 28, 1999 (file with annexes to the application, annex 35, leaves 716 to 717 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7715 to 7716).

134.50. on February 16, 1999, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court issued a ruling in which it declared that it was not competent to hear the case and ordered that it be forwarded to the Second Criminal, Drug Trafficking and Environmental Crimes Trial Court. The arguments of the Court to declare that it was not competent were that the investigative process and its preparatory stage were under the control of the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, and this Court even began the intermediate stage of the case; subsequently, due to the objection filed by the private accuser against the Judge, the proceeding was forwarded to the Second Court of First Instance, and in the opinion of this Court, after this ruling was issued the proceeding "must return to the normal line regarding pre-established territorial competence" and therefore it should be forwarded once again to the Second Criminal, Drug Trafficking and Environmental Crimes Trial Court for it to continue with the established competence; [FN128]

[FN128] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of February 16, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7721 to 7722).

134.51. once it received the proceeding on February 19, 1999, the Second Criminal, Drug Trafficking and Environmental Crimes Trial Court posed, on its own motion, a "query on competence" to hear the case, and the judicial records were therefore forwarded to the Criminal Chamber of the Supreme Court of Justice for it to decide which court should continue to hear the case; [FN129]

[FN129] Cf. query regarding competence of the Second Criminal, Drug Trafficking and Environmental Crimes Trial Court dated February 19, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7724 to 7727).

134.52. on March 11, 1999, the Criminal Chamber of the Supreme Court declared the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court competent to hear the oral trial in this case. In that same ruling, it ordered that the case records be forwarded to the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance for it to clearly, precisely, and in a detailed manner specify the punishable act ascribed to the defendants, since it had not done so in a concrete manner in its January 28, 1999 ruling; [FN130]

[FN130] Cf. writ issued by the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on March 11, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaf 7729).

134.53. pursuant to the previous ruling, on March 18, 1999, Judge Henry Monroy Andrino of the Second Criminal Court of First Instance expanded and specified the January 28, 1999 ruling (supra para. 134.49). Judge Monroy Andrino's order included, inter alia, the following items: 1) Edgar Augusto Godoy Gaitán, as Head of the Presidential General Staff, together with Juan Valencia Osorio and Juan Guillermo Oliva Carrera, Head and Deputy Head of the Presidential Security Department of the Presidential General Staff, respectively, planned and ordered a plan to keep watch on and physically eliminate Myrna Mack Chang; 2) said plan consisted of monitoring the activities of the victim, especially through constant surveillance of her house and following her personally; 3) the plan culminated with the physical elimination of the victim, carried out by Noel de Jesús Beteta Álvarez, assigned to the Presidential Security Department of the Presidential General Staff, together with other unidentified persons; 4) the accused planned and ordered the death of Myrna Mack Chang because they deemed that the anthropologist had ties with the communities of resisting population and that her investigations on the displaced population groups affected military strategy and harmed the image of the State; and 5) once the murder had been committed, the accused sought to cover up the crime, carrying out acts of intimidation, ordering alterations to and disappearance of documents, as well as influencing the refusal to provide information to the representative of the Public Prosecutor's Office; [FN131]

[FN131] Cf. ruling by the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance dated March 18, 1999 (file with annexes to the application, annex 36, leaves 719 to 734 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7731 to 7744); and testimony of Henry Monroy Andrino rendered before the Court on February 19, 2003.

134.54. on May 23, 1999, the private accuser objected to the President of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court, who had acted as judge in the Third Criminal Trial Court of First Instance, based on the argument that a judge cannot hear a proceeding when he has been in contact with the case in previous instances. [FN132] On August 5, 1999, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court turned down the objection; [FN133]

[FN132] Cf. objection to the Judge of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court filed on May 23, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7786 to 7795).

[FN133] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of August 5, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7835 to 7836).

134.55. the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court heard an objection regarding lack of competence, filed by the defendants on May 25, 1999, in which they argued that they should be tried by military courts. [FN134] On August 26, 1999, the objection regarding lack of competence was rejected, because the request by the defendants was not based on new facts and Article 219 of the Constitution of Guatemala allows civil courts to hear cases of common crimes committed by the military, pursuant to an interpretation by the Constitutional Court. [FN135] On August 31, 1999, [FN136] the defendants filed a generic appeal against this ruling before the Third Trial Court, which was rejected on September 2 of that same year. [FN137] On September 7, 1999, the defendants filed a remedy of complaint against this last ruling before the Fourth Chamber of the Court of Appeals, and it was rejected on September 27, 1999; [FN138]

[FN134] Cf. objection regarding lack of jurisdiction before the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on May 25, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7798 to 7806).

[FN135] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of August 26, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7892 to 7895).

[FN136] Cf. appeal before the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on August 31, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7898 to 7906).

[FN137] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of September 2, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7911 to 7912).
[FN138] Cf. Judgment of the Supreme Court of Justice of March 23, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6896 to 6904).

134.56. after ruling on the generic appeal, on September 9, 1999 the Third Criminal Trial Court allowed 8 days for the parties to submit evidence. [FN139] On September 21, 1999, Juan Guillermo Oliva Carrera filed an amparo remedy against this order of the Third Trial Court before the First Chamber of the Court of Appeals, arguing that the court continued the process despite a complaint before the Fourth Chamber of the Court of Appeals on which there was still no ruling. [FN140] On September 28, 1999, the amparo remedy was rejected because the prior steps had not been exhausted, since there was a remedy of complaint pending before the Appellate Chamber; [FN141]

[FN139] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of September 9, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaf 7991).
[FN140] Cf. amparo remedy filed before the First Chamber of the Court of Appeals on September 21, 1999 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10765 to 10771).
[FN141] Cf. Order of the First Chamber of the Court of Appeals of September 28, 1999 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10779 to 10783).

134.57. on November 4, 1999, the defendants filed an amparo remedy before the Supreme Court of Justice against the ruling of the Fourth Chamber of the Court of Appeals that found the remedy of complaint filed by them against the Third Trial Court inadmissible. [FN142] On March 23, 2000, the Supreme Court of Justice rejected the amparo remedy deeming it notoriously inadmissible, ordered payment of legal costs by the one who brought the action, and fined their defense counsel. [FN143] On March 31, 2000, the defendants filed an appeal against the ruling of the Supreme Court of Justice on the amparo remedy before the Constitutional Court. [FN144] On May 8, 2000, the Constitutional Court decided to summon a hearing on May 11, 2000, for the parties to state their position on the matter. [FN145] On May 11, 2000, the private accuser at the respective hearing requested that the appeal regarding the amparo remedy be rejected to allow the proceeding to move forward. [FN146] On August 1, 2000, the Constitutional Court found the appeal regarding the amparo remedy filed by the defendants unfounded; [FN147]

[FN142] Cf. amparo remedy filed before the Supreme Court of Justice on November 2, 1999 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6826 to 6840).

[FN143] Cf. judgment of the Supreme Court of Justice of March 23, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6896 to 6904).
[FN144] Cf. appeal before the Constitutional Court on March 31, 2000 (file with evidence to facilitate adjudication of the case submitted by the State on October 13 and 27, 2003, leaves 10794 to 10795).
[FN145] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 45).
[FN146] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 45).
[FN147] Cf. Order of the Constitutional Court of August 1, 2000 (file with annexes to the application, annex 38, leaves 746 to 756).

134.58. on October 6, 2000, the Third Trial Court issued a ruling in which it ordered that the objection filed by the defendants against all the judges who constituted the Third Trial Court itself be forwarded to the Fourth Chamber of the Court of Appeals for it to hear that objection. Previously, the Third Trial Court rejected the objection because it deemed that it had no legal or factual basis at all. It also ordered continuation of the proceeding. [FN148] The September 9, 1999 ruling of the Third Court ordering submission of evidence (supra para. 134.56) was not notified to the parties until October 10, 2000; the private accuser and the defendants submitted evidence to the Court on October 18 and 19, 2000; [FN149]

[FN148] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 46); and ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of October 6, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7986 to 7990).
[FN149] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 46); and submission of evidence to the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on October 18 and 19, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7106 to 7113, 7118 to 7124, 7127 to 7151).

134.59. on October 31, 2000, the Fourth Appellate Chamber found the objection filed by the defendants inadmissible and ordered the case file to be returned to the Third Trial Court, for it to continue the respective process; [FN150]

[FN150] Cf. Order of the Fourth Chamber of Appeals of October 31, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaves 8018 to 8023).

134.60. on May 29, 2001, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court, deeming that the previous actions had not included Lucrecia Hernández

Mack as a "partie civile," declared "all actions of this Court absolutely null, since the May 12, 1999 ruling, with the exception of the ruling on competence of this Court and the constitutional motion," and it ordered that the proceeding be returned to the Second Criminal, Drug Trafficking and Environmental Crimes Court of First Instance; [FN151]

[FN151] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on May 29, 2001 (file with annexes to the application, annex 41, leaves 779 to 783 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7612 to 7616).

134.61. the private accuser [FN152] and the Public Prosecutor's Office [FN153] filed applications for reconsideration against this May 29, 2001 ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court;

[FN152] Cf. application for reconsideration dated June 4, 2001 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7631 to 7649).
[FN153] Cf. application for reconsideration dated June 1, 2001 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7654 to 7661).

134.62. on May 30, 2001, Lucrecia Hernández Mack stated under oath that at the January 27, 1999 hearing –through her attorney- she decided to desist from her civil claim as set forth in Articles 127 and 338 of the Criminal Procedures Code. Therefore, "with this attitude she abandoned her right to compensation for damages as 'partie civile' in this case;" furthermore, she stated that "when it issued the order for the trial to commence without ruling on her status as a 'partie civile,' the body in charge of controlling the investigation did not violate any of her individual or procedural rights;" [FN154]

[FN154] Cf. statement by Lucrecia Henández Mack on May 30, 2001 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7650 to 7653).

134.63. on July 5, 2001, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court admitted the applications for reconsideration filed (supra para. 134.61); it annulled the May 29, 2001 ruling; and it ordered "continuation of the processing of the instant case, from the state of the proceedings at the time the challenged ruling was issued." Finally, it declared that Lucrecia Hernández Mack had desisted from her claim; [FN155]

[FN155] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on July 5, 2001 (file with annexes to the brief answering the application and raising preliminary objections, leaves 7672 to 7686).

134.64. on July 23, 2001, Juan Guillermo Oliva Carrera filed an amparo remedy against the July 5, 2001 ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court, before the First Chamber of the Court of Appeals, acting as an Amparo Court. [FN156] On July 30, the Chamber found it inadmissible with respect to granting provisional amparo or stay; on September 13, 2001, the Constitutional Court confirmed this ruling with respect to the provisional amparo; [FN157]

[FN156] Cf. amparo remedy before the First Chamber of the Court of Appeals on July 23, 2001 (file with annexes to the brief filed by the representatives of the victim with observations on the preliminary objections, leaves 32 to 47).
[FN157] Cf. Order of the Constitutional Court of September 13, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10382 to 10383)

134.65. on September 17, 2001, defendant Oliva Carrera filed another amparo remedy before the First Chamber of the Court of Appeals, Acting as an Amparo Court, against the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court because in its July 13, 2001 ruling this Court had decided to admit the evidence offered by the Public Prosecutor's Office and the private accuser. [FN158] The Chamber admitted said remedy for processing, and in its September 21, 2001 ruling it granted the provisional stay, temporarily suspending the July 13, 2001 ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court; [FN159]

[FN158] Cf. amparo remedy filed before the First Chamber of the Court of Appeals on September 17, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10510 to 10529).
[FN159] Cf. Order of the First Chamber of the Court of Appeals of September 21, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10534 to 10535).

134.66. on October 3, 2001, both the regular Judges and the staff of the First Chamber of the Court of Appeals declined to continue hearing all the amparo remedies filed in this Chamber in which Helen Mack Chang intervened, "to avoid continued questioning of [the] impartiality" of the Court; [FN160]

[FN160] Cf. Order of the First Chamber of the Court of Appeals of September 27, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10552 to 10553); and Order of the Constitutional Court of October

4, 2001 (file with annexes to the brief filed by the representatives of the victim with observations on the preliminary objections, leaves 95 to 97).

134.67. on October 4, 2001, the Constitutional Court designated the Second Chamber of the Court of Appeals to "process, hear, and decide –in its current state- the amparo remedy" filed by Juan Guillermo Oliva Carrera against the July 13, 2001 ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court; [FN161]

[FN161] Cf. Order of the Constitutional Court of October 4, 2001 (file with annexes to the brief filed by the representatives of the victim with observations on the preliminary objections, leaves 95 to 97).

134.68. on October 29, 2001, the Second Chamber of the Court of Appeals, acting as an Amparo Court, decided to annul the provisional amparo ordered on September 21, 2001, as it deemed that the circumstances that made it be in order had changed. [FN162] On November 25, 2001, defendant Oliva Carrera filed an appeal before the Second Chamber of the Court of Appeals against its October 29, 2001 ruling; [FN163]

[FN162] Cf. Order of the Second Chamber of the Court of Appeals of October 29, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaf 10559).

[FN163] Cf. appeal before the Second Chamber of the Court of Appeals of November 25, 2001 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10572 to 10573).

134.69. on February 25, 2002, the Second Chamber of the Court of Appeals, acting as an Amparo Court, found the amparo remedy filed by defendant Oliva Carrera against the July 5, 2001 ruling (supra para. 134.64) of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court inadmissible. It also ordered the defendant to pay the legal costs and fined his attorney five hundred quetzales. [FN164] On March 27, 2002, defendant Oliva Carrera filed an appeal against said ruling of February 25, 2002, before the Second Chamber of the Court of Appeals, acting as an Amparo Court; [FN165]

[FN164] Cf. Order of the Second Chamber of the Court of Appeals of February 25, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10439 to 10444).

[FN165] Cf. appeal before the Second Chamber of the Court of Appeals on March 27, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10463 to 10465).

134.70. on June 30, 2002, while his appeal was pending, defendant Oliva Carrera asked the Constitutional Court to order a temporary stay of the June 11, 2002 ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court, in which it set a new hearing for the oral debate to commence; [FN166]

[FN166] Cf. request to the Constitutional Court on June 30, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10493 to 10495).

134.71. on September 11, 2002, defendant Oliva Carrera asked the Constitutional Court to discontinue the appeal that he had filed against the February 25, 2002 ruling of the Second Chamber of the Court of Appeals, acting as an Amparo Court. [FN167] On September 23, 2002, the Constitutional Court approved the discontinuance of the appeal filed by defendant Oliva Carrera; [FN168]

[FN167] Cf. request to the Constitutional Court of September 11, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10500 to 10501).
[FN168] Cf. Order of the Constitutional Court of September 23, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10503 to 10504).

Other judicial actions during the period from September 2001 to December 2002

134.72. during the period from September 2001 to December 2002, the private accuser and the alleged accessories filed numerous additional objections, amparo remedies, appeals, applications for reconsideration, and constitutional motions;

Acquittal of the alleged accessories

134.73. on October 3, 2002, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court acquitted Edgar Augusto Godoy Gaitán and Juan Guillermo Oliva Carrera and cleared them of all charges regarding the crime of murder, and found Juan Valencia Osorio responsible as perpetrator of the crime of murder against the life and physical integrity of Myrna Mack Chang, sentencing him to 30 incommutable years in prison. The Court stated that it did not rule on civil responsibilities because they were not requested on time and in the appropriate manner; [FN169]

[FN169] Cf. Judgment of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court of October 3, 2002 (file with annexes to the brief filed by the Commission on November 5, 2002, leaves 8420 to 8501).

134.74. on October 15 and 16, 2002, Juan Valencia Osorio, the Public Prosecutor's Office and the private accuser filed special appeals against the October 3, 2002 judgment issued by the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court; [FN170]

[FN170] Cf. special appeals filed on October 15 and 16, 2002 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 9577 to 9662, 9558 to 9576, 9520 to 9553).

134.75. on May 7, 2003, the Fourth Chamber of the Court of Appeals admitted the special appeal regarding merits filed by Juan Valencia Osorio; it found the special appeal regarding formal aspects filed by Valencia Osorio inadmissible; it decided not to admit the special appeal regarding merits filed by the Public Prosecutor's Office and not to admit the special appeal regarding merits filed by Helen Mack Chang. Finally, deciding the case definitively, the Fourth Chamber acquitted Valencia Osorio, clearing him of all charges. It ordered the immediate release of defendants Godoy Gaitán, Valencia Osorio, and Oliva Carrera; [FN171]

[FN171] Cf. Judgment of the Fourth Chamber of the Court of Appeals of May 7, 2003 (dossier on the merits and possible reparations, volume IV, leaves 853 to 870).

134.76. on May 28, 2003, the private accuser and the Public Prosecutor's Office filed appeals for review before the Supreme Court of Justice, Criminal Chamber, for reasons pertaining to the merits and to formal aspects, against the May 7, 2003 judgment issued by the Fourth Chamber of the Court of Appeals. [FN172] On June 3, 2003, said Court decided to formally admit these appeals for review; [FN173]

[FN172] Cf. appeals for annulment before the Supreme Court of Justice, Criminal Chamber, of May 28, 2003 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 9964 to 10025, 10026 to 10101).
[FN173] Cf. Order of the Supreme Court of Justice, Criminal Chamber, of June 3, 2003 (file with evidence to facilitate adjudication of the case submitted by the representatives of the victim on September 5, 2003, leaves 10104 to 10105, 9961 to 9962).

134.77. at the time of the instant Judgment, the Court has not received any information regarding the outcome of said remedies;

Other remedies filed by the alleged accessories

a) with respect to the “Ley de Reconciliación Nacional”

i. the first request

134.78. on January 3, 1997, the defendants requested the benefit of extinguishment of criminal responsibility pursuant to the provisions of the “Ley de Reconciliación Nacional” or national reconciliation law, [FN174] arguing that despite their being innocent of the charges against them, the murder of Myrna Mack Chang was a political crime and therefore they are entitled to the benefits set forth in said law. [FN175] This request gave rise to a stay of the proceedings, pursuant to the provisions of Article 136 of the law on the judiciary body or “Ley del Organismo Judicial”; [FN176]

[FN174] Cf. Decree No. 145-96, Ley de Reconciliación Nacional or law of national reconciliation (file with annexes to the application, annex 28, leaves 638 to 640).
[FN175] Cf. request to the First Criminal Trial Court of First Instance on January 3, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5642 to 5652).
[FN176] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 32).

134.79. on February 6, 1997, the First Criminal Trial Court of First Instance decided not to grant the benefit because it was inadmissible, as the crime of murder was not covered by that law. [FN177] On February 10, 1997, the defendants filed an appeal against said ruling before the Tenth Chamber of the Court of Appeals; [FN178]

[FN177] Cf. ruling by the First Criminal Trial Court of First Instance of February 6, 1997 (file with annexes to the application, annex 29, leaves 642 to 644 and file with annexes to the brief answering the application and raising preliminary objections, leaves 5750 to 5752).
[FN178] Cf. appeal before the First Criminal Trial Court of First Instance of February 10, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5761 to 5762).

134.80. the Special Prosecutor filed an incidental plea regarding lack of competence, arguing that the Tenth Chamber was not competent to hear the proceeding. [FN179] On March 7, 1997, the Tenth Chamber of the Court of Appeals disqualified itself from hearing the appeal for lack of competence, as according to the National Reconciliation Law the Supreme Court of Justice had the exclusive authority to hear appeals regarding this matter. [FN180] The defendants filed an appeal for annulment against said ruling; [FN181]

[FN179] Cf. interlocutory motion regarding lack of jurisdiction filed before the Tenth Chamber of the Court of Appeals on February 18, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6714 to 6716).
[FN180] Cf. Order of the Tenth Chamber of the Court of Appeals of March 7, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5808 to 5810).
[FN181] Cf. Order of the Tenth Chamber of the Court of Appeals of March 17, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5811 to 5813).

134.81. on March 17, 1997, the Tenth Chamber of the Court of Appeals found the appeal for annulment inadmissible, as it deemed that the right to fair trial had not been breached and because it was not the effective means to decree the legal ineffectiveness of the ruling subject to annulment. [FN182] On April 7, 1997 the defendants filed an amparo remedy before the Supreme Court of Justice against this ruling of the Tenth Chamber of the Court of Appeals. On October 17, 1997, the Supreme Court of Justice rejected this remedy as it deemed it notoriously inadmissible; [FN183]

[FN182] Cf. Order of the Tenth Chamber of the Court of Appeals of March 17, 1997 (file with annexes to the brief by the State of September 26, 2001, leaves 5811 to 5813).
[FN183] Cf. Order of the Supreme Court of October 17, 1997 (file with annexes to the application, annex 30, leaves 646 to 656 and file with annexes to the brief answering the application and raising preliminary objections, leaves 5823 to 5833).

134.82. on the other hand, parallel to the processing of the aforementioned remedies, on April 7, 1997 the accused filed an amparo remedy before the Fourth Chamber of the Court of Appeals against the February 6, 1997 ruling of the First Criminal Trial Court of First Instance that did not allow them to avail themselves of the benefits set forth in the National Reconciliation Law, and they requested that said ruling be annulled. [FN184] On May 2, 1997, the Fourth Chamber of the Court of Appeals found the amparo remedy inadmissible because it was time-barred. [FN185] On May 8, 1997, the defendants filed an appeal before the Constitutional Court and on September 16, 1997, this court found it to be inadmissible; [FN186]

[FN184] Cf. Judgment of the Fourth Chamber of the Court of Appeals of May 2, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6771 to 6775).
[FN185] Cf. Judgment of the Fourth Chamber of the Court of Appeals of May 2, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6771 to 6775).
[FN186] Cf. Order of the Constitutional Court of September 16, 1997 (file with annexes to the application, annex 31, leaves 658 to 664).
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ii. the second request

134.83. on May 9, 1997, while the amparo remedies filed by the defendants were pending, they filed a new request before the Third Chamber of the Court of Appeals to avail themselves of the benefits of the National Reconciliation Law. [FN187] The defendants based their request on the argument that this chamber was competent to hear the matter as the Supreme Court of Justice had issued a ruling that modified the territorial competence of the courts. On September 5, 1997, the Third Chamber of the Court of Appeals found that applying the National reconciliation law to the defendants was inadmissible; [FN188]

[FN187] Cf. request filed before the Third Chamber of the Court of Appeals on May 9, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6563 to 6576).
[FN188] Cf. Order of the Third Chamber of the Court of Appeals of September 5, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6646 to 6648).

134.84. on October 22, 1997, the Supreme Court of Justice upheld the judgment of the Third Chamber and therefore denied the request for extinguishment of criminal responsibility. [FN189] On November 25, 1997, the defendants filed an amparo remedy before the Constitutional Court against that ruling, [FN190] and it was accepted for processing by that court on November 26, 1997. [FN191] On March 31, 1998, the Constitutional Court rejected the amparo remedy requested; [FN192]

[FN189] Cf. Order of the Supreme Court of Justice of October 22, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6702 to 6706).
[FN190] Cf. amparo proceeding before the Constitutional Court dated November 25, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaves 6749 to 6766).
[FN191] Cf. Order of the Constitutional Court of November 26, 1997 (file with annexes to the brief answering the application and raising preliminary objections, leaf 6767).
[FN192] Cf. Order of the Constitutional Court of March 31, 1998 (file with annexes to the application, annex 32, leaves 666 to 674).

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b) with respect to Decree 41-96

134.85. on October 18, 2000, the defendants filed a constitutional motion against Decree 41-96 (supra para. 134.33); on October 29, 2000, the Third Criminal Trial Court, acting as a "Constitutional Court," rejected the remedy filed and fined the defense counsel who submitted it. [FN193] On October 31, 2000, the defendants filed an appeal against the ruling of the Third Court, for which reason the case file was forwarded to the Constitutional Court, which is the

competent body of last resort to hear this type of appeals. [FN194] On November 18, 2000, the Constitutional Court heard the case, [FN195] as it was expedited for a ruling within six days, pursuant to Article 130 of the Law on Amparo, Habeas Corpus and Constitutionality. [FN196] On December 18, 2000, the private accuser filed a request before the Constitutional Court for it to issue the respective ruling. [FN197] On March 15, 2001, the Constitutional Court upheld the ruling of the Court rejecting the appeal filed by the defendants, stating that the Criminal Procedures Code would be applied to common crimes committed by the military and that they would be tried by regular Courts; [FN198]

[FN193] Cf. ruling of the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on October 29, 2000 (file with annexes to the application, annex 39, leaves 759 to 767 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7012 to 7020).
[FN194] Cf. writ issued by the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court on October 31, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaf 7027).
[FN195] Cf. writ issued by the Constitutional Court on November 9, 2000 (file with annexes to the brief answering the application and raising preliminary objections, leaf 7036).
[FN196] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 47).
[FN197] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 47).
[FN198] Cf. Order of the Constitutional Court of March 15, 2001 (file with annexes to the application, annex 40, leaves 770 to 776 and file with annexes to the brief answering the application and raising preliminary objections, leaves 7043 to 7049).

Obstructions to justice by State bodies

The police investigation

134.86. on September 11, 1990, the Homicide Section of the Criminological Investigations Department of the National Police began its investigations on the murder of Myrna Mack Chang. Said investigations suffered numerous irregularities and demonstrated lack of will to pursue an adequate investigation, as the police did not adequately protect the scene of the occurrence, nor did they take fingerprints of the victim arguing that it had rained, even though the meteorological report for that day states that it did not rain; they did not take prints that might be found in the vehicle or blood samples; they cleaned Myrna Mack Chang's fingernails and discarded the content of the scrapings "because the samples were too small" and therefore did not conduct the laboratory analysis; her clothes were not examined; and the set of pictures of the wounds is incomplete because, according to their statement, "the camera or flash was damaged;" [FN199]

[FN199] Cf. testimony of Iduvina Hernández rendered before the Court on February 19, 2003; report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793); Report issued by the Criminological Investigations Department of the National Police on September 29, 1990 (file with annexes to the application, annex 43, leaves 795 to 840 and file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-38, leaves 3100 to 3121); and forensic investigation report prepared by Dr. Robert H. Kirschner (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-III-01, leaves 1831 to 1833).

134.87. José Mérida Escobar and Julio Pérez Ixcajop, National Police investigators assigned to investigate the murder, submitted a report on September 29, 1990, in which they concluded that Myrna Mack Chang had been murdered for political reasons. They also mentioned Noel de Jesús Beteta Álvarez, a sergeant major in the Army who was a member of the Presidential Security Department of the Presidential General Staff, as a suspect of the murder. Furthermore, they stated that State security officers had previously kept watch on Myrna Mack Chang. This report was not submitted immediately by the National Police to the competent court, but rather several months later; [FN200]

[FN200] Cf. testimony of Rember Larios Tobar rendered before the Court on February 19, 2003; and report issued by the Criminological Investigations Department of the National Police on September 29, 1990 (file with annexes to the application, annex 43, leaves 795 to 840 and file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-38, leaves 3100 to 3121).

134.88. carrying out orders of Colonel Julio Caballeros, then the Director of the National Police, the previous report was substituted by another, briefer report dated November 4, 1990, which was forwarded to the courts. This report stated that the motivation of the crime could have been robbery; [FN201]

[FN201] Cf. Report issued by the Criminological Investigations Department of the National Police on November 4, 1990 (file with annexes to the application, annex 45, leaves 855 to 868 and file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VII-38, leaves 3146 to 3158); and testimony of Rember Larios Tobar rendered before the Court on February 19, 2003.

134.89. several months later, in April or May, 1991, the new Director of the National Police supplied a copy of the first police report prepared by José Mérida Escobar and Julio Pérez Ixcajop to the Head of the Public Prosecutor's Office, who in June of that same year included it

in the court file. [FN202] On June 26, 1991, investigator Mérida Escobar testified before the court and ratified his September 29, 1990 report; [FN203]

[FN202] Cf. testimony of Rember Larios Tobar rendered before the Court on February 19, 2003; and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio," volume VI, pages 239 to 240 (file with annexes to the application, annex 42, leaves 790 to 791).
[FN203] Cf. statement by police investigator José Mérida Escobar before the Second Criminal Trial Court of First Instance on June 26, 1991 (file with annexes to the application, annex 46, leaves 871 to 880); and testimony of Rember Larios Tobar rendered before the Court on February 19, 2003.

Lack of cooperation by the Ministry of National Defense and the Presidential General Staff

134.90. The Public Prosecutor's Office and the private accuser have requested, through the judiciary, specific documents and information from the Ministry of National Defense and the Presidential General Staff with the aim of adding evidence to the judicial proceeding. Said bodies have systematically refused to provide certain information requested by the court authorities or have provided only part of the information required, arguing that the documents they do not supply deal with natural security matters, and that they constitute confidential information pursuant to Article 30 of the Political Constitution of Guatemala. The Presidential General Staff and the Ministry of National Defense have also forwarded altered documents [FN204] to the authorities in charge of the investigation for the murder of Myrna Mack Chang; [FN205]

[FN204] For example, the personal record of Noel de Jesús Beteta Álvarez kept at the Presidential General Staff and the orders for deduction issued by the Military Medical Center from July 5, 1990 to September 18, 1990, in which they stated that Beteta Álvarez had been "discharged" or was "not in active service" during the time of the facts. Cf. personal record of Noel de Jesús Beteta Álvarez kept by the Presidential General Staff and the deduction orders issued by the Military Medical Center from July 5, 1990 to September 18, 1990 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-III-05, leaves 1873 to 1888).
[FN205] Cf. testimony by Helen Mack Chang and Gabriela Judith Vásquez Smerilli rendered before the Court on February 18 and 19, 2003; expert opinions of Mónica Pinto and Iduvina Hernández rendered before the Court on February 18 and 19, 2003; personal record of Noel de Jesús Beteta Álvarez kept by the Presidential General Staff and deduction orders issued by the Military Medical Center from July 5, 1990 to September 18, 1990 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-III-05, leaves 1873 to 1888); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" of June, 1999, volume VI, pages 242 to 243 (file with annexes to the application, annex 42, leaf 792).

Lack of cooperation by the judiciary bodies

134.91. on April 30, 1996, the special civil prosecutor, appointed to conduct the investigation under the provisions of the new Criminal Procedures Code, asked the Military Court of First Instance of the Department of Guatemala for production of evidence to ensure its availability for subsequent inclusion into the proceedings, with respect to the testimony of Virgilio Rodríguez Santana, Rember Larios Tobar, Julio Pérez Ixcajop, Juan Marroquín Tejeda, and José Tejeda Hernández, who had left Guatemala to Canada due to threats and intimidation (infra paras. 134.97 to 134.99). [FN206] On July 22, 1996, the private accuser requested that the procedural step to be taken in Canada be recognized and accredited; [FN207]

[FN206] Cf. request filed before the Military Court of First Instance of the Department of Guatemala on April 30, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5024 to 5030).
[FN207] Cf. request filed before the Military Court of First Instance of the Department of Guatemala on July 22, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5428 to 5429).

134.92. on February 24, 1998, the private accuser asked the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance to continue the process of production of the evidence requested from the Military Judge in 1996 with respect to the testimony that, by means of rogatory letters to the respective judicial authorities, the individuals exiled in Canada due to the threats they received should render. [FN208] On March 12 of that same year the private accuser withdrew this request. [FN209] Finally, the private accuser had to take steps on her own to bring some of the witnesses to Guatemala to render their testimony; [FN210]

[FN208] Cf. request to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of February 24, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5847 to 5855).
[FN209] Cf. request to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance of February 24, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5862 to 5871).
[FN210] Cf. testimony by Helen Mack Chang and Rember Larios Tobar rendered before the Court on February 18 and 19, 2003.

134.93. on March 25, 1998, the Special Prosecutor asked the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, pursuant to Article 244 of the Criminal Procedures Code – the rules authorizing the courts to evaluate secrecy or privacy of documents- to order the Ministry of National Defense to turn over documents pertaining to the functioning and structure of the Presidential General Staff, which had been denied based on the

argument that they were under official secret, or that they had been supplied in an imprecise manner or merely transcribing literally the content of the respective provisions. The Public Prosecutor's Office also requested that, in case of non-compliance with this request, the person in charge of supplying the information that would be submitted to the criminal proceedings be warned that he or she might be found to be in contempt. [FN211] The Court ruled on this request on May 14, 1998, setting an eight-day term for the Ministry of National Defense to supply the information requested; [FN212]

[FN211] Cf. request to the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on March 25, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5881 to 5889).
[FN212] Cf. writ issued by the First Criminal, Drug Trafficking and Environmental Crimes Court of First Instance on May 14, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaf 5974).

134.94. on June 11, 1998, not having received a satisfactory response from the Ministry of National Defense or other documents requested from the Criminal, Drug Trafficking and Environmental Crimes Court of First Instance, the private accuser filed a formal complaint before the Office of the General Supervisor of Courts due to the patently irregular processing of the case by this Judge. [FN213] On June 22 of that same year the Office of the General Supervisor of Courts submitted its report to the Supreme Court. On July 15, the claimant submitted a brief to the President of the Supreme Court of Justice reiterating and expanding upon the ideas stated before the Office of the General Supervisor of Courts. On October 6, 1998, the private accuser was notified of the rejection of the complaint before the Office of the General Supervisor of Courts because it was deemed inadmissible; [FN214]

Murder of a policeman, threats against and exile of witnesses, policemen, judges, prosecutors, and other legal operators of the judiciary

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[FN213] Cf. request to the Special Prosecutor of the Public Prosecutor's Office dated June 22, 1998 (file with annexes to the brief answering the application and raising preliminary objections, leaves 8160 to 8166).
[FN214] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 38).

134.95. José Mérida Escobar and Julio Pérez Ixcajop, in charge of the investigation in the Myrna Mack Chang case, were followed and directly intimidated by staff of the "Archivo," who told them that they should not continue the investigation; [FN215]

[FN215] Cf. report by the Human Rights Ombudsman of November 9, 1992 (file with annexes to the application, annex 47, leaves 882 to 896); and testimony of Rember Larios Tobar rendered before the Court on February 19, 2003.

134.96. on August 5, 1991, after ratifying before the courts his September 29, 1990 report, José Mérida Escobar was murdered by unknown persons using a firearm, close to the headquarters of the National Police, due to his investigations in the Myrna Mack Chang case; [FN216]

[FN216] Cf. testimony of Rember Larios Tobar rendered before the Court on February 19, 2003; and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaf 792).

134.97. As a consequence of the threats he had been receiving due to his investigations in the Myrna Mack Chang case and of the murder of José Mérida Escobar, Julio Pérez Ixcajop left Guatemala in October, 1991, and went into exile in Canada; [FN217]

[FN217] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793).

134.98. As a consequence of the threats he was receiving, Rember Larios Tobar, then the Head of the Criminological Investigations Department of the National Police (DIC), left Guatemala in 1992 and went into exile in Canada; [FN218]

[FN218] Cf. testimony of Rember Larios Tobar rendered before the Court on February 19, 2003.

134.99. José Tejeda Hernández and Juan Marroquín Tejeda – the only two witnesses of the murder – and Virgilio Rodríguez Santana, a newspaper salesman at the time of the facts and a witness to the surveillance on Myrna Mack Chang, also live in exile in Canada as a consequence of the threats and acts of intimidation that they suffered at the time; [FN219]

[FN219] Cf. request filed before the Military Court of First Instance of the Department of Guatemala on April 30, 1996 (file with annexes to the brief answering the application and raising preliminary objections, leaves 5024 to 5030); and report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, pages 235 to 244 (file with annexes to the application, annex 42, leaves 788 to 793).

134.100. members of the Public Prosecutor's Office and judges who were in charge of the case were also threatened and harassed. [FN220] Henry Monroy Andrino, the trial Judge who issued the order for the trial to commence against those accused as accessories (supra para. 134.49), suffered threats and acts of intimidation. The "Secretary General of the Judiciary Body," specifically, advised him not to issue a decision against the military, and this was one of the various circumstances that led him to resign the judgeship and seek exile in Canada; [FN221]

[FN220] Cf. testimony of Henry Monroy Andrino rendered before the Court on February 19, 2003.
[FN221] Cf. testimony of Henry Monroy Andrino rendered before the Court on February 19, 2003.

Threats to the next of kin of Myrna Mack Chang, members of the Myrna Mack Foundation and AVANCSO staff

134.101. Helen Mack Chang as well as other members of the Mack Chang family have received threatening phone calls and have been followed and intimidated [FN222]

[FN222] Cf. Helen Mack Chang et al. Provisional Measures; supra notes 3 to 5; testimony by Lucrecia Hernández Mack and Helen Mack Chang rendered before the Court on February 18 and 19, 2003; expert opinions of Mónica Pinto and Alicia Neuburger rendered before the Court on February 18 and 19, 2003; and sworn statements by Lucrecia Hernández Mack, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, and Freddy Mack Chang made before a notary public on August 22, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-12, leaves 2291 to 2298).

134.102. staff members of the Mack Foundation, advisors in the case and AVANCSO staff have suffered intimidation and threats; [FN223]

[FN223] Cf. Helen Mack Chang et al. Provisional Measures; supra notes 3 and 4 and 6 and 7; letter by Clara Arenas Bianchi dated February 11, 1993 (file with annexes to the application, annex 48, leaves 898 to 906); testimony by Helen Mack Chang and Nadezhda Vásquez Cucho rendered before the Court on February 18 and 19, 2003; expert opinion of Mónica Pinto rendered before the Court on February 19, 2003; and report by the Special Rapporteur appointed by the Human Rights Committee of the United Nations, dated December 19, 1997 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-III-27, leaf 2160).

Specific facts pertaining to the next of kin of Myrna Mack Chang

134.103. the next of kin of Myrna Mack Chang are the following persons: Lucrecia Hernández Mack, daughter; Yam Mack Choy, the father, deceased on April 24, 1999; Zoila Chang Lau, the mother; Helen Mack Chang, sister; Marco Mack Chang, brother; Freddy Mack Chang, brother; Vivian Mack Chang, sister; and Ronald Chang Apuy, cousin; [FN224]

[FN224] Cf. birth certificate No. 079154 of Myrna Mack Chang issued on August 3, 2001, birth certificate No. K 1516503 of Lucrecia Hernández Mack issued on November 3, 1981, birth certificate No. 079153 of Helen Mack Chang issued on August 3, 2001, birth certification of Marco Mack Chang, birth certification of Freddy Mack Chang, legal residence card of Yam Mack Choy and birth certificate of Zoila Chang Lau issued on August 3, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-01, leaves 2227 to 2241); sworn statement of Ronald Chang Apuy made before a notary public on August 22, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-02, leaf 2243); letter by doctor José García Noval dated August 18, 2001 on the medical treatment given to Yam Mack Choy (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-09, leaf 2284); and birth certificate of Vivian Mack Chang (dossier on the merits and possible reparations, volume V, leaf 993).

134.104. the next of kin of Myrna Mack Chang have suffered pecuniary and non-pecuniary damage due to her death, due to the difficulties in obtaining justice, [FN225] and due to harassment by State authorities – all of which has affected their physical and psychological health; it has had an impact on their social and work relations; it has altered the dynamics of the Mack Chang family and, in some cases, has placed the life and personal integrity of some of its members at grave risk. [FN226] Addressing said damage has involved expenses incurred by the family of the victim; [FN227]

[FN225] Cf. testimony by Lucrecia Hernández Mack and Helen Mack Chang rendered before the Court on February 18 and 19, 2003; expert opinion of Alicia Neuburger rendered before the Court on February 19, 2003; and sworn statements of Lucrecia Hernández Mack, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, and Freddy Mack Chang made before a notary public on August 22, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-12, leaves 2291 to 2298).

[FN226] Cf. Helen Mack Chang et al. Provisional Measures; supra notes 3 to 5; testimony of Lucrecia Hernández Mack and Helen Mack Chang rendered before the Court on February 18 and 19, 2003; expert opinion of Alicia Neuburger rendered before the Court on February 19, 2003; sworn statements of Lucrecia Hernández Mack, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, and Freddy Mack Chang made before a notary public on August 22, 2001 (file

with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-12, leaves 2291 to 2298); letter by doctor José García Noval dated August 18, 2001 on the medical treatment given to Yam Mack Choy (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-09, leaf 2284); and letter by doctor Rodolfo Kepfer Rodríguez dated August 18, 2001 on psychiatric treatment given to Lucrecia Hernández Mack (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-11, leaf 2289).
[FN227] Cf. letters and statements on the medical expenses of the next of kin of the victim (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-09 to annex R-VI-12, leaves 2284 to 2298); and testimony of Lucrecia Hernández Mack rendered before the Court on February 18, 2003.

134.105. partial impunity in this case continues to cause suffering to the next of kin of Myrna Mack Chang; [FN228]

[FN228] Cf. testimony by Lucrecia Hernández Mack and Helen Mack Chang rendered before the Court on February 18 and 19, 2003; expert opinion of Alicia Neuburger rendered before the Court on February 19, 2003; and sworn statements of Lucrecia Hernández Mack, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, and Freddy Mack Chang made before a notary public on August 22, 2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-12, leaves 2291 to 2298).

134.106. Helen Mack Chang founded the Myrna Mack Foundation, which has represented the next of kin of the victim, with the main purpose of seeking justice in the instant case domestically and internationally, and this has involved a number of expenses; [FN229]

[FN229] Cf. testimony of Helen Mack Chang rendered before the Court on February 18, 2003; and expenses of the Myrna Mack Foundation (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annexes R-VI-14 and R-VI-15, leaves 2302 to 2460).

134.107. the next of kin of the victim have been represented before the Commission and the Court by Helen Mack Chang, [FN230] who in turn granted a power of attorney for them to be represented before the Court by Alberto Bovino; Jeff Clark and Robert O. Varenik, of the Lawyers Committee for Human Rights; Viviana Krsticevic and Roxanna Altholz, of CEJIL; Elijah Barret Prettyman Jr., Lyndon Tretter, Taylor Lee Burke, Shannon Tovan MacDaniel and David Kassebaum of the United States law firm Hogan & Hartson. [FN231] Subsequently, Helen Mack Chang rescinded the power of attorney granted to Taylor Lee Burke and Jeff Clark. [FN232] Said persons and organizations [FN233] have incurred a number of expenses under

domestic jurisdiction and before the bodies of the inter-American system, in the domestic proceedings and in the instant proceedings. [FN234]

[FN230] Cf. power of attorney granted by the next of kin of Myrna Mack Chang, Zoila Chang Lau, Freddy Mack Chang, Marco Mack Chang and Lucrecia Hernández Mack, to Helen Mack Chang (dossier on the merits and possible reparations, volume I, leaves 111 to 113).
[FN231] Cf. power of attorney granted by Helen Mack Chang on August 3, 2001 (dossier on the merits and possible reparations, volume I, leaves 149 to 152); and power of attorney granted by Helen Mack Chang on January 13, 2003 (dossier on the merits and possible reparations, volume IV, leaves 664 to 667).
[FN232] Cf. power of attorney granted by Helen Mack Chang on January 13, 2003 (dossier on the merits and possible reparations, volume IV, leaves 664 to 667).
[FN233] Cf. legal costs and expenses of the law firm Wilmer, Cutler & Pickering (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-17, leaves 2464 to 2562). The United States law firm Wilmer, Cutler & Pickering also participated in the representation of Helen Mack Chang and the other next of kin of the victim before the Inter-American Commission.
[FN234] Cf. legal costs and expenses of the legal representatives and of the Myrna Mack Foundation (file with annexes to the final pleadings of the representatives of the next of kin of the victim, annexes B, C, D, E); and legal costs and expenses of the law firm Wilmer, Cutler & Pickering (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-17, leaves 2464 to 2562).

IX. VIOLATION OF ARTICLES 4 AND 1(1) (RIGHT TO LIFE AND OBLIGATION TO RESPECT RIGHTS)

Pleadings of the Commission

135. In the application, the Commission asked the Court to find that the State is responsible for the arbitrary deprivation of the right to life of Myrna Mack Chang and, therefore, responsible for violation of Article 4 of the American Convention based on the following:

a) the extra-legal execution of Myrna Mack Chang is not the consequence of an isolated fact but rather is a paradigmatic example of the selective practice of extra-judicial executions prevailing in Guatemala at the time of the facts;
b) Myrna Mack Chang was extra-legally executed by Noel de Jesús Beteta Álvarez, Sergeant Major Specialist of the group of the security section of the Presidential General Staff and by another individual as yet unknown, who followed instructions of the high command of the Presidential General Staff to murder her. Furthermore, the motivation for the murder was political, due to the professional activities carried out by Myrna Mack Chang in connection with the internally displaced population. Likewise, the modus operandi to extra-legally execute Myrna Mack Chang was that used by the Guatemalan intelligence services and, specifically, by the Presidential General Staff, at the time of the facts; and

c) the extra-legal execution of Myrna Mack Chang was the consequence of a carefully prepared plan developed by the high command of the Presidential General Staff, which consisted of singling-out the victim, keeping watch on her, executing her, and covering up the direct perpetrators and the accessories insofar as possible and obstructing the administration of justice, whether directly or through subterraneous influences.

Pleadings of the representatives of the next of kin of the victim

136. The representatives of the next of kin of the victim asked the Court to find that the State is responsible for the arbitrary deprivation of the right to life of Myrna Mack Chang and, therefore, responsible for violation of Article 4 of the American Convention. In addition to reiterating various pleadings of the Commission, said representatives pointed out that:

a) planning and execution of the plan to murder Myrna Mack Chang was for political motives linked to her professional activity and can be ascribed to members of the Presidential General Staff of Guatemala, which coincides precisely with the patterns of selective extra-legal executions at the time;
b) Myrna Mack Chang was not simply an anthropologist, and she was not murdered only for practicing her profession. She was targeted because she represented the expression and dissemination of the truth, especially regarding the repression campaigns of the Army in the rural sectors, the aim of which was to not leave evidence regarding those military actions, to avoid opposition and to avoid attracting international scrutiny;
c) the statements of Noel de Jesús Beteta Álvarez, one of the direct perpetrators of the facts, the testimony of individuals who refer to the surveillance and execution of the victim, partial acknowledgment of responsibility by the State, public or judicial statements of high officials of the Guatemalan Government, the CEH Report, the REMHI Report, and the patterns of political repression at the time of the facts, provide conclusive grounds to affirm the institutional responsibility of the security forces the Presidential General Staff in the execution of the victim; and
d) the manner in which Noel de Jesús Beteta Álvarez and the agents of the Presidential General Staff involved in the execution acted could not have occurred without the intervention and knowledge of the commanding officers at the institution. Various items of evidence in the case file point to the same conclusion: “the murder of Myrna Mack was committed by an agent of the State in his capacity as an active member of the Presidential General Staff, carrying out orders received from other officers of this advisory military body.”

Pleadings of the State

137. In accordance with what the Court set forth in paragraphs 94 and 111, the State acquiesced unconditionally with respect to the facts described by the Commission in its application and the claim that the Court find that Article 4 of the Convention was breached.

Considerations of the Court

138. Article 4(1) of the American Convention provides that:

[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

139. The Court deems that, pursuant to what was established in the chapter on proven facts, the State is responsible for the extra-legal execution of Myrna Mack Chang committed through actions of its agents, carrying out orders issued by the high command of the Presidential General Staff, which constitutes a violation of the right to life. This circumstance was worsened because at the time of the facts there was in Guatemala a pattern of selective extra-legal executions fostered by the State, which was directed against those individuals who were considered "internal enemies." Furthermore, since then and still today, there have not been effective judicial mechanisms to investigate the human rights violations nor to punish those responsible, all of which gives rise to an aggravated international responsibility of the respondent State.

140. The death of Myrna Mack Chang was the result of a covert military intelligence operation carried out by the Presidential General Staff and tolerated by various authorities and institutions (supra para. 134.6). This military intelligence operation had three phases.

141. The first phase was to single-out the victim in view of her professional activity, an activity that bothered various authorities and institutions in Guatemala (supra paras. 134.7, 134.10 and 134.11). In this regard, en 1992, the Guatemalan Human Rights Ombudsman, Ramiro de León Carpio, based on the investigation of the instant case, stated that:

[t]he topics of the research projects carried out by anthropologist Myrna Mack Chang are still considered to be high risk ones, because they affect Government policies and their conclusions may not be in accordance with externally-oriented strategies.
[…] After an in-depth analysis of the above, one can infer, based on presumptions, that the violation to the right to life and to the physical integrity of Myrna Elizabeth Mack Chang was committed because of the development of her social investigation activities, because they were considered destabilizing vis-à-vis the order pre-established by the Government, which was perceived by the Intelligence Section of the National Army, who ordered and carried out this extra-legal killing. This case constitutes a typical politically-motivated killing. [FN235]

[FN235] Cf. report by the Human Rights Ombudsman of Guatemala dated November 9, 1992 (file with annexes to the application, annex 47, leaves 882 to 896).
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142. Several of the expert witnesses and witnesses who appeared before the Court also stated that Myrna Mack Chang was singled-out as a "target" or an "internal enemy" due to the activities she carried out. In this regard, expert witness Mónica Pinto (supra para. 127.i), in her expert opinion before the Court, stated that:

Myrna Mack was executed in 1990. I do not recall the exact date. It was not the only execution in 1990, there were others. And in reality, summary executions in Guatemala have had various profiles over time. After a stage of massive, collective summary executions that would be part of various policies such as the "Scorched Earth" policy or some others, came the more selective

summary executions. Myrna Mack was working in a sensitive area, perhaps for political considerations, and on the other hand, the way she was executed determined that it was not a traditional murder. Myrna Mack suffered 27 knife wounds.
[…]
[M]y mandate does not extend to the time of the facts in which Myrna Mack lost her life. The interpretation of the four reports that I submitted to the Commission is that basically the whole treatment of the issue of refugees by a broad segment of power in Guatemala is very close to considering that refuge was practically synonymous to membership in the guerrilla forces. Myrna Mack was working on the topic of refugees and was working on the causes, and at a given moment Myrna Mack became a dangerous element. How intense was this danger? I do not know whether this is precisely the interpretation that might have made the authorities decide that Myrna Mack should be eliminated. Yet obviously all the circumstances were in place at the time in which I drafted the first of the reports to reach the conclusion that the way in which Myrna Mack had lost her life was not due to a mere homicide, that it was not due to any matter of passion, but rather that it stemmed from a policy that had decided, in a premeditated manner, that it was necessary to get rid of Myrna Mack.

143. Witness Lucrecia Hernández Mack, daughter de the victim (supra para. 27.c), likewise stated before the Court:

[m]y mother was killed for political reasons. At the time she was conducting, and had already conducted, research studies on the internally displaced population in Guatemala. In other words, a civilian population that had been harassed and persecuted by the Guatemalan Army. And she was hearing the testimony of these persons and the institutional policies of the State regarding [...] these persons. She was letting people know, and had published a book in which she clearly stated the existence of these populations and also how the Army had been massacring within the country and had been violating human rights within the country. This was obviously not convenient for the Army and therefore they saw my mother as a threat and she then became a target and that is why they murdered her. It was for political reasons. And well and this is something that they denied from the start, that it could be for political reasons.

144. In this regard, the CEH Report concluded, with respect to Myrna Mack Chang case, that it:

deems that this human rights violation is an example and consequence of the harmful discourse that, during the years of internal armed confrontation, identified the internally displaced population and the intellectuals who studied their problems as enemies of the State. The CEH deems that those who decided to murder Myrna Mack sought, based an erroneous intelligence assessment of the role of this professional and her anthropological activity, to send an intimidating message, in general, to the communities of displaced persons and, specifically, to the institutions and persons who were concerned about their living conditions. [FN236]

[FN236] Cf. report by the Comisión para el Esclarecimiento Histórico, “Guatemala, memoria del silencio” in June, 1999, volume VI, pages 243 to 244 (file with annexes to the application, annex 42, leaves 792 to 793).

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145. The second phase of the military intelligence operation consisted of keeping watch on, following, and extra-legally executing the victims. This was done by a group of specialists of the Presidential General Staff (supra paras. 134.3, 134.4, 134.6, 134.10 and 134.11). The execution of Myrna Mack Chang was not an isolated act carried out by the Presidential General Staff specialist Noel de Jesús Beteta Alvarez, but rather the result of a careful operation developed by the high command of that body, directly executed by Sergeant Beteta Alvarez (supra paras. 134.5 and 134.22). In this regard, Noel de Jesús Beteta Alvarez stated, with respect to the modus operandi of the Presidential General Staff, that:

[t]his type of murder missions is not often, it depends on the situation, but at that time there was a lot of work. I think that there were perhaps some thirty murder missions, only for me. This is aside from the rest of the group, so the amount is twenty by thirty. Some six hundred a year only in that office (the EMP). In Myrna's case they passed me the file, I analyzed it and began the surveillance. This type of missions last no more than fifteen days from when we single the person out until the time of the execution. We do not report until the mission has been completed. Once that mission was completed, I shredded the file, I burned it, and I did not speak about the matter any more to anyone at the office. All my reports to Juan Valencia Osorio, my supervisor, were verbal. It included the way to eliminate her so that people thought it was a common crime. Then they tried to eliminate me physically and armed people even kept watch on the house and came asking for me. I am sure that Juan Valencia Osorio ordered that I be killed. That is why I left the country. Once I was a prisoner they did not talk to me nor send me any messages. When my mother said that they were coming to the house I understood the message. [FN237]

[FN237] Cf. Report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, page 190; and transcripts of interviews with Noel de Jesús Beteta Alvarez (file with annexes to the application, annex 52.2, leaves 1152 to 1259).

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146. In this regard, the CEH Report pointed out that:

[m]ost of the human rights violations took place with knowledge by or under orders from the highest authorities of the State. Evidence from various sources (statements of former members of the Armed Forces, declassified documentation, data from various organizations, testimony of Guatemalan eminent persons) all points to the fact that the intelligence services of the Army, especially the G-2 and the Presidential General Staff, obtained information on all types of individuals and civil organizations, evaluated their behavior in their respective spheres of activity, prepared lists of those to be repressed due to their allegedly subversive nature, and then, according to each case, captured, interrogated and tortured them, made them disappear, or executed them.

[…T]he responsibilities for many of these violations include, in the line of military command and in that of political and administrative responsibility, the highest levels of the Army and of successive Governments.
[…T]he excuse that the lower-ranking officers acted with a great deal of autonomy and decentralization, which would explain "excesses" and "mistakes" that were not ordered by the commanding officers, is a groundless argument according to the investigation conducted by the CEH. The notorious fact that no commander, officer or intermediate authority in the Army or the security forces of the State has been prosecuted or convicted for his acts in violation of human rights over so many years strengthens the evidence that most said violations resulted from an institutional policy that ensured an impenetrable impunity, which continued throughout the period investigated by the CEH. [FN238]

[FN238] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, Conclusions, pages 47 to 48.

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147. The REMHI Report, in turn, in fitting with the statements by Noel de Jesús Beteta Alvarez regarding the modus operandi, in connection with the extra-legal executions in Guatemala, found that:

[t]he commandoes that carried them out were formed by groups of five to eight individuals, including the executors, the drivers, and those keeping watch. As part of covert operations, there were no written orders, identification of the members of the commando was through pseudonyms, and the vehicles and weapons used did not have registration numbers that could link to the origin of the operation.
In general, these extra-legal executions were decisions of the commander of the respective intelligence body in the area, although certain cases were consulted beforehand with the highest levels of military intelligence. In some cases in which trouble was foreseen, the decisions were often coordinated with the heads of other security forces, advising even the directors of the National Police, for them to previously clean the area and not interfere when the commando left it.
Ordinarily the executions did not include prior warnings to the victim, although there was a discrete plan to follow them for eight and up to fifteen days. The victim was followed to establish customary reference points regarding his or her movements, such as place of residence and of work.
[...] Most of the times the orders were direct and there was no discussion, and a brief report was subsequently required regarding the outcome, as well as destruction of evidence such as reports, and so forth. The system included following the person for several days or weeks to establish his or her movements. In general, the way the person was killed, the day and how they would flee were decided by the specialist in charge of the kidnapping or murder, taking into account that it should look like a common crime or make their identification difficult (for example, in darkness), at an appropriate time (without witnesses) and, if applicable, to ensure that the person would not be left wounded. This was the system in many murders of leaders or intellectuals, as in the case of Myrna Mack.

[…] Very often the intelligence actions continued after the crime, leading to destruction or alteration of evidence, threats against witnesses and members of the family, and so forth, obstructing any investigation, to ensure the impunity of their actions." [FN239]

[FN239] Cf. Report by the Proyecto Interdiocesano de Recuperación de la Memoria Histórica, "Guatemala: Nunca Más: los mecanismos del horror," volume II, page 189.

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148. In this regard, the CEH reached the conclusion that:

taking into account all the information gathered, the CEH is convinced that the murder of Myrna Elizabeth Mack Chang was committed by an agent of the State in his capacity as an active member of the Presidential General Staff (EMP), carrying out orders received from other officers of this military advisory body, and her death is a grave violation of the right to life. [FN240]

[FN240] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, page 243 (file with annexes to the application, annex 42, leaf 792).

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149. The third phase of the military intelligence operation consisted of covering up, insofar as possible, all the direct perpetrators and accessories of the operation, so as to ensure their impunity in the instant case to be able to continue acting in a clandestine manner, without any control, and to continue performing illegal acts (supra paras. 134.11 to 134.13). In this regard, the State itself acknowledged that "military influence might be a factor affecting the difficulties and irregularities in the proceeding." [FN241] Likewise, the CEH pointed out that "[m]ost of the arbitrary executions committed by agents of the State were complemented by other acts and maneuvers directed at avoiding or obstructing investigation by the judges, thus intensifying the climate of impunity." [FN242]

[FN241] Cf. report by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights, pages 2 and 3 (file with annexes to the application, annex 10, leaves 232 to 233).

[FN242] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, page 369.

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150. The CEH also stated in its final conclusions that:

it has established that in Guatemala the military intelligence services conducted unconventional and irregular operations outside any legal order or framework. Their illegal operations were clandestine, both in their preparation and in their execution. The purpose of these missions was to ensure secrecy of a task so that it would not be possible to identify the accessories and direct

perpetrators of the facts, to exonerate the agents of the State from all responsibility, and to thus ensure the ineffectiveness of any judicial or police investigation. [FN243]

[FN243] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, Conclusions, page 31.

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151. Therefore, and pursuant to the proven facts, the Court deems it proven that at the time of the facts there was in Guatemala a pattern of selective extra-legal executions fostered and tolerated by the State itself (supra paras. 134.10 and 134.11). In this regard, the CEG stated in its final conclusions, with respect to the extra-legal executions, that:

the State of Guatemala repeatedly and systematically committed violations of the right to life that in this Report are referred to as arbitrary executions, aggravated in many cases by resorting to extreme mercilessness, as happened for example in situations in which the bodies were abandoned with obvious signs of torture, multiple mutilations, bullet wounds, or burns. The agents of this type of violations were generally Army officers, specialists, and troops, death squads operating under the protection of the authorities or constituted by their agents [...]. [FN244]

[FN244] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, Conclusions, page 44.

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152. On this matter, the Court has pointed out that when there is a pattern of extra-legal executions fostered or tolerated by the State, this generates an environment that is incompatible with effective protection of the right to life . This Court has established that the right to life plays a fundamental role in the American Convention because it is a prior condition for realization of the other rights. [FN245] When the right to life is not respected, all the other rights lack meaning. The States have the obligation to ensure the creation of such conditions as may be required to avoid violations to this inalienable right and, specifically, the duty of avoiding attempts against it by the agents of the State. [FN246]

[FN245] Cf. Juan Humberto Sánchez Case, supra note 9, para. 110; and "Street Children" Case (Villagrán Morales et al.), supra note 8, para. 144.
[FN246] Cf. Juan Humberto Sánchez Case, supra note 9, para. 110.

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153. Compliance with Article 4 of the American Convention, in combination with Article 1(1) of that same Convention, requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but also that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation), [FN247] under their duty to ensure full and free exercise of the rights by all persons under their jurisdiction. [FN248] This active protection of

the right to life by the State involves not only its legislators, but all State institutions, and those who must protect security, be these its police forces or its armed forces. [FN249] Therefore, the States must adopt all necessary measures, not only to prevent, try, and punish deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents. [FN250]

[FN247] Cf. Bulacio Case, supra note 9, para. 111; Juan Humberto Sánchez Case, supra note 9, para. 110; and "Street Children" Case (Villagrán Morales et al.), supra note 8, para. 139.
[FN248] Cf. Bulacio Case, supra note 9, para. 111; Juan Humberto Sánchez Case, supra note 9, para. 110; and Cantoral Benavides Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, para. 69.
[FN249] Cf. Juan Humberto Sánchez Case, supra note 9, para. 110.
[FN250] Cf. Juan Humberto Sánchez Case, supra note 9, para. 110; Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, para. 172; and "Street Children" Case (Villagrán Morales et al.), supra note 8, paras. 144 to 145.

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154. In the sub judice, case, it has been established that the State itself fostered a practice of selective summary executions (supra paras. 134.10 and 134.11), a situation that is totally contrary to the duty of the State to respect and ensure the right to life.

155. The Court also deems it proven that at the time of the facts in Guatemala there were no effective mechanisms to investigate violations of the right to life, for which reason there was a climate of impunity regarding human rights violations (supra para. 134.13). Likewise, the CEH stated in its final conclusions:

[t]he weakness of the justice system, absent in vast areas of the country before the armed conflict, became more acute when the judiciary bent to the requirements imposed by the prevailing model of national security. The CEH concludes that, by tolerating or directly participating in the impunity that provided material coverage for the very basic violations of human rights, the bodies of the justice system became ineffective in one of their fundamental functions of protection of the individual vis-à-vis the State, and they lost all credibility as guarantors of legality in force. They allowed impunity to become one of the most important mechanisms to generate and maintain the climate of terror. [FN251]

[FN251] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, Conclusions, page 35.

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156. In cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life .

157. In this regard, safeguarding the right to life requires conducting an effective official investigation when there are persons who lost their life as a result of the use of force by agents of the State. [FN252] In this connection, the European Court of Human Rights has stated that:

[the] general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under Article 2, read in conjunction with the State's general duty [...] to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be [an] effective official investigation when individuals have been killed as a result of the use of force. [FN253]

[FN252] Cf. Juan Humberto Sánchez Case, supra note 9, para. 112.
[FN253] Cf. Eur. Court H.R., Case of Hugh Jordan v. the United Kingdom judgment of 4 May 2001, para. 105; Eur. Court H.R., Case of Çiçek v. Turkey judgment of 27 February 2001, para. 148; and Eur. Court H.R., McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, para. 161.

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158. Therefore, the Court concludes that the extra-legal execution of Myrna Mack Chang was the result of a covert military intelligence operation prepared by the high command of the Presidential General Staff carried out by its members within a pattern of selective extra-legal executions, in a climate of impunity, which was and has been tolerated by various State authorities and institutions, for which reason it finds that Guatemala has violated Article 4(1) of the American Convention, in combination with Article 1(1) of that same Convention, to the detriment of Myrna Mack Chang.

X. VIOLATION OF ARTICLES 8, 25 AND 1(1) (RIGHT TO FAIR TRIAL, JUDICIAL PROTECTION AND OBLIGATION TO RESPECT RIGHTS)

Pleadings of the Commission

159. In its application, the Commission asked the Court to find that there was a violation of Articles 8 and 25 of the American Convention to the detriment of the victim and her next of kin. In this regard, the Commission pointed out that:

a) the judicial proceeding that stemmed from the murder of Myrna Mack Chang is one of the clearest examples in recent Guatemalan history and of the limits of the scope of the willingness of the Guatemalan State to seriously and effectively investigate human rights violations, to try and to punish all those responsible, in this case including the accessories. This case exemplifies the limits of the cloak of impunity that exists in Guatemala and the price that those who attempt to challenge the limits of impunity or to completely lift its mantle must be willing to pay;
b) the consequences of challenging impunity have been: the murder of police investigator José Mérida Escobar, who reported that the killing of Myrna Mack Chang was due to a political

matter and that a member of the Presidential General Staff was involved in the crime; demotion within the police force and subsequent exile due to threats and acts of intimidation against the other police investigator, José Pérez Ixcajop, who together with Mérida Escobar also stated that the murder of Myrna Mack Chang was a political crime and that there were security agents involved in it; exile of 4 witnesses due to the death threats and intimidations once the facts were make known; exile due to death threats and intimidation against the judge who ordered the trial to commence against the accessories of the murder; threats and acts of intimidation against judges and prosecutors who have tried to move the judicial proceeding forward; threats against and following of various legal advisors in this case, the sister of the victim, and members of the AVANCSO foundation;

c) the State did not allow Helen Mack Chang to have access to an effective legal remedy with guarantees of due process, to try and to punish all those responsible for the murder of Myrna Mack Chang. The Commission recognizes that in this case there have been some results and there has been partial impunity, as one of the direct perpetrators of the crime, Noel de Jesús Beteta Álvarez, has been tried and sentenced. However, it is the understanding of the Commission that, pursuant to Articles 1(1), 8 and 25 of the Convention, the State has the obligation to try and to punish all the direct perpetrators and accessories of the facts that breached the human rights. In this case, more than "twelve" years after the extra-legal execution of Myrna Mack Chang, only one of the direct perpetrators has been duly punished, and all the persons legally accused as accessories of the crime have been absolved, openly contradicting the evidence against them. The judicial proceeding against them has been delayed more than "twelve" years and, as the State itself has acknowledged, it has gone beyond reasonable terms pursuant to the Convention. The judicial authorities are responsible for this unjustifiable delay due to "an indifferent management of the proceeding that has allowed and processed frivolous remedies, not respecting procedural terms in attempting to detach themselves from the proceeding through alleged queries on competence." The State has considerably exceeded the three criteria set forth by the Honorable Court to establish reasonable term, that is, the complexity of the case, the behavior of the authorities, and the behavior of the parties;

d) from the initial phase of the investigation, the judicial proceeding showed serious irregularities. Inadequate care of the Guatemalan authorities at the scene of the crime was made evident by the precarious gathering of physical evidence that made it impossible to establish the direct perpetrators of the crime by means of scientific evidence, for which reason the preliminary investigation was based on testimonial evidence;

e) a grave irregularity committed during the investigation of the facts was the modification of the police report prepared by the agents entrusted with investigating the murder. The September 29, 1990 report drafted by agent José Mérida Escobar, in which he reached the conclusion that the motive of the murder was political in nature and he named Noel de Jesús Beteta as one of the suspects of the crime, was kept secret by orders of the Director of the National Police and subsequently modified by means of a report submitted to the judicial authorities on November 4, 1990, stating that the motive was robbery and that there were no suspects of the crime;

f) the army, protecting itself behind military secret, has systematically refused to supply certain information requested by the judicial authorities, which demonstrates its unwillingness to cooperate in the investigations. The Ministry of National Defense has supplied only part of the information requested, arguing that the documents that have not been supplied address military

or diplomatic matters of national security that are confidential information pursuant to Article 30 of the Political Constitution of Guatemala;

g) the Guatemalan courts have allowed abusive use of the amparo remedy. While the law authorizes the amparo remedy against court rulings, the interpretation of said possibility by the courts in this case has enabled the parties to submit amparo remedies that have caused unjustifiable delays and permanent discontinuity of the proceeding. From February, 1994, to the date of the application, "eleven" amparo remedies have been filed by the defendants. Their obvious inadmissibility, which should have led the judges to reject them in limine to avoid undue delays in the proceeding, is demonstrated by the fact that said amparo remedies have been rejected by the courts. Furthermore, the 11 amparo remedies and their respective appeals were decided by the courts outside the terms set forth in the law, and this has entailed three years and four months of paralysis of the proceeding due to said remedies. This demonstrates that the intervening judges have been partly responsible for the use of the amparo remedy in this case as a fourth instance, becoming a covert appeal and nullifying its objective and aim of being a simple, rapid, and effective remedy;

h) impunity that continues to exist in this case with respect to the accessories is because in Guatemala there are still many opportunities for the administration of justice to be subordinated to military interests, through what the Comisión para el Esclarecimiento Histórico de Guatemala has called "subterraneous mechanisms" of impunity. After acknowledging its responsibility for the murder of Myrna Mack Chang and the existence of a denial of justice in this case, the State has done nothing to correct the situation On the contrary, all it has done is to try to disregard said acknowledgment and to obstruct the judicial proceeding even more; and

i) on October 3, 2002, the Third Criminal, Drug Trafficking and Environmental Crimes Trial Court issued a judgment of first instance in which Juan Valencia Osorio was found criminally responsible as perpetrator of the crime of murder against Myrna Mack Chang, and defendants Edgar Augusto Godoy Gaitán and Juan Guillermo Oliva Carrera were acquitted and cleared of all charges. On May 7, 2003, the Fourth Appellate Chamber acquitted Juan Valencia Osorio and upheld the terms of the first instance ruling that acquitted the other defendants. This judgment attempts to ensure impunity of such a grave violation, based on a reinterpretation of the facts that have been duly proven in the case file and that were assessed at the appropriate time by a judge of first instance in accordance with national legislation. In the instant case, the Commission deems that the judicial actions of the Guatemalan authorities have been arbitrary, and therefore the Court has the authority to rule on the matter.

Pleadings of the representatives of the next of kin of the victim

160. The representatives of the next of kin of the victim asked the Court to find that the State had breached Articles 8 and 25 of the Convention and, in this regard, they stated that:

a) in this case there was a systematic obstruction of the investigations by the agents of the State to cover up the responsibilities of the agents of the Presidential General Staff who were involved in the extra-legal execution of the victim;

b) the first anomalies in the investigation occurred at the scene of the crime itself and during the initial stage of forensic investigation. The agents who intervened at the scene of the crime conducted a highly negligent and incompetent investigation, especially with respect to obtaining and securing evidence and processing of the scene of the crime. Furthermore, immediately after

the fact, the military staff of the "Archivo" intervened to ensure that the investigation did not involve them. This caused irreparable damage to items that were crucial to establish the identity of all those responsible for the murder and for the investigation to move forward, and it entailed violations to the duty of due diligence of the State to conduct the investigation of the extra-legal execution of Myrna Mack Chang;

c) the highest authorities of the Presidential General Staff, from the start of the proceeding, forwarded "false documentary evidence" to the authorities in charge of investigating the murder. Thus, the records of the Medical Center and of the Presidential General Staff were intentionally altered and sent as if they contained truthful information to the State bodies entrusted with the investigation, and certain authorities made statements with the aim of denying that Noel de Jesús Beteta Álvarez was a member of the Presidential General Staff at the time of the murder and to cover up the extent of institutional participation of the latter.

d) there were acts of harassment against members of the administration of justice, witnesses, next of kin of the victim, and members of non-governmental organizations, which were characteristic traits of the proceeding against the accused for the murder of Myrna Mack Chang. Furthermore, the lack of effective control over the activities of the Presidential General Staff allowed the murder of police investigator José Mérida Escobar to be committed;

e) the Ministry of National Defense has systematically refused to supply information that is crucial to elucidate the facts. The bodies of the Guatemalan State did not respond to 64% of the judicial requests for information. On the other hand, even in some of the cases included in the 36% where the State replied, it is possible to affirm that it did not comply in good faith with the request for information;

f) in its reply to the Report of the Inter-American Commission, the State sought to elude all responsibility of State bodies other than the judiciary for obstructions and unwillingness to move forward with a serious and effective investigation of the case. Furthermore, the executive branch of government in Guatemala has resorted to the concept of "official secret" in face of requests by prosecutors and judges, with the aim of not supplying information that is significant to establish the truth, and this is one more example that the arguments invoked by the State are untenable;

g) another act of obstruction of the investigation was carried out by the judiciary itself, when the Third Criminal Trial Court established the guilt of one of the direct perpetrators of the murder, and at the same time ordered the proceeding closed with respect to Edgar Augusto Godoy Gaitán, Juan Valencia Osorio, Juan Guillermo Oliva Carrera, Juan José Larios, Juan José del Cid Morales and the individual whose surname is Charchal, for lack of evidence. The Judge had no competence to close an investigation on the three military officers of the Presidential General Staff, since as members of the Army they could only be tried by military courts. For this reason, these persons never appeared in the proceeding against Noel de Jesús Beteta Álvarez as accused, their preliminary examination statement was never taken, and they were not prosecuted. Therefore, the court closed the investigation outside its sphere of competence and in an arbitrary manner. The private accuser had to litigate for over two years to attain annulment of the closing of an investigation that had not formally begun;

h) another obstacle in the way of the proceeding against those accused as accessories was the determination of which court would be competent. Rapid determination of competence is an indispensable condition to exercise the rights guaranteed by Articles 8(1) and 25(1) of the Convention. The only acceptable circumstance to tolerate a longer term to define competence of the intervening court was the legal modification that abolished the military courts where the proceeding had begun against the three accused. This discussion on competence caused the

unnecessary intervention of several courts and forced the private accuser and the Public Prosecutor's Office to have to answer arguments that sought to deflect the procedural activity regarding the investigation and that caused continuous paralysis of the proceeding, despite the fact that the remedies filed by the parties did not legally require a stay of the proceeding;

i) the accused Edgar Augusto Godoy Gaitán, Juan Valencia Osorio and Juan Guillermo Oliva Carrera filed "eleven" amparo remedies, all of which were turned down. The ruling on each amparo took, on average, 6 or 7 months, and the legal term is thirty days. This adds up to 47 months, that is, a net excess of three years and four months of unjustified paralysis of the proceeding beyond the legal terms. In other words, the judicial authorities did not comply with the legal terms to rule and to notify the ruling, and in practice the amparo remedy constituted a mechanism that acted as a direct cause of denial and delay of justice, as it allowed and tolerated a discussion in four different instances. Despite the legal provisions in force, processing of the amparo remedy several times led, unnecessarily, to paralysis of the proceeding for unjustifiable periods; and

j) the State lacks the political will to prosecute, try, and punish the members of the Presidential General Staff responsible for the murder of Myrna Mack Chang. This attitude is clearly illustrated by the annulment ruling by the Fourth Chamber of the Court of Appeals. On May 7, 2003, said Chamber annulled the conviction against Juan Valencia Osorio, stating as only motive a non-existing contradiction in the first instance judgment, without substantiating its ruling in any way.

Pleadings of the State

161. As stated by the Court in paragraphs 94 and 111, the State acquiesced unconditionally to the facts described by the Commission in its application and to the request that the Court find that there was a violation of Articles 8 and 25 of the Convention.

Considerations of the Court

162. Article 8(1) of the American Convention sets forth:

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

163. Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
   a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
   b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

164. In view of what the Court has deemed proven with respect to the right to fair trial and judicial protection, the analysis of Articles 8 and 25 will address the following topics: a) gathering of evidence at the scene of the crime; b) alteration and concealment of the report on the police investigation; c) manipulation of the evidence supplied by the Presidential General Staff and the Ministry of National Defense; d) official secret; e) murder of a police investigator; harassment and threats against legal operators, police investigators, members of the Myrna Mack Foundation and of AVANCSO and the next of kin of Myrna Mack Chang; f) lack of diligence of the judges in the criminal proceeding; and g) reasonable term.

165. Before discussing each of the aforementioned points, let us recall what the CEH stated regarding the Myrna Mack Chang case:

[…] this case clearly illustrates the grave flaws and shortcomings of actions by the courts, despite multiple and persistent procedural actions by the private prosecutor and private accuser. It also reveals the existence of subterraneous mechanisms of impunity that sabotage the criminal investigation and obstruct enforcement of the law, by altering the scene of the crime, obstructing the criminal investigation, implementing overt and covert intimidation plans against judges, witnesses, prosecutors and investigators –to the point of killing police investigator José Mérida- and official acts to cover up and arbitrarily invoke official secret.
But the case also reveals the possibilities that reopen when the next of kin of the victim, as Helen Mack did, resolutely exercise their right to judicial action and attempt to overcome the intimidations, the covering up of the human rights violations, and abusive resort to official secret. [FN254]

[FN254] Cf. report by the Comisión para el Esclarecimiento Histórico, "Guatemala, memoria del silencio" in June, 1999, volume VI, page 244 (file with annexes to the application, annex 42, leaf 793).

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a) Gathering of evidence at the scene of the crime

166. The Court has corroborated that once the body was found, the police abstained from adequately protecting the scene of the crime, cleaned the victim's nails, and discarded the content of the scrapings, and alleged that it did not record or preserve the fingerprints because it had rained, despite the fact that the meteorological report stated that there had been no rainfall. Furthermore, the police did not take blood samples of the victim, for which reason the respective laboratory tests were not conducted, and her clothes were not examined and the victim's wounds were not photographed completely (supra para. 134.86).

167. The investigative procedures that were omitted are key components for an appropriate development of the judicial investigation, especially in face of a fact that has cost a person's life. [FN255]

[FN255] Cf. Juan Humberto Sánchez Case, supra note 9, para. 127 and U.N. Doc./ST/CSDHA/.12 (1991).

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b) Altering and hiding the report of the police investigation

168. As was stated with respect to the proven facts, the police entrusted two of its officers, José Mérida Escobar and Julio Pérez Ixcajop, with investigating the death of Myrna Mack Chang. On September 29, 1990, said policemen submitted to the Director of the Guatemalan National Police, Colonel Julio Caballeros, the respective report, in which they reached the conclusion that Myrna Mack Chang had been murdered for political reasons and they even identified Noel de Jesús Beteta Álvarez, a specialist of the Presidential General Staff, as a suspect of the murder (supra para. 134.87).

169. The Court also has deemed it proven that, under orders from Colonel Julio Caballeros, then the Director of the National Police, the report prepared by José Mérida Escobar and Julio Pérez Ixcajop was substituted by another, more brief report dated November 4, 1990, which was forwarded to the courts. This report stated that the motive of the crime might have been robbery, and it identified no suspects (supra para. 134.88).

170. Likewise, the Court has deemed it proven that the new Director of the Police forwarded the September 29, 1990 report to the Public Prosecutor's Office several months later, in April or May, 1991 (supra para. 134.89).

171. Likewise, Rember Larios Tobar, then the Head of the Criminological Investigations Department of the National Police of Guatemala (supra para. 127.e), stated before the Court that:

I assigned homicide investigator José Miguel Mérida because he was knowledgeable, well-trained, and experienced in homicide investigations [and] he chose the other investigator [...]Julio César Pérez Ixcajop; a report was prepared, dated February 29, 1990, and it was immediately submitted to the Director of the Police, colonel Julio Caballeros. [T]he report stated that based on the witnesses' interviews, it had been established that there was a suspect by name Noel de Jesús Beteta and also that the motive of the killing might have been that she had published a book that talked about the institutional policies toward the internally displaced population in Guatemala, which at the time was considered a very sensitive topic in Guatemala.
[…]
I recall that there was a second report, and if I remember correctly it was dated November 4, 1990, and it was prepared under orders issued by the Director of the National Police who said that this report should be submitted and sent to the courts. I also recall that when the September 29, 1990 report was submitted the first time, he ordered that it be kept secret, that it not be sent to the court. He also warned us that our lives were at risk and that we should not let anyone else know about this report, for whatever reason, because our lives would be at risk. Then, for that reason, he ordered that the November 4, 1990 report be submitted to the courts.

172. This behavior of the person acting as the highest police authority, who at the time was a member of the army, of hiding and manipulating the official account of the investigation to the judicial authorities, demonstrates that there was an attempt to cover-up those responsible for the extra-legal execution of Myrna Mack Chang, and this constitutes an obstruction of justice and an inducement for those responsible of the facts to remain in a situation of impunity.

c) Manipulation of the evidence submitted by the Presidential General Staff and the Ministry of National Defense

173. The Court has deemed it proven that, in response to a request by the authorities in charge of the investigation, specifically of the Public Prosecutor's Office, the Presidential General Staff and the Ministry of National Defense forwarded manipulated documents with the intention of concealing information that was important for elucidation of the facts. For example, the personal record of Noel de Jesús Beteta Álvarez, kept by the Presidential General Staff and the orders for deductions issued by the Military Medical Center from July 5 to September 18, 1990 (supra para. 134.90), stating that Noel de Jesús Beteta Álvarez had been "discharged" or "not in active duty" at the time of the facts, to avoid any link between the actions committed by Beteta Álvarez and the Presidential General Staff.

174. This behavior of the Presidential General Staff and of the Ministry of National Defense, manipulating the information requested by the courts, is also an act of obstruction of the administration of justice that seeks to provide impunity to the members of the Presidential General Staff involved, with the aim of avoiding a serious, impartial, and effective investigation of the murder of the victim.

d) Official secret

175. The Court has deemed proven that the Ministry of National Defense, resorting to official secret regulated by Article 30 of the Political Constitution, has refused to supply certain documents pertaining to the functioning and structure of the Presidential General Staff; in other cases, said Ministry has supplied vague and imprecise information that did not satisfy the requirements of the judicial authorities and of the Public Prosecutor's Office (supra para. 134.90).

176. It has been proven that the Ministry of National Defense carried out this type of actions and, regarding this matter, witness Gabriela Vásquez Smerilli stated, in her testimony before the Court, that she had repeatedly requested eight documents from the Minister of Defense that had been requested by the Public Prosecutor's Office, with no satisfactory answer. The replies received were, for example: that the documents did not exist because they had been incinerated; that the information had been submitted to the Public Prosecutor's Office (but the information submitted had been different); or that the file requested did not exist. In other cases, the Minister of Defense provided information that was not what they had requested, or never supplied the information requested (supra para. 127.g).

177. Expert witness Henry El Khoury Jacob also stated to the Court, with respect to official secret, that in light of Article 30 of the Guatemalan Constitution "the judge is a sovereign

authority and the public office cannot refuse. For this there is, let us say, a minor procedure to be followed and the judge will assess what must be done if it truly is a secret and then how he will proceed, discretionally and discretely […] with that secret" (supra para. 127.j).

178. In this regard, the Court underlines that Guatemalan legislation - in Article 244 of the Criminal Procedures Code – sets forth a procedure by means of which the competent court or the judge controlling the investigation can privately examine documents whose secrecy is alleged, and establish whether said documents are useful for the case, whether he includes them in the proceeding, and how to authorize their disclosure to the parties, who must safeguard the secrecy of their content. Nevertheless, despite the fact that the competent courts requested several documents from the Ministry of National Defense based on that provision, the Ministry did not submit them, arguing that the information contained in the documents constituted official secret (supra paras. 134.93 and 134.94).

179. As the European Court of Human Rights has stated, [FN256] in cases in which certain evidence is kept secret for reasons of public interest (such as national security), it is not for the international court to establish whether secrecy of the information is necessary or not, as generally this is for the national courts to decide. However, it is for the international court to determine whether the domestic proceeding respects and protects the interests of the parties. In this regard, the European Court pointed out that retaining important evidence arguing public interest, without notifying the judge in charge of the case, does not comply with the requirements of Article 6 of the European Convention, [FN257] which is equivalent to Article 8 of the American Convention.

[FN256] Cf. Eur. Court H.R., Dowsett v. the United Kingdom judgment of 24 June 2003, Reports of Judgments and Decisions 2003, paras. 43-44; Eur. Court H.R., Rowe and Davis v. the United Kingdom judgment of 16 February 2000, Reports of Judgments and Decisions 2000-II, paras. 62-63; and Eur. Court H.R., Edwards v. the United Kingdom judgment of 25 November 1992, Reports of Judgments and Decisions 1992. p. 34, section 33.

[FN257] Cf. Eur. Court H.R., Dowsett v. the United Kingdom, supra note 256, para. 43-44; and Eur. Court H.R., Rowe and Davis v. the United Kingdom, supra note 256, paras. 62-63.

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180. The Court deems that in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.

181. The Court shares the statement of the Inter-American Commission with respect to the following:

[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their

public agents and to investigate, try, and punish those responsible for said acts, on the other hand.
[…P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the "clandestinity of the Executive branch" and to perpetuate impunity.
Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act. "It is not, therefore, a matter of denying that the Government must continue to safeguard official secrets, but of stating that in such a paramount issue its actions must be subject to control by other branches of the State or by a body that ensures respect for the principle of the division or powers..." Thus, what is incompatible with the Rule of Law and effective judicial protection "is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside any control system…" [FN258]

[FN258] Cf. application by the Inter-American Commission on Human Rights of June 19, 2001 (dossier on the merits and possible reparations, volume I, leaf 74).
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182. This refusal by the Ministry of National Defense to supply all the documents requested by the courts, resorting to official secret, constitutes an obstruction of justice.

e) Murder of a police investigator; harassment and threats against legal operators, police investigators, witnesses, members of the Myrna Mack Foundation and of AVANCSO and the next of kin of Myrna Mack Chang

183. It has been proven that in Guatemala at the time of the facts there was a widespread situation of fear of cooperating in cases of elucidation of human rights violations, as those who cooperated suffered acts of intimidation, harassment, threats, and murders (supra para. 134.13).

184. It has also been deemed proven that certain judges have avoided hearing and ruling on this case (supra para. 134.100). In this regard, former judge Henry Monroy Andrino, in his testimony before the Court, stated that this attitude of the judges was primarily justified because members of the army and especially of the Presidential General Staff were involved, and that this circumstances made them fearful of suffering reprisals due to their actions to determine the responsibility of these persons in the criminal proceeding (supra para. 127.f).

185. In this regard, it has been established that former judge Henry Monroy Andrino issued the order for the trial to commence against the members of the high command of the Presidential General Staff, and from that moment on he suffered serious threats against his life and personal integrity and that of his family, for which reason he was forced to resign his position and leave

Guatemala. Pursuant to the above, Henry Monroy Andrino (supra paras. 127.f and 134.100) stated before the Court that:

from that moment on [when he issued the order to commence the proceeding] I began to suffer threats and acts of intimidation, threats over the phone. Various types of intimidation, among which I can highlight the fact that I was summoned to the office of the Secretary General of the Judiciary Body where he, verbally, warned me that I should be careful because the judges who dared to issue rulings against members of the Army suffered accidents.
[…]
I began to feel fear regarding my physical safety, since as I mentioned in this specific case of the murder of anthropologist Myrna Mack there was a complete sequence of threats and acts of intimidation against legal operators, witnesses, members of the National Police, as I mentioned, including the murder of one of the investigators. In other words, in concrete terms, I felt fear, I was afraid of what was happening.
[…]
Aside from this, there were also the pressures of my family, who felt threatened, and I decided to leave Guatemala, with all the consequences that come with exile.

186. Regarding the above, Helen Mack Chang stated, in her testimony before the Court, that "all the witnesses had to go into exile, all of them. And the judges who heard the case were also threatened […]. Subsequently an assistant, a legal operator, also had to go into exile." (supra para. 127.d).

187. It has likewise been proven that two police investigators, José Mérida Escobar and Julio Pérez Ixcajop – who prepared the September 29, 1990 police report, in which they reached the conclusion that the motive of the murder of Myrna Mack Chang was political, and they identified a member of the Presidential General Staff as a suspect– suffered a series of acts of harassment and threats for having conducted the investigation of the case (supra paras. 127.e, 134.95 to 134.98).

188. It has also been deemed proven that police investigator José Mérida Escobar was murdered after having ratified before the courts the police report issued on September 29, 1990. The facts pertaining to his death have not yet been effectively investigated (supra para. 127.e).

189. It has furthermore been deemed proven that police investigator Julio Pérez Ixcajop, who also participated in the preparation of the aforementioned report, in face of the murder of his work colleague and the threats he was receiving, had to leave Guatemala to avoid similar facts happening to him (supra para. 134.97).

190. In connection with the above, Rember Larios Tobar, then the Head of the Criminological Investigations Department of the National Police of Guatemala, in his testimony before the Court, stated that José Mérida Escobar repeatedly "told me that he was under surveillance and being persecuted due to the investigation and I asked him to record that surveillance and he did [...]. However, after November 29 his life changed radically, because he began to suffer harassment, threats, surveillance, all types of persecution, and he constantly informed me of them." Specifically, he recalled that before rendering his statements before the courts, José

Mérida Escobar told him "that he was afraid because he was still being watched and threatened," but "as this was one of his qualities, that strength of personality, he went to the court and told the truth about what he knew of the Myrna Mack Chang case, and several weeks after he testified, he was murdered" (supra para. 127.e).

191. It has likewise been deemed proven that Rember Larios Tobar, who was also offered as a witness in the criminal proceeding, began to receive threats, a situation that led him to leave Guatemala and go to Canada; in this regard, in his testimony before the Court, he stated that "just like what happened to investigator Mérida after September 29, 1990, I began to suffer harassment" (supra para. 127.e) and he specifically said that:

[b]efore my statement in the Myrna Mack case, which I rendered on December 13, 1991, and afterwards, I have suffered death threats and attempts against my life. In February, 1992, I was called by the police directorate to rejoin the police and I was then appointed head of the police in an area that was conflictive at the time. My life was in danger and I also suffered all types of harassment and death threats and I recall that in June of that year, 1992, I was ordered by the director of the police to conduct an arrest without a court order, which I refused to do because I would be or was breaking the law, so I told him that I could not do it. Then, as a reprisal he decided to dismiss me from that position, to conduct an investigation, to fabricate crimes that I had never committed. Afterwards, they made it public in all the media, both in the written press and on television, that I am a criminal, and surveillance became more intense, and there were five attempts against my life in which friends of mine were also wounded by bullets, and I could not live at my house because my house was being watched and it was also being fired at, and this forced me into exile in Canada. And well, I would like to say that I am alive when, according to the patterns and procedures that were designed at one time by the intelligence bodies, I should be dead like my colleague Mérida Escobar died. And I would like to say that my only sin, our only sin was to receive orders and carry out our functions as policemen.

192. It has also been established in the instant Judgment that three witness in the criminal proceeding were harassed and threatened, their lives and personal safety were at risk, and they decided to go into exile in Canada. Two of the witnesses, Juan Marroquín Tejeda and José Tejeda Hernández, recognized one of the two attackers of Myrna Mack Chang as Noel de Jesús Beteta Álvarez; and witness Virgilio Rodríguez noted that the victim's house was being watched by at least three individuals, one of whom was Noel de Jesús Beteta Álvarez (supra para. 134.99). In this regard, Virgilio Rodríguez testified before the Court that when he read in the newspaper that the policeman who had interviewed him "had been machine-gunned at the corner of the General Directorate of the Police," he decided to leave the country because "I thought that what happened to that person was also going to happen to me" (supra para. 127.b).

193. The above leads to the conclusion that the murder of policeman José Mérida Escobar, the harassment and threats against Judge Henry Monroy Andrino and witnesses Julio Pérez Ixcajop, Juan Marroquín Tejeda, José Tejeda Hernández, Virgilio Rodríguez and Rember Larios Tobar was aimed at making them fearful so that they would desist from cooperating in the search for the truth and, therefore, to obstruct the judicial development of the proceeding to punish all those responsible for the extra-legal execution of Myrna Mack Chang.

194. With respect to the staff of the Myrna Mack Foundation and of AVANCSO, they were also harassed and threatened several times, for which reason the Commission asked the Court to adopt provisional measures in favor of the former, and this Court decided to adopt them (supra para. 58).

195. Likewise, the next of kin of Myrna Mack Chang have suffered numerous threats and acts of harassment. Specifically, Helen Mack Chang, sister of the victim, has suffered them constantly and, in response to a request by the Commission for provisional measures in her favor, the Court ordered the State to adopt such measures as might be necessary to protect her life and her right to humane treatment (supra para. 58). After hearing the testimony and expert opinions during the public hearing at its seat, this Court, upon its own motion, ordered the State to adopt provisional measures in favor of the following immediate next of kin of the victim: Zoila Chang Lau, the mother; Marco Mack Chang, brother; Freddy Mack Chang, brother; Vivian Mack Chang, sister; Ronald Chang Apuy, cousin; Lucrecia Hernández Mack, daughter; and the children of the latter (supra para. 61). At the same time, the Court also ordered expansion of the provisional measures in favor of expert witness Iduvina Hernández, who rendered her statement before this Court (supra para. 61).

196. Subsequently, the Inter-American Court expanded the provisional measures in favor of Jorge Lemus Alvarado, linked to the ongoing criminal proceeding in Guatemala, and his next of kin (supra para. 62).

197. Furthermore, on the date the instant Judgment is issued, those responsible for the threats and intimidations suffered by these persons have not yet been identified nor punished.

198. This Court deems that the facts described against the family of the victim, the staff of the Myrna Mack Foundation and the staff of AVANCSO were aimed, as was already stated with respect to the legal operators, police investigators and witnesses, at frightening them into desisting from their intention of ensuring that the facts of the instant case be investigated and that all those responsible for the extra-legal killing of Myrna Mack Chang be identified and punished.

199. In light of the above, this Court deems that the State, to ensure due process, must provide all necessary means to protect the legal operators, investigators, witnesses and next of kin of the victims from harassment and threats aimed at obstructing the proceeding and avoiding elucidation of the facts, as well as covering up those responsible for said facts.

f) Lack of diligence in processing of the criminal proceeding by the judges

200. This Court has established that "[i]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine domestic proceedings." [FN259]

[FN259] Cf. Juan Humberto Sánchez Case, supra note 9, para. 120; Bámaca Velásquez Case, supra note 250, para. 188; and "Street Children" Case (Villagrán Morales et al.), supra note 8, para. 222.

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201. Thus, given the specifics of the case and the nature of the abridgments alleged by the Commission and the representatives of the next of kin of Myrna Mack Chang, the Court must examine the domestic judicial proceedings as a whole to attain a comprehensive perception of them and to establish whether said actions contravene the standards on the right to fair trial and judicial protection and the right to effective remedy, derived from Articles 8 and 25 of the Convention.

202. With respect to the criminal proceeding, it is necessary to state that the Court, when it refers to the right to fair trial, also known as procedural guarantees, has established that for said guarantees to truly exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary for all requirements to be fulfilled that are "designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof," [FN260] in other words, the "prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination." [FN261]

[FN260] Cf. Juan Humberto Sánchez Case, supra note 9, para. 124; Hilaire, Constantine and Benjamin et al. Case. Judgment of June 21, 2002. Series C No. 94, para. 147; and Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 25.
[FN261] Cf. Juan Humberto Sánchez Case, supra note 9, para. 124; Hilaire, Constantine and Benjamin et al. Case, supra note 260, para. 147; and The Right to Information on Consular Assistance in the Framework of Guarantees of Due Legal Process. Advisory OpinionOC-16/99 of January 1, 1987. Series A No. 16, para. 118.

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203. In the chapter on proven facts, lack of diligence and of willingness of the courts was demonstrated, as regards moving the criminal proceeding forward to elucidate all the facts pertaining to the death of Myrna Mack Chang and to punish all those responsible. The Court will not analyze here the actions of each of the courts that lacked due diligence (amparo remedies, constitutional motions, objections to judges, interlocutory motions, motions regarding lack of competence, appeals for annulment, requests for exemption under the National Reconciliation Law, among others), but as an example it will only refer to the use of amparo remedies, the filing and processing of which led those in charge of the criminal proceeding to incur notorious delays in the instant case. It should be recalled, as the State expressly affirmed in the May 29, 2001, report to the Inter-American Commission, that "[t]he Government of Guatemala acknowledges that there have been procedural vicissitudes, partly derived from excessive use of procedural remedies, but ones that must be respected by the Government and the authorities […]." [FN262]

[FN262] Cf. report by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights, pages 2 and 3 (file with annexes to the application, annex 10, leaves 232 to 233).

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204. In the instant case the defendants have filed at least twelve amparo remedies, as shown in the chapter on proven facts, all of which were found inadmissible by the respective judicial authorities. The Court also notes, as pointed out by the Commission and the representatives of the next of kin of the victim, that these amparo actions paralyzed the proceeding for more than three years. The judicial authorities did not process the amparo remedies with due diligence, for them to be a rapid and effective remedy, but rather allowed them to become a tactic to delay the proceeding, as it can be heard by up to four different instances.

205. In this regard, the representatives of the next of kin of the victim pointed out that "[a]dministrating the amparo remedy in this manner [...] distorts the meaning of the action, which becomes a means of fostering, permitting and tolerating discussion in four different instances –e.g. the judge in charge of the investigation, the appellate chamber, the Supreme Court and the Constitutional Court – of almost all the court rulings, including those that are merely routine procedures."

206. The Court notes that, as stated in the text entitled "Ley de Amparo, Exhibición Personal y de Constitucionalidad", and according to the expert testimony of Henry El Khoury, the law itself places the amparo courts under the obligation to process and rule on all amparo remedies filed against any judicial authority for any procedural act. Therefore, the law itself places said courts under the obligation to process any amparo remedy, even if it is "patently inadmissible," as the various remedies filed in this case were found to be.

207. However, the Court calls attention to the fact that in the criminal proceeding under discussion, frequent filing of this remedy, although permissible according to the law, has been tolerated by the judicial authorities. This Court deems that the domestic judge, as a competent authority to direct the proceeding, has the duty to channel it in such a manner as to restrict the disproportionate use of actions whose effect is to delay the proceeding. Processing of the amparo remedies together with their respective appeals was, in turn, conducted without complying with the legal terms, as the Guatemalan courts took on average six months to decide each one. This situation caused a paralysis of the criminal proceeding.

208. On the other hand, the Court notes that since February 9, 1994, the date on which the Supreme Court of Justice of Guatemala left the proceeding open against the accessories of the extra-legal execution of Myrna Mack Chang, the defense counsel filed a large number of legal questions and remedies (amparo remedies, constitutional motions, objections to judges, interlocutory motions, motions regarding lack of competence, appeals for annulment, requests for exemption under the National Reconciliation Law, among others), that have not allowed the proceeding to move forward to its natural culmination.

209. This manner of exercising the means made available by law to the defense counsel has been tolerated and permitted by the intervening judicial bodies, forgetting that their function is not exhausted by enabling due process that guarantees defense in the trial, but that they must also ensure within a reasonable time [FN263] the right of the victim or the victim's next of kin to know the truth of what happened and for those possibly responsible to be punished. [FN264]

[FN263] Cf. Bulacio Case, supra note 9, para. 114; Hilaire, Constantine and Benjamin et al. Case, supra note 260, para. 142 to 144; and Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 71 and 72.
[FN264] Cf. Bulacio Case, supra note 9, para. 114.

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210. The right to effective judicial protection therefore requires that the judges direct the proceeding in such a way as to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights. [FN265]

[FN265] Cf. Bulacio Case, supra note 9, para. 115.

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211. In light of the above, the Court deems that the judges, who are in charge of directing the proceeding, have the duty to direct and channel the judicial proceeding with the aim of not sacrificing justice and due legal process in favor of formalism and impunity. Thus, if the authorities permit and tolerate such use of judicial remedies, they turn them into a means for those who commit the illegal act to delay and obstruct the judicial proceeding. This leads to a violation of the international obligation of the State to prevent and protect human rights and it abridges the right of the victim and the next of kin of the victim to know the truth of what happened, for all those responsible to be identified and punished, and to obtain the attendant reparations.

g) Reasonable term

212. The Court has deemed proven that in the instant case the limits of a reasonable term have been exceeded, and the State has expressly recognized this since the acknowledgment of international responsibility before the Inter-American Commission on March 3, 2000.

213. This Court also notes that each of the points discussed above has contributed to the fact that a definitive judgment has not been issued that elucidates all the facts pertaining to the extra-legal execution of Myrna Mack Chang and that punishes all those responsible for the facts, including the direct perpetrators, instigators, participants and accessories after the fact, despite the passage of more than thirteen years from the date of the murder. In this regard, the United Nations Verification Mission in Guatemala pointed out in its tenth report that "[i]n the Myrna Mack case, the multiple remedies filed by the accused and the hesitancy of the trial courts to accept competence has had the effect of causing delays that affect the development of the proceeding and the right of the private accuser to be heard within a reasonable term." [FN266]

[FN266] Cf. Tenth Report on Human Rights by the United Nations Verification Mission in Guatemala (MINUGUA) in January, 2000. Para. 70.

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214. The fact that a covert military intelligence operation carried out by the Presidential General Staff was involved also delayed the criminal proceeding substantially (supra paras. 134.12, 134.13 and 134.26). In this regard, the State itself "also acknowledged that military influence might be a factor affecting the difficulties and irregularities in the proceeding." [FN267]

[FN267] Cf. report by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights, pages 2 and 3 (file with annexes to the application, annex 10, leaves 232 to 233).

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215. In view of the criteria set forth by the Court regarding this matter, and taking into account the scope of reasonable term in judicial proceedings, [FN268] it can be stated that the proceeding followed before the various instances in this case did not respect the principle of a reasonable term enshrined in Article 8(1) of the American Convention.

[FN268] Cf. Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, para. 134; Case of the Constitutional Court. Judgment of January 31, 2001. Series C No. 71, para. 93; and "White Van" Case (Paniagua Morales et al.), supra note 8, para. 152.

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216. It has been established that in the instant case the extra-legal execution of Myrna Mack Chang resulted from a military intelligence operation of the Presidential General Staff, which sought to conceal the facts and sought impunity of those responsible, and to this end, with tolerance by the State, it resorted to all types of means, including harassment, threats and murders of those cooperating with the courts. All this has affected the production of evidence and independence of the judiciary, has delayed the criminal proceeding, and has a negative impact on the development of this proceeding.

217. On the other hand, it has been proven that, despite the fact that said criminal proceeding commenced with the aim of elucidating the facts, it has not been effective to try and, if appropriate, to punish all those responsible, as stated before (supra paras. 134.19 and 134.26). While one of the direct perpetrators of the facts has been convicted, the truth of the matter is that the State has neither identified nor punished all those criminally responsible for the illegal acts that gave rise to the application (direct perpetrators, accessories, participants and accessories after the fact). In the case studied here, it has been proven that the killing of Myrna Mack Chang fit within a pattern of selective extra-legal executions (supra paras. 134.10 and 134.11), with the characteristic that there has also been impunity (infra paras. 134.12 and 134.13). In the context of this situation, the judicial remedies are not effective, the judicial investigations have serious shortcomings, and the passage of time plays a crucial role in erasing all traces of the crime, thus

making the judicial protection enshrined in Articles 8 and 25 of the American Convention illusory.

218. In view of what has been stated above in this chapter, the Court reaches the conclusion that the State breached Articles 8 and 25 of the American Convention in combination with Article 1(1) of that same Convention, to the detriment of the following next of kin of Myrna Mack Chang: Lucrecia Hernández Mack, Yam Mack Choy, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, Freddy Mack Chang, and Ronald Chang Apuy.

XI. VIOLATION OF ARTICLES 5 AND 1(1) (RIGHT TO HUMANE TREATMENT AND OBLIGATION TO RESPECT RIGHTS)

Pleadings of the representatives of the next of kin of the victim

219. In their autonomous brief with pleadings, requests, and evidence, the representatives asked the Court to find that the State has violated Article 5 of the American Convention to the detriment of the direct next of kin of Myrna Mack Chang, who are: Lucrecia Hernández Mack, daughter; Yam Mack Choy, the deceased father; Zoila Chang Lau, the mother; Freddy Mack Chang, brother; Marco Mack Chang, brother; Helen Mack Chang, sister; and Ronald Chang Apuy, first cousin. In this regard, they stated that:

a) the violation was due to the fact that the next of kin of the victim felt deep suffering and anguish because of the following situations: 1) the circumstances of the death of Myrna Mack Chang; 2) the harassment campaign directed against those who insisted on finding out the truth regarding the death of Myrna Mack Chang; and 3) inaction of the State to punish all those responsible;
b) for more than "twelve" years, the next of kin of the victim and, especially, Helen Mack Chang, have made numerous efforts to attain justice in the case and, since then, have lived under the imminent threat of suffering aggression as personal punishment for their struggle against impunity. Insistence of the family on trying all those responsible–direct perpetrators and accessories- of the murder of Myrna Mack Chang has been counteracted by the efforts of certain Guatemalan sectors to ensure impunity through acts of intimidation and violence. The feeling of insecurity and anguish that stems from having to live with this harsh reality must be considered non-humane treatment;
c) while the Commission did not expressly point to violation of Article 5 of the Convention in its application, that does not impede the Court from addressing this matter. The representatives of the next of kin of the victim have the autonomous power to allege violations of rights independently of the pleadings submitted by the Commission, inasmuch as the facts that are the object of the case brought before the Court are respected. The aim of the new Rules of Procedure of the Court is to enable autonomous defense of the interests of the victims or their next of kin, facilitating their active participation in the development of the proceeding. For this reason, forcing the representatives of the victims to restrict the content of their claim to the application submitted by the Commission would be contrary to the amendment. It is therefore consistent for the Court to recognize the right of the victim to autonomously requests a juridical solution of the case. If the Court did not explicitly recognize said right of the victim or the representatives of the victim, in any case it is competent to rule on the request based on the iura novit curia principle.

Pleadings of the Commission

220. The Commission did not refer in its application to a violation of Article 5 of the Convention. However, in its November 1, 2001 brief in which it submitted its observations on the autonomous brief filed by the representatives, it pointed out that "taking into account that said argument does not expand the object of the controversy of the Mack case when it was before the [Commission]," there is no impediment under the Convention for the Court to analyze the possible violation of said Article, based on the iura novit curia principle. Furthermore, the application against it is filed before the Court, the State knows the central object of the controversy, in other words, that the factual and legal basis that enables an effective exercise of the right of defense of the State is that the application filed by the Commission and the brief by the representatives of the next of kin of the victim substantially contain the same legal and factual controversies that were the object of the proceeding before the Commission. Finally, that the limits set forth in the Convention to the Court's sphere of decision-making have not been altered by the brief of the representatives of the next of kin of the victim, who merely reaffirm the facts stated in the application and give them a different juridical definition, for which reason this does not affect the right of defense of the State nor the powers granted to the Commission by the Convention.

Pleadings of the State

221. In accordance with what the Court set forth in paragraphs 94 and 111, the State acquiesced unconditionally to the facts described by the Commission in its application and to the request of the representatives of the next of kin of the victim that the Court find that there was a violation of Article 5 of the Convention.

Considerations of the Court

222. Article 5(1) of the Convention states that:

[e]very person has the right to have his physical, mental, and moral integrity respected.
[...]

223. In their brief with requests, pleadings, and evidence, the representatives of the next of kin of the victim asked that the Court find that there was a violation of Article 5 of the American Convention to the detriment of the next of kin of Myrna Mack Chang. It should be underlined that the Inter-American Commission did not allege a violation of said Article. In addition, as stated above, in its March 3, 2003 brief, the State acquiesced with respect to abridgment of Article 5 of the Convention.

224. The Court has already established that it is possible for the victims, their next of kin or their representatives to allege violation of other Articles of the Convention than those already included in the object of the demand filed by the Commission, based on the facts contained in said application, for which it refers to the "Five Pensioners" case, in which it stated that:

[w]ith respect to inclusion of rights other than those already encompassed by the application filed by the Commission, the Court deems that the applicants can invoke said rights. It is they who are entitled to all the rights embodied in the American convention, and not admitting this would be an undue restriction of their status as subjects of International Human Rights Law. It is understood that the above, pertaining to other rights, adheres to the facts already contained in the application. [FN269]

[FN269] "Five Pensioners" Case, supra note 9, paras. 153, 154 and 155.

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225. On the other hand, this Court has stated, in previous cases, that the next of kin of the victims of violations of human rights may, in turn, be victims. [FN270] In the Villagrán Morales case, State authorities impeded elucidation of the facts pertaining to the case, which intensified the suffering of the next of kin. In face of said circumstances, the Court described the impact on the next of kin as "the feeling of insecurity and impotence caused to the next of kin by the failure of the public authorities to fully investigate the corresponding crimes and punish those responsible." [FN271]

[FN270] Cf. Juan Humberto Sánchez Case, supra note 9, para. 101; Bámaca Velásquez Case, supra note 250, para. 160; and "Street Children" Case (Villagrán Morales et al.), supra note 8, para. 176.

[FN271] Cf. "Street Children" Case (Villagrán Morales et al.), supra note 8, para. 173.

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226. In the instant case, the Court also takes into account the situation faced by the next of kin of Myrna Mack Chang as a consequence of the threats, following, harassment, and intimidation that they have suffered, as methods to stop them from continuing their efforts to attain justice with the aim of punishing all those responsible for the execution of Myrna Mack Chang (supra paras. 127.c and 127.d).

227. Specifically, on June 7, 2002, Helen Mack Chang, sister of the victim and President of the Myrna Mack Foundation, received a death threat issued by a group calling itself 'Guatemaltecos de verdad'. Due to said threat, as well as information on an operation that was being prepared to attempt against her life, Helen Mack Chang had to leave Guatemala for some time. Furthermore, on July 25, 2002, unknown persons attempted to enter her home without identifying themselves.

228. In view of the facts described above, on August 9, 2002, the Inter-American Commission submitted to this Court a request for provisional measures in favor of Helen Mack Chang and other members of the Myrna Mack Foundation. On August 26 of that same year, the Court decided to adopt the provisional measures and ordered the State to adopt, forthwith, such measures as might be necessary to protect the life and safety of Helen Mack Chang and other members of the Myrna Mack Foundation (supra para. 60).

229. During the public hearing held in the instant case before the Court, Lucrecia Hernández Mack (supra para. 127.c) also stated that:

[…] being precisely in a state of insecurity affects us emotionally because we have not been able to close any circle of grieving as a family. […] No one in our family is willing to show vulnerability or weakness due to the situation of insecurity in which we live. […] And on the other hand, we can say that we are all constantly trying to adopt security measures. […] Even the dynamics among us, if something bad happens to one of us, we do not tell each other so that the others do not worry. […] I would just like to mention in my grandmother's case and, well, I also include myself, the possibility of something happening sometime to my aunt Helen is something that causes us incredible anguish. It is an overly heavy emotional burden to think that I can lose a second mother or that my grandmother can lose a second daughter.

230. Likewise, during the public hearing at the seat of the Court (supra para. 127.d), Helen Mack Chang stated that:

[t]he pattern has always been that when a judicial step is going to be taken, there is always a threat. For example, once they entered the house, they went around the entire house, they asked for my family's passports, they left and they did not steal anything. Phone calls, obviously. Recently, last year, a high official called me to tell me that there was an attack against me, that was when the Court ordered the provisional measures. Recently, the security forces themselves have detected following by vehicles with suspicious drivers around the Foundation and my house. They have attempted to link my brother to drug trafficking, and they even began a trial. There have also been other accusations brought against me. For example, for having exposed the clandestine groups, merely based on an opinion in the press where I had a report coming from the police, an anonymous report coming from the National Civil Police, giving all the names of policemen who were under the orders of one of the accused, Juan Guillermo Oliva Carrera. And this was enough for a lawsuit against me, aside from other threats trying to accuse me of other types of things.
[…]
I believe that it is mostly living with great anxiety, uncertainty. The State has resorted very much to psychological warfare. Even the motion by the State at this Court is one more tactic, more psychological warfare. I have the Agent of the State here whom I can say was a witness in my case, in my favor, and now they want to set him against me, using the same delay tactics that they have used within the country. They always want to play this game precisely with the people who are near me, to break me, emotionally and psychologically, so that I will not be able to go on. Within my family, I think that we have each lived an individual process to avoid breaking down as a family and to remain firm in this struggle to attain justice which has become a paradigmatic case, not only for the family but also because I think that I feel the weight on my back on many Guatemalans who see themselves reflected in this case because they have been unable to attain justice, it is quite a heavy weight that has obviously forced me to give up my personal life, to spend all my time and to be able to represent, in a dignified manner, the thousands of victims who had no opportunity, because every day they come up to me and urge me to go on. I have to go on with this case.

231. As a consequence of the statements by Lucrecia Hernández Mack and Helen Mack Chang during the public hearing held on February 21, 2003 before the Court, the latter decided to order the State to expand the measures as required to safeguard the life and the right to humane treatment of the next of kin of Myrna Mack Chang, who are: Zoila Chang Lau, the mother; Marco Mack Chang, brother; Freddy Mack Chang, brother; Vivian Mack Chang, sister; Ronald Chang Apuy, cousin; Lucrecia Hernández Mack, daughter; and the latter's children (supra para. 61).

232. It has been proven, therefore, in the sub judice case, that there was a violation of the right to humane treatment of the next of kin of the victim as a direct consequence of the threats and harassment that they have suffered from the start of the investigation of the extra-legal execution of Myrna Mack Chang. This situation was worsened by the pattern of obstruction of the aforementioned investigations, the murder of a police investigator, the threats and harassment suffered by some of the legal operators, policemen, and witnesses, which forced them into exile. Said circumstances, made more severe by the long time that has passed without elucidation of the facts, has caused constant anguish among the next of kin of the victim, together with feelings of frustration and powerlessness and a deep fear of suffering the same pattern of violence fostered by the State. [FN272] For this reason, the next of kin of Myrna Mack Chang must be considered victims because the State has damaged their psychological and moral integrity. [FN273]

[FN272] Cf. Juan Humberto Sánchez Case, supra note 9, para. 101; Bámaca Velásquez Case, supra note 250, para. 160; and Blake Case. Judgment of January 24, 1998. Series C No. 36, para. 114.

[FN273] Cf. Juan Humberto Sánchez Case, supra note 9, para. 101; Bámaca Velásquez Case, supra note 250, para. 162; and Eur. Court H.R., Kurt v. Turkey judgment of 25 May 1998, Reports of Judgments and Decisions 1998-III, paras. 130-134.

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233. Pursuant to the above, the Court arrives at the conclusion that the State violated Article 5(1) of the American Convention, in combination with Article 1(1) of that same Convention, to the detriment of the following next of kin of Myrna Mack Chang: Lucrecia Hernández Mack, Yam Mack Choy, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, Freddy Mack Chang and Ronald Chang Apuy.

XII. APPLICATION OF ARTICLE 63(1)

234. Pursuant to the foregoing explanation in the previous chapters, the Court found that the State is responsible for violation of Article 4 of the Convention to the detriment of Myrna Mack Chang and of Articles 5, 8 and 25 of that same Convention to the detriment of her next of kin, all of them in combination with Article 1(1) of the American Convention. In its case law, this Court has established that it is a principle of International Law that any violation to an international obligation that has caused damage entails the duty to provide adequate reparation. [FN274] For this, the Court has based itself on Article 63(1) of the American Convention, according to which,

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

[FN274] Cf. Bulacio Case, supra note 9, para. 70; Juan Humberto Sánchez Case, supra note 9, para. 147; and "Five Pensioners" Case, supra note 9, para. 173.

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235. As the Court has stated, Article 63(1) of the American Convention contains a common-law provision that constitutes one of the fundamental principles of contemporary International Law regarding the responsibility of the States. According to it, when an illegal act attributable to the State takes place, the latter immediately incurs a responsibility for the violation of the international provision involved, with the attendant duty of providing reparations and of making the consequences of said violation cease. [FN275]

[FN275] Cf. Bulacio Case, supra note 9, para. 71; Juan Humberto Sánchez Case, supra note 9, para. 148; and "Five Pensioners" Case, supra note 9, para. 174.

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236. Reparation of the damage caused by infringement of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists of reestablishing the previous situation, If this is not possible, as in the instant case, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused. [FN276] The State under the obligation cannot invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by International Law. [FN277]

[FN276] Cf. Bulacio Case, supra note 9, para. 72; Juan Humberto Sánchez Case, supra note 9, para. 149; and Las Palmeras Case. Reparations, supra note 10, para. 38.

[FN277] Cf., inter alia, Bulacio Case, supra note 9, para. 72; Juan Humberto Sánchez Case, supra note 9, para. 149; Cantos Case, supra note 35, para. 68; Las Palmeras Case. Reparations, supra note 10, para. 38; El Caracazo Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 77; Hilaire, Constantine and Benjamin et al. Case, supra note 260, para. 203; Trujillo Oroza Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 61; Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22,, 2002. Series C No. 91, para. 39; Cantoral Benavides Case. Reparations, supra note 248, para. 41; Cesti Hurtado Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, para. 34; "Street Children" Case (Villagrán Morales et al.). Reparations (Art. 63(1) American Convention on

Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 61; "White Van" Case (Paniagua Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 77; and Blake Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 32.

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237. As the term suggests, reparations consist of measures that tend to make the effects of the violations committed disappear. Their nature and amount depend on the damage caused both at the pecuniary and non-pecuniary levels. In this regard, reparations ordered must be in relation to the violations found in the previous chapters of this Judgment.

238. Pursuant to the above, the Court must first decide on the determination of the beneficiaries of the reparations; then it will set the latter regarding pecuniary and non-pecuniary damage, other forms of reparation and, finally, legal costs and expenses.

XIII. BENEFICIARIES

Pleadings of the Commission

239. The Commission stated that, due to the nature of the violations committed by the State, those persons who had close emotional ties to Myrna Mack Chang were deeply affected both by the suffering experienced because of the loss of one of their beloved ones, and by their own emotional loss. The Commission deemed that the beneficiaries of the reparations must be: Lucrecia Hernández Mack, daughter; Víctor Hernández Anzueto, former husband (at the time of the facts they had already divorced); Yam Mack Choy, the father; Zoila Chang Lau, the mother; Helen, Marco, Freddy, Vivian and Ronald, all of them Mack Chang, "siblings of the victim."

Pleadings of the representatives of the next of kin of the victim

240. The representatives of the next of kin of the victim claimed that the reparations that the Court might order, as a consequence of the human rights violations committed by the State against Myrna Mack Chang, "are payable to: 1) Myrna Mack Chang, the victim; 2) Lucrecia Hernández Mack, the daughter de the victim; 3) Yam Mack Choy, the father; 4) Zoila Chang Lau, the mother; and the siblings of the victim: 5) Helen Mack Chang, sister and private accuser; 6) Marco Mack Chang; 7) Freddy Mack Chang; and 8) Ronald Chang Apuy."

Pleadings of the State

241. The State did not refer to the beneficiaries of the reparations in the instant case.

Considerations of the Court

242. The Court will now determine the person or persons who are the "injured party" in the instant case, pursuant to the terms of Article 63(1) of the American Convention. In view of the fact that the violations to the American Convention found by the Court in the instant Judgment

were committed against Myrna Mack Chang, Lucrecia Hernández Mack, Yam Mack Coy, deceased, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, Freddy Mack Chang, and Ronald Chang Apuy, all of them –as victims- must be included in said category and be entitled to the reparations ordered by the Court, both regarding pecuniary damage, when appropriate, and regarding non-pecuniary damage. With respect to the deceased victim, Myrna Mack Chang, it will also be necessary to determine which reparations ordered in her favor are transmissible.

243. The provision of Article 2(15) of the Rules of Procedure [FN278] should be underlined, as regards the necessary breadth of the concept of "next of kin of the victim." Said concept includes all persons linked by close kinship, including the parents, children and siblings, who might have the right to compensation, insofar as the fulfill the requirements set forth in the case law of this Court. Regarding this point, we must highlight the criterion followed by the Court of assuming that the death of an individual causes non-pecuniary damage to the closest members of the family, especially those who were in close emotional contact with the victim, [FN279] a situation that will be determined in the respective chapter.

[FN278] Pursuant to Article 2 of the Rules of Procedure, the term "next of kin" means "the immediate family, that is, the direct ascendants and descendants, siblings, spouses or permanent companions, or those determined by the Court, if applicable."
[FN279] Cf. Bulacio Case, supra note 9, para. 78; Juan Humberto Sánchez Case, supra note 9, para. 156; Las Palmeras Case. Reparations, supra note 10, para. 54 and 55.

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244. It has also been proven that Ronald Chang Apuy, first cousin of the victim, was raised by the Mack Chang family since he was a small child and is considered one more member of the family. Therefore, the Court deems that Ronald Chang Apuy will be assimilated to the status of sibling and it assumes that he could not be indifferent to what happened to Myrna Mack Chang, for which reason the acts in violation of the Convention set forth in this Judgment also affected him and he must be considered a beneficiary of the reparations.

245. With respect to Vivian Mack Chang, this Court deems that, even though she has not participated in the instant proceeding, personally or through a representative, it has been proven that she is a sister of the victim. Therefore, the Court assumes that she has undergone the same suffering as the rest of the family, for which reason she must also be a beneficiary of reparations.

XIV. REPARATIONS

246. In accordance with the evidence gathered during the proceeding and in light of the criteria set forth by this Court in its case law, the Court will now analyze the claims of the parties regarding this matter, so as to determine the measures of reparation pertaining to pecuniary and non-pecuniary damage and other forms of reparation.

A) PECUNIARY DAMAGE

Pleadings of the Commission

247. With respect to the estimate of pecuniary damage, the Commission alleged that, to fairly estimate the lost income in accordance with the needs and circumstances of this case, the Court must take into account the following factors:

a) Myrna Mack Chang was a renowned professional, both at a national and international level, in the field of social anthropology. She pursued graduate studies in England, which was uncommon for a Latin American woman in the early 1980s and in terms of Guatemalan reality. The victim was also the co-founder of AVANCSO and she attended numerous international conferences. The Court must take this background information into account, as when the State arbitrarily deprived Myrna Mack Chang of her life, she had before her an enormous potential in terms of the possibilities to continue carrying out her research activities, as well as a wide range of professional opportunities; and
b) to estimate the "lost earnings" it is necessary to take into account the average of what the victim earned at the time of the facts and the monthly salaries earned today by various professionals with the academic qualifications, experience and international reputation that Myrna Mack Chang had attained. To this it is necessary to add the interest to compensate for devaluation of the currency in the past, up to the date of payment; there should be a deduction for the sum of future losses of present value, as well as a 25% deduction for personal consumption.

Pleadings of the representatives of the next of kin of the victim

248. The representatives of the next of kin of the victim asked the Court to order the State to pay the "lost earnings" of the victim, for which they pointed out that:

a) to estimate the lost earnings, the Court should take into account that when she was murdered, the victim was an outstanding professional and intellectual, both in her country and in international circles, for which reason she had many professional opportunities before her;
b) to estimate the non-earned salary of Myrna Mack Chang, the Court can base its calculations on the average of what she earned at the time of the facts, what the director of AVANCSO earns today, and the salary earned by persons in Guatemala with similar academic credentials employed in the field of social science. In the course of over ten years, Myrna Mack Chang's salary would have increased due to length of service, rising cost of living, and inflation in Guatemala;
c) to estimate lost earnings in this case, they requested that the Court accept the calculation made by the expert witness offered before the Court, which adds up to US$949,434.78 (nine hundred forty-nine thousand four hundred and thirty-four United States dollars and seventy-eight cents). In a subsidiary manner, they requested that an appropriate calculation be made in accordance with the traditional standards of the inter-American system and the specific situation of Myrna Mack Chang, in which case the amount for this item adds up to US$561,384.64 (five hundred sixty-one thousand three hundred eighty-four United States dollars and sixty-four cents);
d) as a consequence of the violations to the Convention found in this case, there were additional economic losses, including personal expenses and costs resulting from the search for justice. Expenses in connection with medical or psychological treatment required due to the damage caused to the next of kin are also included: the expenses owed to Yam Mack Choy,

father of the victim, amount to US$16,442.30 (sixteen thousand four hundred and forty-two United States dollars and thirty cents) and the expenses owed to Lucrecia Hernández Mack, daughter of the victim, amount to US$7,692.30 (seven thousand six hundred and ninety-two United States dollars and thirty cents); and

e) with respect to the sister of the victim, Helen Mack Chang, she left her job to undertake the search for justice, which changed all her life to struggle against the continuous injustice by the State, and they asked the Court to set an amount in fairness to compensate for her violated rights and the attendant drastic change in her life plan.

Pleadings of the State

249. The State did not refer specifically to the pecuniary damage.

Considerations of the Court

250. The Court will now establish the material damage, which includes loss or reduction of the income of the victim and expenses incurred by the next of kin of the victim due to the facts, [FN280] for which it will determine a compensation that seeks to redress the patrimonial consequences of the violations found in the instant Judgment. For this, it will take into account the evidence gathered in this case, the case law of the Court itself, and the pleadings of the representatives of the next of kin of the victim, of the Commission and of the State.

[FN280] Cf. Juan Humberto Sánchez Case, supra note 9, para. 162; Trujillo Oroza Case. Reparations, supra note 277, para. 65; and Bámaca Velásquez Case. Reparations, supra note 277, para. 43.

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a) Lost earnings

251. The Commission and the representatives of the next of kin of the victim requested compensation for the lost earnings of Myrna Mack Chang. Specifically, said representatives requested that the Court adopt as a basis the average of what the victim earned at the time of the facts, what the director of AVANCSO earns today, the salary earned by persons with similar academic credentials to those of the victim, the salary increase of the victim over time, the rising cost of living, inflation in Guatemala, and life expectancy, among others.

252. With respect to the lost earnings of Myrna Mack Chang, the Court, in fairness, sets the amount at US$235,000.00 (two hundred and thirty-five thousand United States dollars) for this item. Said amount must be given to the daughter of the victim, Lucrecia Hernández Mack.

b) Consequential damages

253. Taking into account the claims of the parties, the body of evidence, the proven facts in the instant case and its own case law, the Court finds that compensation for material damage in the instant case must also include the following:

1) with respect to Helen Mack Chang, sister of the victim, it has been proven that as a consequence of the extra-legal death of her sister, she undertook the task of searching for justice, for over thirteen years, through her active participation in the criminal proceeding to investigate the facts and to identify and punish all those responsible. Helen Mack Chang gave up her work as a consequence of the facts discussed in the instant case, established the Myrna Mack Foundation, and has spent much of her time struggling against impunity. The Court deems that Helen Mack Chang stopped receiving her customary income as a consequence of the facts and bearing in mind the specific circumstances of the sub judice case, in fairness, it sets the amount of compensation at US$25,000.00 (twenty-five thousand United States dollars);
2) as regards the father and the daughter of the victim, it has been proven that due to the extra-legal death of Myrna Mack Chang and of the consequences stemming from this fact, they suffered various physical and psychological illnesses, for which they had to receive medical treatment. Therefore, the Court deems it pertinent to set US$3,000.00 (three thousand United States dollars) as compensation for medical expenses incurred by Yam Mack Choy and US$3,000.00 (three thousand United States dollars) for Lucrecia Hernández Mack, for this same item. Since Yam Mack Choy passed away on April 24, 1999, compensation in his favor must be paid in full to Zoila Chang Lau; and

254. Based on all the above, the Court sets as compensation for material damage due to the violations found, the following amounts:

REPARATIONS FOR PECUNIARY DAMAGE				
	Lost earnings	Consequential damages	Medical expenses incurred	Total
Myrna Mack Chang	US$235,000.00			US$235,000.00
Lucrecia Hernández Mack (daughter)			US$3,000.00	US$3,000.00
Yam Mack Choy (the father)			US$3,000.00	US$3,000.00
Helen Mack Chang (sister)		US$25,000.00		US$25,000.00
TOTAL	US$266,000.00			

B) NON-PECUNIARY DAMAGE

255. The Court will now consider those injurious effects of the facts of the case that are not financial or patrimonial. Non-pecuniary damage can include both the suffering and affliction caused to the direct victims and their close relations, the detriment to the individuals' very significant values, as well as non-pecuniary alterations to the conditions of existence of the victim or the victim's family. This damage can only be compensated by the amount set by the Court reasonably applying judicial discretion. [FN281]

[FN281] Cf. Bulacio Case, supra note 9, para. 90; Juan Humberto Sánchez Case, supra note 9, para. 168; and El Caracazo Case. Reparations, supra note 277, para. 94.

Pleadings of the Commission

256. As regards assessment of non-pecuniary damage, the Commission alleged that it is obvious, from the facts of the case, that both Myrna Mack Chang and the members of her immediate family experienced moral suffering as a consequence of her extra-legal execution, especially the daughter of the victim, who at the time of the facts was 16 years old. This suffering has also been worsened by the fact that in the instant case there has been impunity for the accessories of the murder of the victim. The next of kin of the victim, especially her sister Helen Mack Chang, have struggled for over twelve years with all the attendant emotional stress involved in combating impunity, and they have endured threats, intimidations, and harassment by agents of the State.

257. On the other hand, the Commission deems that fair monetary compensation should be given to redress the detriment to the life project of Myrna Mack Chang. Planning and execution of the victim by agents of the State was aimed at the specific objective of depriving her of her life project, as through her social research she inconvenienced the upper echelons of the State. Elimination of the life options of the victim "objectively reduced her freedom and constitutes the loss of a valuable asset," and they asked the Court to recognize said detriment as part of the compensation ordered. This type of grave detriment to the life path of a victim is not part of the item of pecuniary damage or of moral damage. The Commission shares the opinion that these damages are difficult to quantify, but it believes that resorting to the doctrine of the system and to considerations of fairness, there is a solid basis to estimate a compensation that recognizes the value of a life from a more comprehensive perspective.

Pleadings of the representatives of the next of kin of the victim

258. The representatives of the next of kin of the victim pointed out that it is obvious, from the facts stated, that Myrna Mack Chang and her next of kin experienced moral suffering as a consequence of the extra-legal execution, especially her daughter, who was 16 year old at the time of the facts. The Mack Chang family trusts that the Court will set a fair amount to compensate each member of the family for the rights abridged, and they suggest that in reaching this decision the Court take into account that this is an especially grievous case, not only because it is a terrible and deliberate homicide of an outstanding professional, but also because it involves a thirteen-year struggle by the family to attain a system of impartiality and justice in a country whose State has caused suffering and frustration to each of the next of kin.

Pleadings of the State

259. The State did not refer to non-pecuniary damage.

Considerations of the Court

260. International case law has repeatedly established that the judgment constitutes per se a form of reparation. [FN282] Nevertheless, given the grave circumstances of the instant case, the intensity of suffering caused by the respective facts to the victim and her next of kin, the alterations to the conditions of existence of the next of kin and the other non-material or non-pecuniary consequences suffered by the latter, the Court deems that it must order payment of a compensation for non-pecuniary damages, in fairness. [FN283]

[FN282] Cf. Bulacio Case, supra note 9, para. 96; Juan Humberto Sánchez Case, supra note 9, para. 172; and "Five Pensioners" Case, supra note 9, para. 180.
[FN283] Cf. Bulacio Case, supra note 9, para. 96; Juan Humberto Sánchez Case, supra note 9, para. 172; and El Caracazo Case. Reparations, supra note 277, para. 99.

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261. In the sub judice case, in setting the compensation for non-pecuniary damage, the Court takes into account that Myrna Mack Chang was extra-legally executed in circumstances of extreme violence (supra para. 134.4), for which reason it is evident that she felt corporal pain and suffering before her death, and this was aggravated by the climate of harassment at the time.

262. As the Court has pointed out, non-pecuniary damage inflicted on the victim is evident, at it is part of human nature that every person subject to aggression such as that committed against Myrna Mack Chang experiences deep moral suffering. [FN284]

[FN284] Cf. Bulacio Case, supra note 9, para. 98; Juan Humberto Sánchez Case, supra note 9, para. 174; and Trujillo Oroza Case. Reparations, supra note 277, para. 85.

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263. In this regard, the compensation set by the Court for the damage suffered by Myrna Mack Chang up to the moment of her death must be given in full to the daughter of the victim, Lucrecia Hernández Mack.

264. In the case of the next of kin, it is reasonable to conclude that the affliction suffered by the victim extends to the closest members of the family, especially to those who were in close emotional contact with her. No evidence is required to reach this conclusion. [FN285] In addition, in the instant case some of the next of kin of Myrna Mack Chang are victims of violations of various Articles of the American Convention (supra paras. 218 and 233). To set compensation for non-pecuniary damage, the next of kin of the victims will be considered in that dual condition, for which reason the Court deems that:

a) the threats, intimidation and harassment suffered by the next of kin as part of what happened to Myrna Mack Chang have been proven, and they have caused deep suffering to the members of the family, daughter, parents and siblings and cousin of the victim (supra para. 134.104). Furthermore, the impunity prevailing in this case has been and continues to be a source

of suffering for the next of kin. It makes them feel vulnerable and in a state of permanent defenselessness vis-à-vis the State, and this causes them deep anguish (supra para. 134.105);

b) with respect to Lucrecia Hernández Mack, daughter of the victim (supra paras. 134.103 and 243), this Court notes that she was 16 years old at the time her mother was murdered, and she depended on her emotionally and financially, as she did not live with her father. She experienced a traumatic situation due to the unexpected loss of her mother, which caused her deep grief and sadness that still affect her life. She is hurt by the absence of her mother because at certain moments in her life, such as academic ones or motherhood, she feels the need to have her close to share their concerns and receive advice. She is also very concerned about her family and in constant fear of losing another beloved one. On the other hand, as regards the criminal proceeding, its constant delays have been frustrating for her and, especially, the fact that there is still impunity for those responsible makes her feel very insecure (supra para. 127.c). Due to all the above, this Court deems that she must be compensated for non-pecuniary damage;

c) with respect to Yam Mack Choy, the deceased father of the victim, and Zoila Chang Lau, mother of the victim, attention must be paid to the fact that the Court assumes that the death of a person causes non-pecuniary damage to the parents, for which reason it is not necessary to prove this. [FN286] As this Court has stated before, "we can admit the presumption that the parents have suffered mentally for the cruel death of their children, since it is human nature that every person feels pain in the face of the suffering of a child." [FN287] In the instant case, Yam Mack Choy, after the death of her daughter, in addition to the grief that this caused her, suffered physical illnesses that damaged his health and put an end to his life. The mother of the victim, in turn, has suffered deep grief, which she tried to express as follows in her sworn statement:

To recall my daughters death means to continue asking: why did they kill her?, if she was always good, intelligent, and studious, with high ideals and without personal ambitions. Her friends have always expressed the warm feelings and affection they felt for her and they all agree that she always showed great solidarity, that she struggled for the truth and for the neediest, and therefore I still do not understand why she died.

I have dreamt of her several times, this has always heartened me a little because I feel that it is a way to keep in touch, but I also suffer very much when I do not dream of her because I feel that she is far away and I become very sad.

I never thought that one of my children would die before me, her death has been a very harsh blow for me because I feel that I did not protect her enough. I ask myself why I did not realize that something was wrong, I should have told her to go travel for some time, while the bad times passed, I do not know, something could have been done to avoid what happened. It is not fair that they killed her if she was so good.

After Myrna's murder, my husband suffered a terrible disappointment in the way he thought about our country; like myself, he did not understand how that could have happened to his daughter. He began to have health problems, suffered deep depressions, and I suspect that it was the death of his oldest daughter that triggered much of his sadness. If she had been alive, I believe that he would have lived much longer." [FN288]

For all the above, this Court deems that the parents of the victim must be compensated for non-pecuniary damage. Since Yam Mack Choy passed away, the compensation in his favor must be given in full to Zoila Chang Lau;

d) with respect to Helen Mack Chang, the sister of the victim, this Court also deems that in the case of siblings the degree of relationship and affection between them must be taken into account. [FN289] This lady has felt deep suffering and grief due to the extra-legal death of her sister, which altered her life and that of her family, especially that of her parents and of her niece; the way her sister was murdered has had an impact on her for a long time; seeing her parents pain and having had to give her niece the news of her mother's death has caused her indescribable suffering. Taking the necessary steps before the police and the judiciary to seek justice involved her in a process "which [she] never imagine[d] would take on the proportions it did." She had to give up her professional activity to personally undertake the search for justice and, therefore, to struggle against impunity. She has participated actively in the criminal proceeding from the start; she has suffered acts of harassment and threats that have place her life and her personal safety at risk; and to protect her family, she has adopted serious security measures that have altered their family life, all of which has caused her great emotional stress (supra para. 127.d). Therefore, the Court deems that she must be compensated for non-pecuniary damage;

e) with respect to Marco Mack Chang and Freddy Mack Chang, brothers of the victim, they also suffered grief due to the cruel death of their sister, and her absence saddens them; she was the person who supported the family in difficult moments. They have also suffered the stress of struggling for such a long time to elucidate the facts and of living with the uncertainty of what will happen in the proceeding, a situation that has also made them fear the danger faced by the family at crucial moments in the trial (supra paras. 134.104 and 134.105). Therefore, this Court deems that they should be compensated for non-pecuniary damage;

f) with respect to Vivian Mack Chang, sister of the victim, this Court has stated, in its recent case law, that it can be assumed that the death of a sibling causes non-pecuniary damage to the other siblings [FN290] and, therefore, she must receive compensation for this; and

g) regarding Ronald Chang Apuy, cousin of the victim (supra para. 134.103), it has been proven that he lived with the Mack family since he was small and that he is considered one more member of the family. He had close emotional ties with Myrna Mack Chang and he has shared with the family the sorrow and suffering for their loss. He has also experienced the fear caused by the threats and acts of intimidation received throughout the criminal proceeding for elucidation of the facts and the uncertainty due to the delays in this proceeding. Therefore, the Court deems that he too should receive compensation for non-pecuniary damage.

[FN285] Cf. Bulacio Case, supra note 9, para. 98; Juan Humberto Sánchez Case, supra note 9, para. 175; and Trujillo Oroza Case. Reparations, supra note 277, para. 85.

[FN286] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 88 a); Cantoral Benavides Case. Reparations, supra note 248, paras. 37 and 61 a); and "Street Children" Case (Villagrán Morales et al.). Reparations, supra note 277, para. 66.

[FN287] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 88 b); Castillo Páez Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 88; and Loayza Tamayo Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 142.

[FN288] Cf. sworn statements of Lucrecia Hernández Mack, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang and Freddy Mack Chang made before a notary public on August 22,

2001 (file with annexes to the brief with requests, pleadings and evidence submitted by the representatives of the next of kin of the victim, annex R-VI-12, leaves 2291 to 2298).
[FN289] Cf. Cantoral Benavides Case. Reparations, supra note 248, para. 61 b); and "White Van" Case (Paniagua Morales et al.). Reparations, supra note 277, para. 109.
[FN290] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 88 d); Cantoral Benavides Case. Reparations, supra note 248, paras. 37 and 61 d); and Villagrán Morales et al. Case Reparations, supra note 277, para. 68.
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265. Therefore, this Court concludes that the grave non-pecuniary damage suffered by the next of kin of Myrna Mack Chang has been fully proven.

266. In the instant case, the need of the daughter of the victim, Lucrecia Hernández Mack, to receive psychological treatment for the damage caused by the violations committed by the State has also been proven. Therefore, the Court sets, in fairness, US$10,000.00 (ten thousand United States dollars), as the amount to cover future medical expenses that she requires.

267. Taking into account the various aspects of the damage discussed above, insofar as it is pertinent and in accordance with the specifics of the case, the Court sets the value of compensations for non-pecuniary damage to be paid to the next of kin of the victim, in fairness, as stated in the following table:

Reparation for non-pecuniary damage		
Victim and next of kin	Non-pecuniary damage	Total
Myrna Mack Chang	US$40,000.00	US$40,000.00
Lucrecia Hernández Mack (daughter)	US$110,000.00	US$110,000.00
Yam Mack Choy (the father)	US$40,000.00	US$40,000.00
Zoila Chang Lau (the mother)	US$40,000.00	US$40,000.00
Helen Mack Chang (sister)	US$100,000.00	US$100,000.00
Marco Mack Chang (brother)	US$5,000.00	US$5,000.00
Freddy Mack Chang (brother)	US$5,000.00	US$5,000.00
Vivian Mack Chang (sister)	US$5,000.00	US$5,000.00
Ronald Chang Apuy (cousin)	US$5,000.00	US$5,000.00
TOTAL	US$350,000.00	

C) OTHER FORMS OF REPARATION

268. The Court will now consider other injurious effects of the facts, which are not financial or patrimonial in nature, and which may be redressed by means of acts of the public authorities; these include investigation and punishment of those responsible, remembrance of the victim and consolation to her relatives; and signifying official reproval of the human rights violations that

occurred and undertaking a commitment that acts such as those of the instant case will happen no more.

Pleadings of the Commission

269. Regarding this point, the Commission asked the Court to order the State to adopt the following reparations as measures of satisfaction and guarantees of non-recidivism:

a) to take such measures as may be necessary to provide domestic legal effect to the obligation to investigate and effectively punish the accessories of the extra-legal execution of Myrna Mack Chang. The main reparation sought is the effective trial and punishment of the accessories in the murder of Myrna Mack Chang;
b) to remove all obstacles and de facto and legal mechanisms that maintain impunity in the instant case. In this regard, the judges, prosecutors, witnesses, legal operators and next of kin in this case must receive sufficient safety guarantees; furthermore, the judicial authorities must use all means available to them so as to expedite the proceeding in pursuit of justice;
c) to promptly substitute the Presidential General Staff in compliance with the agreements set forth in the Peace Accords;
d) to adopt the de facto and legal measures required for the Guatemalan legal system to be free of rules that enable protection through official secret in investigations on human rights violations;
e) to ensure remembrance of the victim through other measures of satisfaction and non-recidivism, for which it requested that the State publish a book on the history of Myrna Mack Chang's life; that it produce a video on the history of the victim's life; that it build a monument to honor the victim or name a square or avenue after her; and that it establish a scholarship in her name in the Anthropology career at a Guatemalan university for a student to be funded throughout his or her studies;

Pleadings of the representatives of the next of kin of the victim

270. In their respective brief, the representatives of the next of kin of the victim stated that the Mack family asked the Court to order the State to adopt the following measures of satisfaction:

a) to continue the domestic judicial investigation and publicly try all the direct perpetrators and accessories who have not yet been tried;
b) to remove all obstacles to the development of the domestic judicial proceeding, which includes adopting the following measures:
b.i) since Helen Mack Chang as "partie civile" in the criminal proceeding has sought to obtain the testimony of witnesses living abroad to establish who the accessories were, without an efficient response by the State, that the Court order the State to issue the required authorizations to allow witnesses Virgilio Rodríguez Santana, Rember Larios Tobar, Julio Pérez Ixcajop, Juan Marroquín Tejeda, and José Tejeda Enríquez to be heard by the Court in the case in Guatemala. The State must ensure such measures as may be necessary for the production of the evidence and to provide the security conditions required;

b.ii) that it adopt such security measures as may be necessary to protect the life and the right to humane treatment of all the next of kin, judges, prosecutors, witnesses, attorneys, and other judicial authorities involved in the case;

b.iii) as an exceptional measure, that the Court appoint an observer to monitor the domestic proceedings and to report to the Court on a regular basis;

b.iv) that it order an investigation of the judges who have not observed Guatemalan laws and legal proceedings with respect to the amparo remedies filed and the use of official secret by the authorities;

b.v) that it order an investigation of the numerous interlocutory motions to obstruct justice in this case;

b.vi) that it order compliance with the requests for documents filed by the secretariat and the court during the proceedings against the direct perpetrator and the accessories;

c) that it adopt the following guarantees of non-recidivism:

c.i) that it adjust its judicial practice with the aim of ruling rapidly and effectively on repetitive or obstructive amparo remedies in this case, and that it adjust its amparo legislation in accordance with the American Convention, thus providing an effective judicial recourse for the victims;

c.ii) that it regulate and constitutionally interpret the application of the doctrine of official secret;

c.iii) that it order compliance with the Peace Accords and the recommendations of the Comisión de Esclarecimiento Histórico (CEH) to resolve the continuous conflicts in Guatemala. Non-compliance with these recommendations impedes closing the circle of violence and impunity in the country. These measures include, especially:

- dissolving the Presidential General Staff (EMP);
- a reform of the intelligence bodies in Guatemala, for which the Government must submit to Congress the respective bills to: a) precisely define the structures, tasks, and spheres of action of civil and military intelligence, restricting the latter to exclusively military objectives; and b) to clearly establish effective control mechanisms of Congress over all aspects of the intelligence apparatus of the State;
- establishment of a national holiday, the Day of the Victim, to commemorate the victims of human rights violations during the internal conflicts in Guatemala over the last thirty years.

c.iv) to reform the Guatemalan National Civil Police;

c.v) for José Mérida Escobar to be recognized by the police institution as a “martyr in performance of duty” and for his name to be vindicated at a public act, and for the police work of Rember Larios Tobar to be publicly recognized;

d) to adopt the following measures:

d.i) for the President of Guatemala and the Minister of Defense to publicly ask for the “forgiveness” of the Mack family for past and current human rights violations against the victim and her family;

d.ii) for two annual scholarships to be established in the name of Myrna Mack Chang to maintain public recognition of the victim and the nature of her work. These scholarships must be granted to Guatemalan students to study Anthropology and Law at respected and internationally recognized universities, outside Guatemala. AVANCSO and the Myrna Mack Foundation must also participate in selecting the students. This reparation is especially appropriate due to the Myrna Mack Chang´s academic background and her devotion to

promoting human rights. The scholarships should enable reproduction, to a certain extent, of the impact of the life of the victim on Guatemalan society;

d.iii) for a monument to Myrna Mack Chang to be built, located in the region of Guatemala where she worked intensely.

Considerations of the Court

271. The Court has concluded, inter alia, that Guatemala violated Articles 8 and 25, in combination with 1(1) of the Convention, to the detriment of the next of kin of the victim, due to deficient direction of the judicial proceedings, their delays, and the obstructions effected to impede punishment all those responsible, including direct perpetrators, accessories, participants and accomplices after the fact, which has generated feelings of insecurity, defenselessness, and anguish in the next of kin of the victim.

272. The Court recognizes that in the instant case impunity of those responsible is partial, as one of the direct perpetrators has been tried and punished (supra paras. 134.5 and 134.22). Nevertheless, at the time of the instant Judgment, after more than thirteen years, the criminal proceeding is ongoing and is pending a decision on an appeal for annulment, for which reason a definitive judgment has not yet been issued that identifies and punishes all those responsible for the extra-legal execution of Myrna Mack Chang. On the other hand, there has been a situation of grave impunity that constitutes an infringement of the aforementioned duty of the State (supra para. 217), that is injurious to the next of kin of the victim, and that fosters chronic recidivism of the human rights violations involved. [FN291]

[FN291] Cf. Bulacio Case, supra note 9, para. 120, Juan Humberto Sánchez Case, supra note 9, paras. 143 and 185; and Las Palmeras Case. Reparations, supra note 10, para. 53.a).

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273. This Court has repeatedly referred to the right of the next of kin of the victims to know what happened and to know who are the agents of the State responsible for the respective facts. [FN292]As the Court has stated, "[w]henever there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality." [FN293]

[FN292] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 100; Cantoral Benavides Case, Reparations, supra note 248, para. 69; and "Street Children" Case (Villagrán Morales et al.). Reparations, supra note 277, para. 100.

[FN293] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 100; Cantoral Benavides Case, Reparations, supra note 248, para. 69; and Cesti Hurtado Case. Reparations, supra note 277, para. 62.

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274. The Court has reiterated that every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the

victims and society as a whole must be informed of everything that has happened in connection with said violations. This right to the truth has been developed by International Human Rights Law; [FN294] recognized and exercised in a concrete situation, it constitutes an important means of reparation. Therefore, in this case it gives rise to an expectation that the State must satisfy for the next of kin of the victim and Guatemalan society as a whole. [FN295]

[FN294] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 114; Bámaca Velásquez Case. Reparations, supra note 277, para. 76. See, for example, United Nations Human Rights Committee, Quinteros v. Uruguay, Communication No. 107/1981, decision of 21 July 1983; United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 49th Session, Informe final revisado acerca de la cuestión de la impunidad de los autores de violaciones de los derechos humanos (derechos civiles y políticos) preparado por L. Joinet, UN General Assembly Doc. E/CN.4/Sub.2/1997/20/Rev.1; United Nations, Human Rights Committee, Subcommittee on Prevention of Discrimination and Protection of Minorities, 45th Session, Estudio relativo al derecho de restitución, indemnización y rehabilitación a las víctimas de violaciones flagrantes de los derechos humanos y las libertades fundamentales, final Report submitted by Theo van Boven, Special Rapporteur, E/CN.4/Sub .2/1993/8.

[FN295] Cf. Trujillo Oroza Case. Reparations, supra note 277, para. 114; Bámaca Velásquez Case. Reparations, supra note 277, para. 76; and Castillo Páez Case, Judgment of November 3, 1997. Series C No. 34, para. 90.

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275. In light of the above, to completely redress this aspect of the violations committed, the State must effectively investigate the facts in the instant case, so as to identify, try, and punish all the direct perpetrators and accessories, and the other persons responsible for the extra-legal execution of Myrna Mack Chang, and for the cover-up of the extra-legal execution and of the other facts in the instant case, aside from the person who has already been punished for these facts. The outcome of the proceeding must be made known to the public, for Guatemalan society to know the truth.

276. The Court notes that the State must ensure that the domestic proceeding to investigate and punish those responsible for the facts in this case attains its due effects and, specifically, it must abstain from resorting to legal concepts such as amnesty, extinguishment, and the establishment of measures designed to eliminate responsibility. In this regard, the Court has already pointed out that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law. [FN296]

[FN296] Barrios Altos Case. Judgment of March 14, 2001. Series C No. 75, para. 41; El Caracazo Case. Reparations, supra note 277, para. 119; Trujillo Oroza Case. Reparations, supra note 277, para. 106; and Barrios Altos Case. Interpretation of the Judgment on the Merits (Art. 67 American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 15.

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277. To comply with this obligation, the State must also remove all de facto and legal mechanisms and obstacles that maintain impunity in the instant case; it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and to the next of kin of Myrna Mack Chang and use all means available to it so as to expedite the proceeding.

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278. On the other hand, for the acknowledgment of responsibility by the State and what this Court has set forth to have full reparation effects for the victims and to act as guarantees of non-recidivism, the Court deems that the State must carry out a public act of acknowledgment of its responsibility regarding the facts in this case and of amends to the memory of Myrna Mack Chang and to her next of kin, [FN297] in the presence of the highest authorities of the State, which must be published in the media.

[FN297] Cf. Juan Humberto Sánchez Case, supra note 9, para. 188.

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279. At that same act, taking into account the specifics of the case, the State must also publicly honor the memory of José Mérida Escobar, the police investigator who was murdered in connection with the facts in the instant case (supra para. 134.96).

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280. The State must also publish, within three months of notification of the instant Judgment, at least once, in the official gazette "Diario Oficial" and in another national-circulation daily, operative paragraphs 1 to 12 and the proven facts contained in paragraphs 134; 134.1 to 134.8; 134.10 to 134.19; 134.26; 134.86 to 134.90; and 134.95 to 134.106, without the footnotes, of the instant Judgment.

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281. The characteristics of the facts in this case reveal that the armed forces, the police corps, and the security and intelligence agencies of the State acted exceeding their authority by applying means and methods that were not respectful of human rights. It is imperative to avoid recidivism of the circumstances and facts described with respect to this same Judgment.

282. The State must adopt the necessary provisions for this and, specifically, those tending to educate and train all members of its armed forces, the police and its security agencies regarding

the principles and rules for protection of human rights, even under state of emergency. The State must specifically include education on human rights and on International Humanitarian Law in its training programs for the members of the armed forces, of the police and of its security agencies.

283. On the other hand, the Court has established that there was participation of the high command of the Presidential General Staff and its Presidential Security Department or "Archivo" in the extra-legal execution of Myrna Mack Chang. In this regard, both the Inter-American Commission and the representatives of the next of kin of the victim requested, as a guarantee of non-recidivism, the dissolution of the Presidential General Staff. It is publicly known, as a notorious fact, that on September 24, 2003, the Congress of the Republic of Guatemala enacted the "Ley de la Secretaría de Asuntos Administrativos y de Seguridad de la Presidencia de la República" (SAAS), in which it established the juridical basis for the civil body in charge of security and support for the President, the Vice-President of the Republic and their families, in substitution of the Presidential General Staff. The Court also takes note of the fact that on October 31, 2003, the President of the Republic of Guatemala, Alfonso Portillo, held a ceremony at which the transfer of functions to the new SAAS agency began.

284. The Court deems that the activities of the military forces and of the police, and of all other security agencies, must be strictly subject to the rules of the democratic constitutional order and to the international human rights treaties and to International Humanitarian Law. This is especially valid with respect to the intelligence agencies and activities. These agencies must, inter alia, be: a) respectful, at all times, of the fundamental rights of persons; and b) subject to control by civil authorities, including not only those of the executive branch, but also, insofar as pertinent, those of the other public powers. Measures to control intelligence activities must be especially rigorous because, given the conditions of secrecy under which these activities take place, they can drift toward committing violations of human rights and illegal criminal actions, as occurred in the instant case.

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285. With respect to guarantees of non-recidivism of the facts of the instant case, as part of public recognition of the victim, the State must establish a scholarship, in the name of Myrna Mack Chang, to cover the complete cost of a year of study in anthropology at a prestigious national university. Said scholarship must be granted by the State permanently every year.

286. The State must also name a well-known street or square in Guatemala City in honor of Myrna Mack Chang, and place a prominent plaque in her memory at the place where she died or nearby, with a reference to the activities she carried out. This will contribute to awakening public awareness to avoid recidivism of facts such as those that occurred in the instant case and to maintain remembrance of the victim. [FN298]

[FN298] Cf. Benavides Cevallos Case. Judgment of June 19, 1998. Series C No. 38, paras. 48.5; and Aloeboetoe et al. Case. Reparations, (Art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 96.

XV. LEGAL COSTS AND EXPENSES

Pleadings of the Commission

287. The Commission stated that the activities to seek justice in the instant case are a direct result of the violations of rights committed by agents of the State and of the fact that the national authorities did not react with the due diligence stipulated by the American Convention. Therefore, the Court must recognize the reasonable costs incurred by the legal representatives in the instant case, both under domestic jurisdiction and before the bodies of the inter-American system.

Pleadings of the representatives of the next of kin of the victim

288. As regards legal costs and expenses, the representatives of the next of kin of the victim stated the following:

a) the Myrna Mack Foundation has incurred a number of expenses pertaining to its litigation under domestic and international jurisdiction, adding up to US$163,623.70 (one hundred and sixty-three thousand six hundred and twenty-three United States dollars and seventy cents). In addition, they requested US$104,399.93 (one hundred four thousand three hundred and ninety-nine United States dollars and ninety-three cents) for expenses incurred from September, 2001, to June, 2003, including administrative and operational expenses to continue the proceeding before the Court, as well as US$35,777.50 (thirty-five thousand seven hundred seventy-seven United States dollars and fifty cents) for actions under domestic jurisdiction. Therefore, the Myrna Mack Foundation asked this Honorable Court to reimburse the expenses it incurred, which must be paid by the State as compensation;
b) the Lawyers Committee for Human Rights incurred expenses for its work in the Mack case from 1990 to June, 2003, adding up to US$64,763.00 (sixty-four thousand seven hundred and sixty-three United States dollars);
c) the law firm Wilmer, Cutler and Pickering incurred legal costs and expenses and provided various legal services in its work on the Mach Chang case. Due to the importance of this case, the firm decided to waive it usual honoraria and asked the Court to assign it a symbolic amount of US$50,000.00 (fifty thousand United States dollars);
d) CEJIL has incurred a number of administrative and related expenses in the process of juridically substantiating the application in the instant case before the Court, for which reason they requested US$60,260.02 (sixty thousand two hundred and sixty United States dollars and two cents);
e) the law firm Hogan & Hartson, LLP has collaborated in the Myrna Mack Chang case. Due to the importance of the case, the firm decided to waive its usual honoraria and asked the Court to assign it a symbolic amount of US$50,000.00 (fifty thousand United States dollars);

Pleadings of the State

289. The State did not refer to legal costs and expenses.

Considerations of the Court

290. As the Court has stated on previous occasions, [FN299] legal costs and expenses are included under the concept of reparation embodied in Article 63(1) of the American Convention, because the activities carried out by the next of kin of the victim with the aim of attaining justice, both under domestic and international jurisdiction, entail disbursements which should be compensated for when the State is found to be internationally responsible by means of a condemnatory judgment. As regards its reimbursement, it is for the Court to prudently assess its scope, including expenses incurred before the authorities under domestic jurisdiction and those incurred in the course of the proceeding before the inter-American system, bearing in mind the circumstances of the specific case and the nature of international jurisdiction for the protection of human rights. [FN300] This assessment can be based on the principle of fairness and take into account the expenses stated by the parties, insofar as their quantum is reasonable. [FN301]

[FN299] Cf. Bulacio Case, supra note 9, para. 150; Juan Humberto Sánchez Case, supra note 9, para. 193; and Las Palmeras Case. Reparations, supra note 10, para. 82.
[FN300] Cf. Bulacio Case, supra note 9, para. 150; Juan Humberto Sánchez Case, supra note 9, para. 193; and "Five Pensioners" Case, supra note 9, para. 181.
[FN301] Cf. Bulacio Case, supra note 9, para. 150; Juan Humberto Sánchez Case, supra note 9, para. 193; and "Five Pensioners" Case, supra note 9, para. 181.

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291. For this, the Court deems it equitable to order payment of a total sum of US$163,000.00 (one hundred and sixty-three thousand United States dollars) for legal costs and expenses incurred by the representatives of the victim in the domestic proceedings and in the international proceeding before the inter-American system for protection of human rights. The corresponding payment must be distributed as follows:

a) US$145,000.00 (one hundred and forty-five thousand United States dollars) to the Myrna Mack Foundation;
b) US$5,000.00 (five thousand United States dollars) to Lawyers Committee for Human Rights;
c) US$5,000.00 (five thousand United States dollars) to the law firm Wilmer, Cutler and Pickering;
d) US$5,000.00 (five thousand United States dollars) to the law firm Hogan & Hartson; y
e) US$3,000.00 (three thousand United States dollars) to CEJIL.

292. As a consequence of the impunity that exists in the instant case and of the reparations ordered by this Court, in the future the Myrna Mack Foundation must take a number of steps pertaining to the ongoing criminal proceeding to punish all those responsible for what happened to Myrna Mack Chang. Therefore, to cover said future expenses, the Court grants the aforementioned Foundation, in fairness, US$5,000.00 (five thousand United States dollars).

XVI. METHOD OF COMPLIANCE

293. To comply with the instant Judgment, the State must pay the compensations and the reimbursement of legal costs and expenses within one year of notification of the instant Judgment.

294. Payment of the compensation ordered in favor of the victims or of their next of kin, as appropriate, will be made directly to them. If one of them should die, the payment will be made to his or her heirs.

295. The payments for reimbursement of legal costs and expenses incurred in steps taken by the representatives of the next of kin of the victim under domestic jurisdiction and in the international proceeding before the Inter-American System for the Protection of Human Rights will be made to said representatives (supra paras. 291 and 292).

296. If for any reason it were not possible for the beneficiaries to receive the respective payments within a year, the State must deposit the respective amounts in favor of said beneficiaries in an account or certificate of deposit, at a sound financial institution, in United States dollars or their equivalent in quetzales, under the most favorable financial conditions allowed by banking practice and legislation. If after ten years the payment has not been claimed, the amount will be given to a Guatemalan charity institution.

297. The State can fulfill its pecuniary obligations by means of a payment in United States dollars or in an equivalent amount of quetzales, using for the respective calculation the exchange rate between both currencies at the New York exchange the day before the payment.

298. Payment of the amount for pecuniary and non-pecuniary damage as well as for legal costs and expenses set forth in the instant Judgment cannot be subject to currently existing taxes or levies or any that may be decreed in the future.

299. If the State were to be in arrears, it must pay interest on the amount owed, which will be the banking interest rate for arrearages in Guatemala.

300. In accordance with its usual practice, the Court reserves the right, inherent to its authority, to monitor comprehensive compliance with the instant Judgment. The proceeding will be closed once the State has fully applied the provisions of the instant ruling. Within one year of when this Judgment is notified, the State must submit to the Court a first report on the measures adopted to comply with this Judgment.

XVII. OPERATIVE PARAGRAPHS

301. Now therefore,

THE COURT,

taking note of the acquiescence of the State, in which it unconditionally acknowledged its international responsibility regarding the case, and having assessed the body of evidence, as set forth in paragraphs 111 to 116 of the instant Judgment,

DECLARES THAT:

unanimously,

1. that the State violated the right to life enshrined in Article 4(1) of the American Convention on Human Rights, in combination with Article 1(1) of that same Convention, to the detriment of Myrna Mack Chang, as set forth in paragraphs 139 to 158 of the instant Judgment.

unanimously,

2. that the State violated the right to fair trial and to judicial protection embodied in Articles 8 and 25 of the American Convention on Human Rights, in combination with Article 1(1) of that same Convention, to the detriment of the following next of kin of Myrna Mack Chang: Lucrecia Hernández Mack, Yam Mack Choy, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, Freddy Mack Chang and Ronald Chang Apuy, as set forth in paragraphs 165 to 218 of the instant Judgment.

unanimously,

3. that the State violated the right to humane treatment embodied in Article 5(1) of the American Convention on Human Rights, in combination with Article 1(1) of that same Convention, to the detriment of the following next of kin of Myrna Mack Chang: Lucrecia Hernández Mack, Yam Mack Choy, Zoila Chang Lau, Helen Mack Chang, Marco Mack Chang, Freddy Mack Chang and Ronald Chang Apuy, as set forth in paragraphs 224 to 233 of the instant Judgment.

unanimously,

4. that this Judgment constitutes per se a form of reparations, as set forth in paragraph 260 of the instant Judgment.

AND DECIDES THAT:

unanimously,

5. that the State must effectively investigate the facts of the instant case, with the aim of identifying, trying, and punishing all the direct perpetrators and accessories, and all others responsible for the extra-legal execution of Myrna Mack Chang, and for the cover-up of the extra-legal execution and other facts of the instant case, aside from the person who has already been punished for those facts; and that the results of the investigations must be made known to the public, as set forth in paragraphs 271 to 275 of the instant Judgment.

unanimously,

6. that the State must remove all de facto and legal obstacles and mechanisms that maintain impunity in the instant case, provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and to the next of kin of Myrna Mack Chang, and resort to all other means available to it so as to expedite the proceeding, as set forth in paragraphs 276 and 277 of the instant Judgment.

unanimously,

7. that the State must publish within three months of notification of the instant Judgment, at least once, in the official gazette "Diario Oficial" and in another national-circulation daily, the proven facts set forth in paragraphs 134; 134.1 to 134.8; 134.10 to 134.19; 134.26; 134.86 to 134.90; and 134.95 to 134.106, without the footnotes, and operative paragraphs 1 to 12, as set forth in paragraph 280 of the instant Judgment.

unanimously,

8. that the State must carry out a public act of acknowledgment of its responsibility in connection with the facts of this case and of amends to the memory of Myrna Mack Chang and to her next of kin, in the presence of the highest authorities of the State, as set forth in paragraph 278 of the instant Judgment.

unanimously,

9. that the State must publicly honor the memory of José Mérida Escobar, police investigator, in connection with the facts of the instant case, as set forth in paragraph 279 of the instant Judgment.
unanimously,

10. that the State must include, in the training courses for members of the armed forces and the police, as well as the security agencies, education regarding human rights and International Humanitarian Law, as set forth in paragraph 282 of the instant Judgment.

unanimously,

11. that the State must establish a scholarship, in the name of Myrna Mack Chang, as set forth in paragraph 285 of the instant Judgment.

unanimously,

12. that the State must name a well-known street or square in Guatemala City after Myrna Mack Chang, and place a plaque in her memory where she died, or nearby, with reference to the activities she carried out, as set forth in paragraph 286 of the instant Judgment.

by seven votes against one,

13. that the State must pay the total sum of US$266,000.00 (two hundred sixty-six thousand United States dollars) or their equivalent in Guatemalan currency, as compensation for pecuniary damage, as set forth in paragraphs 252 to 254 of the instant Judgment, distributed as follows:

a) to Lucrecia Hernández Mack, as the daughter of Myrna Mack Chang, US$235,000.00 (two hundred thirty-five thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 252 and 254 of the instant Judgment;
b) to Lucrecia Hernández Mack, US$3,000.00 (three thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 253.2 and 254 of the instant Judgment;
c) to Zoila Chang Lau, as the widow of Yam Mack Choy, US$3,000.00 (three thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 253.2 and 254 of the instant Judgment; and
d) to Helen Mack Chang, US$25,000.00 (twenty-five thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 253.1 and 254 of the instant Judgment.

Judge Martínez Gálvez partially dissenting.

by seven votes against one,

14. that the State must pay the total sum of US$350,000.00 (three hundred and fifty thousand United States dollars) or their equivalent in Guatemalan currency as compensation for non-pecuniary damage, as set forth in paragraphs 263 to 267 of the instant Judgment, distributed as follows:

a) to Lucrecia Hernández Mack, as the daughter of Myrna Mack Chang, US$40,000.00 (forty thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 263 and 267 of the instant Judgment;
b) to Lucrecia Hernández Mack, US$110,000.00 (one hundred and ten thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 264.a, 264.b, 266 and 267 of the instant Judgment;
c) to Zoila Chang Lau, as the widow of Yam Mack Choy, US$40,000.00 (forty thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 264.a, 264.c and 267 of the instant Judgment;
d) to Zoila Chang Lau, US$40,000.00 (forty thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 264.a, 264.c and 267 of the instant Judgment;
e) to Helen Mack Chang, US$100,000.00 (one hundred thousand United States dollars) or their equivalent in Guatemalan currency, as set forth in paragraphs 264.a, 264.d and 267 of the instant Judgment; and
f) to Marco Mack Chang, Freddy Mack Chang, Ronald Chang Apuy, and Vivian Mack Chang, US$5,000.00 (five thousand United States dollars) or their equivalent in Guatemalan currency, to each of them, as set forth in paragraphs 264.a, 264.e, 264.f, 264.g and 267 of the instant Judgment.

Judge Martínez Gálvez partially dissenting.

by seven votes against one,

15. that the State must pay the total sum of US$163,000.00 (one hundred and sixty-three thousand United States dollars) for legal costs and expenses, and US$5,000.00 (five thousand United States dollars) for future expenses, as set forth in paragraphs 291 and 292 of the instant Judgment, distributed as follows:

a) to the Myrna Mack Foundation, US$145,000.00 (one hundred and forty-five thousand United States dollars), and US$5,000.00 (five thousand United States dollars), to cover the future expenses caused by steps to be taken in connection with the ongoing criminal proceeding to punish all those responsible for what happened to Myrna Mack Chang, as set forth in paragraphs 291.a and 292 of the instant Judgment;
b) to the Lawyers Committee for Human Rights, US$5,000.00 (five thousand United States dollars), as set forth in paragraph 291.b of the instant Judgment;
c) to the law firm Wilmer, Cutler and Pickering, US$5,000.00 (five thousand United States dollars), as set forth in paragraph 291.c of the instant Judgment;
d) to the law firm Hogan & Hartson, US$5,000.00 (five thousand United States dollars), as set forth in paragraph 291.d of the instant Judgment; and
e) to the Center for Justice and International Law (CEJIL), US$3,000.00 (three thousand United States dollars), as set forth in paragraph 291.e of the instant Judgment.

Judge Martínez Gálvez partially dissenting.

unanimously,

16. that the State must pay the total amount of compensation ordered for pecuniary and non-pecuniary damage as well as the legal costs and expenses set forth in the instant Judgment, without any of its items being subject to currently existing or future taxes, levies or assessments.

unanimously,

17. that the State must comply with the measures of reparation ordered in the instant Judgment within a year of the date of its notification, as set forth in paragraph 293 of the instant Judgment.

unanimously,

18. that if the State were to be in arrears, it must pay interest on the amount owed based on the banking interest rate for arrearages in Guatemala, as set forth in paragraph 299 of the instant Judgment.

unanimously,

19. that the Court will monitor compliance with this Judgment and will close the instant case once the State has fully complied with its provisions. Within one year of notification of this Judgment, the State must submit to the Court a report on the measures adopted to comply with it, as set forth in paragraph 300.

Judge Cançado Trindade informed the Court of his Reasoned Opinion, Judge García Ramírez informed the Court of his Reasoned Concurring Opinion, Judge Salgado Pesantes informed the Court of his Reasoned Concurring Opinion, Judge Abreu Burelli informed the Court of his Reasoned Concurring Opinion, and Judge Martínez Gálvez informed the Court of his Reasoned and Partially Dissenting Opinion, which are attached to this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on November 25, 2003.

Antônio A. Cançado Trindade
President

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

Arturo Martínez-Gálvez
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

REASONED OPINION OF JUDGE A.A. CANÇADO-TRINDADE*

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* This translations is awaiting its final revision by the author.

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1. I vote in favor of adoption of the instant Judgment of the Inter-American Court of Human Rights on the merits and reparations in the Myrna Mack Chang versus Guatemala case, in which

the Court ruled that the violation of Myrna Mack Chang's right to life occurred under aggravating circumstances (para. 139), because it resulted from "a covert military intelligence operation carried out by the Presidential General Staff and tolerated by various authorities and institutions" (para. 140), set within a "pattern of selective extra-legal executions fostered and tolerated by the State itself" (para. 151), and a "climate of impunity" (paras. 155 and 158). The Court also found that said military intelligence operation by the Presidential General Staff "sought to conceal the facts and sought impunity of those responsible, and to this end, with tolerance by the State, it resorted to all types of means, including harassment, threats and murders of those cooperating with the courts," thus affecting the independence of the Judiciary (para. 216).

2. It is my understanding that this is a case of aggravated international responsibility of the State, demonstrated by the aforementioned facts and abusive resort to the so-called "official secret," leading to an obstruction of justice. [FN1] These aggravating circumstances make the instant case a paradigmatic one, and because of them the instant Judgment of the Court is destined to be truly historical. Given the great significance of the juridical issues addressed in it, I feel the obligation to state my personal reflections on the matter, as the basis for my position on the subject of the decision of the Court, especially with respect to the following aspects: a) the difficult paths of international responsibility of the States; b) criminalization of grave human rights violations; c) complementarity between the international responsibility of the States and the international criminal responsibility of individuals; d) types of culpability and crimes of State; e) crimes of State in connection with the fundamental or higher interests of the international community; f) the act of invoking international responsibility of the State by the human being as a subject of international law; g) the nature of the international responsibility of the State, and its relationship with the realization of justice and the struggle against impunity; h) the juridical consequences of crimes of State: aggravated international responsibility and the nature and scope of the reparatio.

[FN1] Cf. paras. 174-181 of the instant Judgment. Cf. also, in this regard, CEH, Guatemala, Memoria del Silencio - Informe de la Comisión para el Esclarecimiento Histórico, volume VI, Annex I, Guatemala, 1999, pp. 242 and 244.

I. The Difficult Paths of International Responsibility of the States.

3. The domain of international responsibility of the State plays a pivotal role in the conceptual universe of International Law. It is the backbone of the international legal order. Actually, the legal system of responsibility is the critical center of any legal system, where the nature and scope of the obligations and the determination of the juridical consequences of their abridgment come together. It therefore constitutes, in brief, the thermometer of operation of the legal system as a whole. Nevertheless, it is truly paradoxical that despite its pivotal role in the international legal order and its crucial importance for the legal system in its entirety, the issue of international responsibility of the State has resisted to such an extent the efforts to codify and progressively develop it.

4. Discussion of this topic has followed long and difficult paths. [FN2] In the course of over seven decades of studies on the subject with the aim of codifying it (from the renowned and failed 1930 Hague Codification Conference to date), controversy has persisted regarding various aspects, including the very moment at which the international responsibility of the State arises, [FN3] and there continues to be tension between the bilateralist inter-State vision of juridical relations of responsibility and a vision of the same –which I, personally, share- that also takes into account fundamental or higher values of the international community as a whole.

[FN2] From the writings of D. Anzilotti to the studies and reports by R. Ago (during which time we also find the influential reflections of H. Kelsen, H. Lauterpacht, C.Th. Eustathiades and F. García Amador, among others), and subsequently –in the framework of the International Law Commission of the United Nations- the reports by W. Riphagen, G. Arangio-Ruiz, and J. Crawford.

[FN3] Cf. A.A. Cançado Trindade, "The Birth of State Responsibility and the Nature of the Local Remedies Rule", 56 Revue de droit international de sciences diplomatiques et politiques (1978) pp. 157-188; and, regarding the implications for implementation of the international responsibility of the State, in the various contexts both of international human rights protection and of diplomatic protection, cf. A.A. Cançado Trindade, The Application of the Rule of Exhaustion of Local Remedies in International Law, Cambridge, Cambridge University Press, 1983, pp. 6-56 and 290-322.

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5. For years, from the start of the 20th century, the legal positivism then prevalent sought to transcend fault or blame (from Roman law) as the basis for international responsibility, by grounding the latter on contradiction of the act or omission attributable to the State with the legal provision. With this, legal positivism –always receptive with respect to dogmatism of State sovereignty- reduced the relationship of responsibility to a matter of reparation of damage, at the level of relations between the State committing the infraction and the victim, without even establishing the intention of the State to cause said damage (as an aggravating circumstance). This hermetic approach became stratified over time.

6. It was necessary to wait several years for new developments in legal doctrine [FN4] to open the path toward a certain “criminalization” of the relationship of responsibility, reducing the space formerly occupied by State voluntarism. Thus –regarding the basis for international responsibility of the State- D. Anzilotti sought to transcend fault or blame; [FN5] decades later, R. Ago sought to do the same with respect to damage; [FN6] as rapporteur for the International Law Commission (ILC) of the United Nations on the issue of international responsibility of the State, R. Ago developed, going beyond previous theoretical models, a gradation of violations of State obligations, which led, in 1976, to his renowned proposal of Article 19 of the State Responsibility Project, including the concept of “international crime” and establishing a distinction between it and “international delict.”

[FN4] Cf. nota (2), supra.

[FN5] Cf. D. Anzilotti, Teoría Generale della Responsabilità dello Stato nel Diritto Internazionale, part I, Firenze, F. Lumachi Libr.-Ed., 1902, pp. 25-101.
[FN6] For the reminiscences of R. Ago regarding his predecessor D. Anzilotti, of the brilliant Italian school of international law, cf. R. Ago, "Rencontres avec Anzilotti", 45 Boletim da Sociedade Brasileira de Direito Internacional (1992) n. 81/83, pp. 17-25.

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7. The ILC itself, in its comment on the matter, compared adoption of the language that recognized the distinction between both concepts (international crimes and delicts), in codification of the international responsibility of the State, to enshrinement of the jus cogens category in the law of treaties. [FN7] With Article 19 of said ILC Draft, two systems of responsibility would take shape: one for non-compliance with obligations of crucial importance for the international community as a whole, and the other for non-compliance with obligations of a lesser or less general importance. “International crimes” would be the acts of an “especially grave nature” that affect fundamental values of the international community, and the others –without the same degree of gravity- would be “international delicts.” [FN8] A new vision of the law of international responsibility began to arise, taking into account basic values and the needs of the international community as a whole.

[FN7] United Nations, Yearbook of the International Law Commission (1976)-II, part II, para. 73, p. 122.
[FN8] Cf. comments and examples in ibid., pp. 95-122.

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8. However, progress in this area has not been linear but rather –as often happens- pendulous. It does not seem to me that the final Draft Articles of the ILC, adopted in 2001, have done justice enough to the advanced conceptual vision of R. Ago and to the concerns of G. Arangio-Ruiz. The fact that in its Articles on Responsibility of States (2001) the ILC addressed details regarding the “countermeasures,” as they are called (reflecting the most primitive aspect of international law, that is, a new version of resort to reprisals), [FN9] and that it set aside and shelved, rather lightly, the concept of international crime or “State crime,” reflects the world in which we live. Ubi societas, ibi jus. The relatively succinct treatment of grave violations –and their consequences- of obligations under mandatory norms of general International Law (Articles 40-41) [FN10] in the ILC’s Articles on the Responsibility of the States (2001) reveals the insufficient conceptual development of the matter up to our days, in an international community that is still seeking a greater degree of cohesion and solidarity.

[FN9] And this new version of reprisals –the so-called “countermeasures”- constitute the chapter on use (albeit legal) of force, and they should not be considered as an inevitable trait of the regime of "legal liability"; Ph. Allott, "State Responsibility and the Unmaking of International Law", 29 Harvard International Law Journal (1988) pp. 22-23.
[FN10] Cf. comments in J. Crawford, The International Law Commission's Articles on State Responsibility, Cambridge, University Press, 2002, pp. 242-253.

II. Criminalization of Grave Human Rights Violations

9. The process of criminalization of grave human rights violations and that of International Humanitarian Law [FN11] has gone pari passu with the evolution of contemporary International Law itself: the establishment of an international criminal jurisdiction [FN12] is viewed in our days as a component that strengthens International Law itself, overcoming a basic shortcoming and its past insufficiencies regarding lack of capacity to try and to punish those responsible for grave violations of human rights and of International Humanitarian Law. [FN13] The travaux préparatoires of the 1998 Rome Statute on the International Criminal Court (ICC) led to prompt recognition, within its sphere of application, [FN14] of individual international criminal responsibility, and this constitutes a major step forward, in terms of legal doctrine, in the struggle against impunity of the most serious international crimes.

[FN11] Cf. G. Abi-Saab, "The Concept of `International Crimes' and Its Place in Contemporary International Law", International Crimes of State - A Critical Analysis of the ILC's Draft Article 19 on State Responsibility (eds. J.H.H. Weiler, A. Cassese and M. Spinedi), Berlin, W. de Gruyter, 1989, pp. 141-150; B. Graefrath, "International Crimes - A Specific Regime of International Responsibility of States and Its Legal Consequences", in ibid., pp. 161-169; P.-M. Dupuy, "Implications of the Institutionalization of International Crimes of States", in ibid., pp. 170-185; M. Gounelle, "Quelques remarques sur la notion de `crime international' et sur l'évolution de la responsabilité internationale de l'État", Mélanges offerts à Paul Reuter - Le droit international: unité et diversité, Paris, Pédone, 1981, pp. 315-326; L.C. Green, "Crimes under the I.L.C. 1991 Draft Code", 24 Israel Yearbook on Human Rights (1994) pp. 19-39.

[FN12] Including both the decisions of the Security Council of the United Nations to establish the ad hoc Tribunals for the former Yugoslavia in 1993, and for Rwanda in 1994 (cf., on the former, v.g., K. Lescure, Le Tribunal Pénal International pour l'ex-Yougoslavie, Paris, Montchrestien, 1994, pp. 15-133; Antonio Cassese, "The International Criminal Tribunal for the Former Yugoslavia and Human Rights", 2 European Human Rights Law Review (1997) pp. 329-352; Kai Ambos, "Defensa Penal ante el Tribunal de la ONU para la Antigua Yugoslavia", 25 Revista del Instituto Interamericano de Derechos Humanos (1997) pp. 11-28; and cf., on the latter, v.g., R.S. Lee, "The Rwanda Tribunal", 9 Leiden Journal of International Law (1996) pp. 37-61; [Several Authors], "The Rwanda Tribunal: Its Role in the African Context", 37 International Review of the Red Cross (1997) n. 321, pp. 665-715 (studies by F. Harhoff, C. Aptel, D. Wembou, C.M. Peter, and G. Erasmus and N. Fourie); O. Dubois, "Rwanda's National Criminal Courts and the International Tribunal", 37 International Review of the Red Cross (1997) n. 321, pp. 717-731, and –especially- adoption of the 1998 Rome Statute by the permanent International Criminal Court.

[FN13] And, especially, for acts of genocide, war crimes, and crimes against humanity; Bengt Broms, "The Establishment of an International Criminal Court", 24 Israel Yearbook on Human Rights (1994) pp. 145-146.

[FN14] Probably some of the current controversies among internationalist jurists (myself included) and the criminalists will last some time, regarding certain aspects of the Rome Statute. While I do not intend to refer to them here, in the instant Separate Opinion I merely call attention to the superior universal values that underlie all the issue of establishment of a permanent

international criminal jurisdiction. Let us furthermore recall that the 1998 Rome Statute enshrined general principles of criminal law (nullum crimen sine lege, nulla poena sine lege, non-retroactivity ratione personae, individual criminal responsibility, exclusion of persons under 18 from the competence of the Tribunal, irrelevance of official position, responsibility of supervisors and other superiors, non-extinguishment –non-applicability of the statutes of limitations-, the element of intentionality, circumstances exempting from criminal responsibility, factual and legal errors, superior orders and legal provisions), despite the conceptual differences between the Delegations of droit civil and common law countries.

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10. Said initiative has provided new impetus to the struggle of the international community against impunity, as a per se violation of human rights, [FN15] by affirming and crystallizing the international criminal responsibility of the individual for said violations, thus seeking to prevent future crimes. [FN16] Criminalization of grave violations of human rights and of International Humanitarian Law has, in our time, been expressed in the enshrinement of the principle of universal jurisdiction. [FN17]

[FN15] W.A. Schabas, "Sentencing by International Tribunals: A Human Rights Approach", 7 Duke Journal of Comparative and International Law (1997) pp. 461-517.

[FN16] . Cf., in this regard, e.g., D. Thiam, "Responsabilité internationale de l'individu en matière criminelle", in International Law on the Eve of the Twenty-First Century - Views from the International Law Commission / Le droit international à l'aube du XXe siècle - Réflexions de codificateurs, N.Y., U.N., 1997, pp. 329-337.

[FN17] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume III, 1st. ed., Porto Alegre/Brasil, S.A. Fabris Ed., 2003, p. 413; and cf. A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume II, 1st. ed., Porto Alegre/Brasil, S.A. Fabris Ed., 1999, pp. 385-400 and 404-412.

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11. In the framework of the inter-American human rights system, in the Paniagua Morales et al. versus Guatemala case (also known as the “White Van” case), the Inter-American Court of Human Rights issued a clear warning statement regarding the duty of the State to combat impunity. [FN18] The Court affirmed the duty of the State [FN19] to “organize the public authorities to guarantee persons subject to its jurisdiction the free and full exercise of human rights,” a duty that –as the Court significantly added- “applies whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups” (para. 174).

[FN18] In its Judgment of 08.03.1998 on the merits in that case, the Court conceived of impunity as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives” (Series C, n. 37, para. 173).

[FN19] Under Article 1(1) of the American Convention on Human Rights.
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12. These considerations of the Court were reiterated in its new obiter dicta in the Judgments on reparations in thefollowing cases: Loayza Tamayo (1998, para. 170), Castillo Páez (1998, para. 107), Blake (1999, para. 64), Villagrán Morales et al. (2001, para. 100), Cesti Hurtado (2001, para. 63), Cantoral Benavides (2001, para. 69), Bámaca Velásquez (2002, para. 64), Trujillo Oroza (2002, para. 97), and likewise in other obiter dicta in recent Judgments in the Juan Humberto Sánchez (2003, para. 143) and Bulacio (2003, para. 120) cases. Recognition of the duty of the State to combat impunity is, thus, expressed in the case law of the Inter-American Court.

13. All those of us who have had the experience and the responsibility of acting with dedication in the international adjudication of human rights know that crimes of State do, in fact exist, and we know what this means. In my view, the international criminal responsibility of the individual does not involve an exemption of the responsibility of the State. We are still in the early stages of a long process of evolution in this area, in which the recent establishment of the ICC constitutes one of the most significant moments in the struggle against impunity, but not the culmination as regards the international responsibility of the States. The latter is outside its scope; its determination is, rather, under the jurisdiction of the international human rights courts, which in turn cannot establish the international criminal responsibility of individuals. This segmented way of conceiving international responsibility –that of States and that of individuals- entails, in both cases, that eradication of impunity is only partial. For it to be total, comprehensive, it is necessary to affirm and determine, concomitantly, the responsibility both of the State and of the individual (the agent of the State), which are complementary.

III. Complementarity between the International Responsibility of States and the International Criminal Responsibility of Individuals.

14. In my view, international responsibility of the State and the international criminal responsibility of the individual are not mutually exclusive, but rather complementary. This is so because a public agent acts on behalf of a State, and both the State and its agent must answer for the acts or omissions attributable to both. International human rights courts focus on the international responsibility of the State, and ad hoc international criminal courts (for former Yugoslavia and for Rwanda) - and in the future the ICC – focus on that of the individuals involved. Neither the former nor the latter encompass the whole matter at the current stage of evolution.

15. Consideration of international responsibility must not restrict itself to the rigid segmentation of civil and criminal responsibility found in the national legal systems. Nothing would seem to hinder it from containing aspects of both, together constituting international responsibility. The latter has its own specificity. A State may be internationally responsible for a crime, attributable both to its agents, who committed it, and to the State itself as a legal person under international law. To deny this would be to obstruct the development of international law in the current domain of international responsibility.

16. Even those who argue that criminal responsibility applies only to the individuals who commit the crimes and not to the collective persons (the States), because societas delinquere non potest, nevertheless recognize the existence and evolution, today, of forms of criminal responsibility of legal persons under domestic law in various countries. [FN20] Holding legal persons criminally responsible (e.g. for environmental protection) derives from the very capacity to act and the need to protect higher social and shared values. The State, a legal person (though an abstract one) and a subject of international law, has rights and duties regulated by the latter; its conduct is directly and effectively envisaged in the law of nations. [FN21] The State, as well as its agents, must therefore answer for the consequences of their acts or omissions.

[FN20] Cf. J. Barboza, "International Criminal Law", 278 Recueil des Cours de l'Académie de Droit International de La Haye (1999) pp. 82 and 96.
[FN21] Cf., e.g., G. Arangio-Ruiz, Diritto Internazionale e Personalità Giuridica, Bologna, Coop. Libr. Univ., 1972, pp. 9-19; J.A. Barberis, Los Sujetos del Derecho Internacional Actual, Madrid, Tecnos, 1984, pp. 26-35.

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17. In its final written pleadings on the instant case, Myrna Mack Chang versus Guatemala, on June 24, 2003, the Inter-American Commission on Human Rights established a distinction between the responsibility of the State per se and the individual criminal responsibility of the agents of the State –although they are interlinked- when it argued that, in the context of the cas d'espèce,

“there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other hand. [...] To solve this tension, it is necessary to take into account the higher interests of justice and therefore the right to the truth.
[…P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations [...] resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the “clandestinity of the Executive branch” and to perpetuate impunity “(p. 11).

18. In a situation such as the one described above, determination of the international criminal responsibility of the individual is not, therefore, sufficient, because the State itself, in whose name its agents committed a crime, contributed –as a legal person under international law, to the perpetration of said crime or to its happening. In the instant case, Myrna Mack Chang versus Guatemala, there is a crime of State due both to the execution (planned by the highest echelons of public authority) of anthropologist Myrna Mack Chang, and to the subsequent cover-up of the facts, obstruction of justice, and impunity of those responsible, thus generating an aggravated responsibility.

19. At the conceptual level, I ultimately do not see how not to admit in general international law that crimes of State occur, especially insofar as there is intent (fault or blame), or tolerance,

acquiescence, negligence, or omission, by the State in connection with grave violations of human rights and of International Humanitarian Law committed by its agents, even on behalf of a State policy. Under said circumstances, societas delinquere potest.

20. In Law, every person constitutes a center or unit of imputation. In the case of physical persons, it is the concrete and living unit of each human being, while the legal person, a creation or construction of the Law, is also a center or unit of imputation for the conduct of individuals acting on its behalf, and for the consequences for which the legal person, as well as its agents, must answer. In brief, the legal personality of a collective entity (such as the State) is a construction of the Law, and it constitutes a unit of imputation for its conduct, carried out by the individuals who compose said collective entity and who act in its behalf; thus, both the legal person and said individuals must answer for the consequences of their acts or omissions, [FN22] especially when they bring about grave violations of human rights and of International Humanitarian Law. In my view, international responsibility of the State and the international criminal responsibility of the individual are not mutually exclusive but rather complementary and inexorably intertwined.

[FN22] In this regard, Luis Recaséns Siches, Tratado General de Filosofía del Derecho, 16ªth. ed., Mexico, Ed. Porrúa, 2002, p. 272.

IV. Types of Culpability and Crimes of State

21. This leads me to some brief reflections on the typology of culpability and, in this framework, the definition of crimes of State. In his masterly monograph, The question of guilt, the upright juridical philosopher Karl Jaspers established a distinction among four types of culpability: a) criminal culpability, resulting from acts that objectively abridge unequivocal laws, and that are provable before a court of law; b) political culpability, resulting from actions of rulers, of the State, for which those governed are responsible, because “every person is co-responsible for how he is governed;” c) moral culpability, resulting from the actions of each individual, with his own conscience as the jurisdiction; and d) metaphysical culpability, which K. Jaspers commented on as follows:

"There is a solidarity among men as such that makes each one responsible for all wrongdoing and all injustice in the world, especially of crimes that happen in their presence or with their knowledge. If I do not do what I can to impede them, I am also guilty.” [FN23]

[FN23] Karl Jaspers, El Problema de la Culpa, Barcelona, Ed. Paidós/Universidad Autónoma de Barcelona, 1965 [repr. in Spanish, 1998], pp. 53-54.

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22. By expressly invoking natural law in his study, [FN24] K. Jaspers considered that “where power does not set limits on itself, violence and terror dominate, and ultimately the annihilation of existence and of the soul.” [FN25] The great thinker admitted the existence of collective guilt

(as the political responsibility of the citizens), “but not, by this, in the same form as moral and metaphysical guilt and not as criminal guilt.” [FN26] For him, metaphysical guilt, in turn, is “the lack of absolute solidarity with the human being as such; [...] ultimately, true collectivity is the solidarity of all men before God.” [FN27]

[FN24] Cf. K. Jaspers, op. cit. supra n. (17), pp. 58 and 75.
[FN25] Ibid., pp. 55-56.
[FN26] Ibid., p. 80.
[FN27] Ibid., pp. 88 and 90.

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23. K. Jaspers did not excuse himself from discussing the different consequences of the various types of guilt: criminal guilt entails punishment; political guilt entails responsibility; moral guilt entails repent and renewal; and metaphysical guilt entails “a transformation of human self-awareness before God.” [FN28] In addition, this admirable author concluded, firmly and persuasively,

"There are crimes of State, which are always and at the same time crimes of certain individuals. [...] Whoever [...] orders or commits a crime is –that is the idea- always tried as a person by the community of States of the world. Under such a threat, the world’s peace would be ensured. Humanity would join in an ethos comprehensible to all. Never more would we repeat what we have suffered: that men, whose dignity had been stolen by their own State, whose human rights had been abridged, who were marginalized or murdered, did not find protection in the higher community of States.” [FN29]

[FN28] Ibid., p. 57.
[FN29] Ibid., p. 131.

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24. Along this same line of thought, another juridical philosopher, Paul Ricoeur, in his essay La mémoire, l'histoire, l'oubli, invoking Karl Jaspers’ thinking, also referred to culpability for State policies involving criminal responsibility, and expressly used the term “crime of State.” [FN30] Said political culpability,

"résulte de l'appartenance de fait des citoyens au corps politique au nom duquel les crimes ont été commis. [...] Cette sorte de culpabilité engage les membres de la communauté politique indépendamment de leurs actes individuels ou de leurs actes individuels ou de leur degré d'acquiescement à la politique de l'État. Qui a bénéficié des bienfaits de l'ordre public doit d'une certaine façon répondre des maux créés par l'État dont il fait partie. [...] Des institutions n'ont pas de conscience morale et [...] ce sont leurs représentants qui, parlant en leur nom, leur confèrent quelque chose comme un nom propre et avec celui-ci une culpabilité historique." [FN31]

[FN30] P. Ricoeur, La mémoire, l'histoire, l'oubli, Paris, Éd. du Seuil, 2000, pp. 423, 434 and 609.
[FN31] Ibid., pp. 615 and 620.
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25. The most enlightened doctrine of international law also contains elements leading to the definition of crimes of State. Thus, already in 1937, Hersch Lauterpacht warned that traditional respect for State sovereignty held back the development of the law of international responsibility, especially where it was most clearly present, that is, regarding the consequences of responsibility. Thus, traditional theory limited responsibility merely to reparation of damages (pecuniary and moral), without the States, due to their sovereignty, being punished. Nevertheless, by removing the State from the consequences of its own violations of the Law, this vision showed itself as a completely arbitrary one, restricting the international action of justice. [FN32] This being so, argued that author vehemently, opposing the prevalent doctrine of the time,

"la violation du droit international peut être telle qu'elle nécessite, dans l'intérêt de la justice, une expression de désapprobation dépassant la réparation matérielle. Limiter la responsabilité à l'intérieur de l'État à la restitutio in integrum serait abolir le droit criminel et une partie importante de la loi en matière de tort. Abolir ces aspects de la responsabilité entre les États serait adopter, du fait de leur souveraineté, un principe que répugne à la justice et qui porte en lui-même un encouragement à l'illegalité. Ce serait permettre aux individus, associés sous la forme d'État, d'acquérir, quant aux actes criminels commis (...), un degré d'immunité qu'ils ne possèdent pas agissant isolément; c'est une immunité couvrant des actes qui, parce qu'ils sont collectifs et aidés par la puissance presque infinie de l'État moderne, jouissent d'un pouvoir de destruction virtuellement illimité.
C'est la personnification courante de l'État, impliquant une distinction artificielle entre l'association et les membres qui la composent, qui a contribué a suggérer ce principe anarchique d'irresponsabilité morale et juridique. (...) Il ne peut guère y avoir d'espoir pour le droit international et la morale si l'individu, agissant comme l'organe de l'État peut, en violant le droit international, s'abriter effectivement derrière l'État impersonnel et métaphysique; et si l'État, en cette capacité, peut éviter le châtiment en invoquant l'injustice de la punition collective." [FN33]

[FN32] H. Lauterpacht, "Règles générales du droit de la paix", 62 Recueil des Cours de l'Académie de Droit International de La Haye (1937) pp. 339 and 349-350.
[FN33] Ibid., pp. 350-352.
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26. As C.Th. Eustathiades appropriately underlined in his substantial and pioneering study half a century ago, States and individuals are subjects of international law, and it cannot be claimed that the international criminal responsibility of the individual replaces or “eliminates” that of the State; the latter’s responsibility can also be defined by an international delict, entailing punishment that under international law has a “repressive function.” [FN34] Individual and State responsibility can perfectly well be cumulative. [FN35]

[FN34] C.Th. Eustathiades, "Les sujets du droit international et la responsabilité internationale - nouvelles tendances", 84 Recueil des Cours de l'Académie de Droit International de La Haye (1953) pp. 415, 417, 448, 604 and 607-608.
[FN35] Ibid., p. 603.

V. Crimes of State with Respect to the Fundamental or Higher Interests of the International Community.

27. There is another aspect that should be highlighted in connection with the definition of crimes of State, linked to protection of the fundamental or higher interests of the international community itself, as a whole. [FN36] Thus, a crime of State is defined as a grave violation of peremptory international law (the jus cogens), which directly affects its principles and foundations, and which is a matter that concerns the international community as a whole, and should not be dealt with by analogy with categories of domestic criminal law. In any case, the concept of crimes of State must be studied in depth, and not avoided.

[FN36] Cf., e.g., J. Barboza, "International Criminal Law", op. cit. supra n. (26), p. 97; J. Quigley, "The International Law Commission's Crime-Delict Distinction: A Toothless Tiger?", 66 Revue de droit international de sciences diplimatiques et politiques - Genève (1988) pp. 119-120.

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28. Crimes of State take shape, in brief, as especially grave violations of international law entailing an aggravated responsibility (with aggravating circumstances, thus evoking a category of criminal law); the gravity of the violation directly affects the fundamental values of the international community as a whole. [FN37] Critics of the concept of crimes of State, instead of bearing said values in mind, linked that concept to a mistaken analogy with criminal law in the sense that it has under domestic law.

[FN37] A. Pellet, "Can a State Commit a Crime? Definitely, Yes!", 10 European Journal of International Law (1999) pp. 426-427; C. Tomuschat, "International Crimes by States: An Endangered Species?", in International Law: Theory and Practice - Essays in Honour of Eric Suy (ed. K. Wellens), The Hague, M. Nijhoff, 1998, pp. 253 and 265.

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29. As Georges Abi-Saab rightly recalls, this is not what Roberto Ago had in mind when, in 1976, he proposed the concept of international crimes or crimes of State in the renowned Article 19 of the Draft Articles on State Responsibility of the ILC. The distorted analogy with domestic criminal law ignores the specificity of crimes of State in international law, and regrettably minimizes recognition of the fundamental or higher interests of the international community, emergence of jus cogens in the domain of international responsibility of the States, and the need

to established an aggravated regime of the international responsibility of the State. [FN38] In addition, the main purpose of this regime is precisely,

"to defend the normative integrity of the legal system itself against patterns of behaviour which go against its most fundamental principles and thus undermine its regular functioning and credibility. (...)

It can legitimately be feared that setting aside the dual regime of responsibility would be widely perceived as a reversal of the evolution of general international law from a community-oriented system back to a purely intersubjective one." [FN39]

[FN38] Establishment of said regime is precisely the aim of the aforementioned Article 19 of the ILC's Draft Articles on State Responsibility; G. Abi-Saab, "The Uses of Article 19", 10 European Journal of International Law (1999) pp. 339-351.
[FN39] Ibid., pp. 350-351.

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30. Reaction to grave and systematic violations of human rights and of International Humanitarian Law became, in our days, a legitimate concern of the international community as a whole. [FN40] This is called for with even greater strength when the victims are vulnerable and defenseless, and when the structure of public authority is deformed and it is utilized to abridge the inherent rights of the human person.Now when the international community professes certain fundamental and higher values, it is necessary to accept the consequence of establishment of a special regime of aggravated responsibility (associated with crimes of State) insofar as there are abridgments of said values or of the rules that protect them. [FN41]

[FN40] A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume I, 2d. ed., Porto Alegre/Brasil, S.A. Fabris Ed., 2003, p. 244; A.A. Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, volume III, 1st. ed., Porto Alegre/Brasil, S.A. Fabris Ed., 2003, p. 415.
[FN41] G. Abi-Saab, "The Concept of 'International Crimes' and Its Place in Contemporary International Law", in International Crimes of State (eds. J.H.H. Weiler, A. Cassese and M. Spinedi), Berlin, W. de Gruyter, 1989, pp. 144-145.

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31. It is, then, appropriate to rescue the approach to this matter that bears in mind the fundamental or higher interests of the international community, which has led to the definition of crimes of State, with their own specificity in international law. Moreover, we must always bear in mind the fundamental principles of the law, without which the juridical order simply is not realized and it ceases to exist as such. As I stated in my Concurring Opinion in the recent Advisory Opinion No. 18 of the Inter-American Court of Human Rights, on the Juridical Status and Rights of Migrants without Documents (of 17.09.2003):

- "Every legal system has fundamental principles that inspire, permeate and shape their provisions. These are the principles (...) that, evoking the first causes, sources or origins of provisions and rules, give cohesion, coherence, and legitimacy to the legal provisions and to the legal system as a whole. They are the general principles of law (prima principia) that give the legal order (...) its inevitable axiological dimension; they reveal the values that inspire the whole legal order and that, ultimately, provide its very foundations. This is how I conceive the presence and position of principles in any legal order, and their role in the conceptual universe of the Law. (...) Provisions and rules issue from the prima principia and find their meaning in them. The principles are thus present in the origins of the Law itself" (paras. 44 and 46).

32. In that same Separate Opinion, I added that the abuse and atrocities suffered by so many human beings everywhere "have ultimately awakened the universal juridical conscience to the urgent need to reconceptualize the very foundations of the international juridical order" (para. 25), and progress of this order is in accordance with the rise of human awareness of the need for realization of the common weal and of justice (para. 26). In this same vision, the definition both of crimes of State, based on establishment of an especially grave violation of international law, and of the respective forms of reparation, as compensations and punishments at the same time (cf. infra), are inescapably linked to the evolution of an international community with greater integration and solidarity, aware of the basic principles and the higher values that it must preserve and that must guide it. [FN42]

[FN42] R. Besné Mañero, El Crimen Internacional - Nuevos Aspectos de la Responsabilidad Internacional de los Estados, Bilbao, Universidad de Deusto, 1999, pp. 140 and 185-186.

VI. The act of invoking the international responsibility of the State by the Human Being as a Subject of International Law.

33. In the instant Judgment in the Myrna Mack Chang versus Guatemala case, the Inter-American Court, when it found a violation of the rights to fair trial and to judicial protection to the detriment of the immediate next of kin of Myrna Mack Chang, ruled that the "military intelligence operation of the Presidential General Staff," which generated her murder, also "sought to conceal the facts and sought impunity of those responsible, and to this end, with tolerance by the State, it resorted to all types of means, including harassment, threats and murders of those cooperating with the courts. All this has affected the production of evidence and independence of the judiciary, has delayed the criminal proceeding, and has a negative impact on the development of this proceeding" (para. 216). In the instant Judgment of the Court, both Myrna Mack Chang and her immediate next of kin have been deemed the victims of the aforementioned violations of rights.

34. This is not the first time that the Court has affirmed the expansion of the concept of victim [FN43] under the American Convention, to encompass both the direct victim and the indirect victims (his or her next of kin). I believe that expansion of the juridical-procedural capacity and personality of the human being is in accordance with the true needs of the contemporary international community. In my Separate Opinion in the Villagrán Morales et al.

versus Guatemala case (the “Street Children” case, Judgment on reparations of 26.05.2001), I reflected that the indirect victims (the immediate next of kin) also:

“have suffered an irreparable loss, as their lives will never more be the same. The loss, at a given moment of their lives, of the beloved one, has thrown them into a "selva oscura", wherefrom they will have to endeavour to get out, through suffering (and only suffering), in order not only to honour the memory of their dead, but also to transcend the darkness of human existence, and to attempt to get closer to the light and to know the true reality, during the time which is left to them of the brief journey of each one in this world (the very brief cammin di nostra vita, which does not allow us to know all that we need). The realization of justice contributes at least to structure their psychic life, to reawake their faith and hope, and to set in order their human relations with their fellowmen. Every true jurist has, thus, the ineluctable duty to give his contribution to the realization of justice, from the perspective of the integrality of the personality of the victims” (para. 40).

[FN43] On evolution of the concept of the victim in International Human Rights Law, cf. A.A. Cançado Trindade, "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)", 202 Recueil des Cours de l'Académie de Droit International de La Haye (1987) 243-299.

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35. In that same Separate Opinion, I added:

“For a long time I have been insisting that the great juridical revolution of the XXth century has been the one consolidated by the International Law of Human Rights, in erecting the human being as subject of International Law, endowed, as a true complaining party against the State, with full juridico-procedural capacity at international level [FN44]. The present case of the "Street Children", in which the forgotten ones of this world succeed to resort to an international tribunal in order to vindicate their rights as human beings, gives an eloquent testimony of this. In the ambit of application of this new corpus juris, it is undoubtedly the victim who appropriately assumes the central position. (...) This development appears in conformity with the very aims of Law, the addressees of whose norms are, ultimately, the human beings” (para. 16).

The true revolution of contemporary juridical thinking lies, in my view, not so much in criminal international law (as it is currently in vogue to believe), but rather in International Human Rights Law, as the latter deems that individuals, whatever the extremely adverse circumstances they may find themselves in) can invoke and put into practice (as active subjects of International Law) the international responsibility of the State for violations of the rights that are inherent to them as human beings.

[FN44] Cf., e.g., A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos", in El Sistema Interamericano de Protección de los Derechos Humanos en el Umbral

del Siglo XXI - Memoria del Seminario (November 1999), volume I, San Jose, Costa Rica, Inter-American Court of Human Rights, 2001, pp. 3-68.

VII. Nature of the international responsibility of the State, and its Relationship with the Realization of Justice and the Struggle against Impunity.

36. As long as an international human rights court cannot determine the international criminal responsibility of the individual, and an international criminal court cannot determine the responsibility of the State, impunity will probably persist, being only partly punished by the former and the latter. International responsibility of the State is neither exclusively civil (as suggested by the duty to provide reparation for damage), nor exclusively criminal (as suggested by legitimization of a punishment). It is a collective responsibility of the State, alongside the international criminal responsibility of the individual. International responsibility of the State contains both civil and criminal aspects, in the current stage of evolution of international law.

37. The viewpoint, espoused by the Inter-American Court of Human Rights in the past, according to which compensations "with exemplarizing or dissuasive purposes" have no place in international law, [FN45] has been completely surpassed. It is in accordance with a reactionary vision, shaped by the precepts of juridical positivism, that until recently (whether consciously or not) held back development regarding this matter, and which no longer reflects, as stated above, the current stage of evolution of international law in this regard. Furthermore, in my view, realization of the exemplarizing or dissuasive purposes can –and must- be sought not only through compensations, but also through other (non-pecuniary) forms of reparation.

[FN45] Inter-American Court of Human Rights (I-ACtHR), Velásquez Rodríguez versus Honduras case (Compensatory Indemnification), Judgment of 21.07.1989, Series C, n. 7, p. 24, paras. 38-39; I-ACtHR), Godínez Cruz versus Honduras case (Compensatory Indemnification), Judgment of 21.07.1989, Series C, n. 8, p. 21, paras. 36-37.

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38. Irrespective of the civil or criminal elements of the international responsibility of the State, I believe it is undeniable that reparations can adopt a punitive or repressive nature, [FN46] to ensure the realization of justice and to put an end to impunity (cf. infra). It is also necessary to bear in mind that, while reparations (both pecuniary and moral) benefit the injured party directly, punishment (or repressive action against the State found in violation), in turn, benefits the human community itself as a whole; not to admit this would be to allow the State found in violation to remove itself from the Law. [FN47]

[FN46] M. Gounelle, "Quelques remarques sur la notion de `crime international' et sur l'évolution de la responsabilité internationale de l'État", in Mélanges offerts à Paul Reuter - Le droit international: unité et diversité, Paris, Pédone, 1981, pp. 317-318.
[FN47] H. Lauterpacht, op. cit. supra n. (34), pp. 355-357.

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39. As C.Th. Eustathiades (supra) had done, Hans Kelsen also maintained that States and individuals are subjects of international law, as the latter places obligations on both; hence the coexistence of international responsibility both of individuals (physical persons) and of States (legal persons). In the case of the States, their responsibility is collective, and H. Kelsen recognized that a State, when it commits a grave violation of international law, commits a delict or a crime. [FN48] Noting that the individual responsible for said violation acted on behalf of the State, H. Kelsen also admitted that the responsibility of the State can be both objective and absolute, and under certain circumstances can also be based on fault or blame. [FN49]

[FN48] Cf. H. Kelsen, Principles of International Law, N.Y., Rinehart & Co. Inc., 1952, pp. 9, 11-13, 97-100, 104-105, 107 and 114-117.
[FN49] Ibid., pp. 122-123.

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40. In point of fact, even admitting the principle of objective or absolute responsibility of the State (as the Inter-American Court has rightly done in the case of "The Last Temptation of Christ" versus Chile, 2001), this does not mean that responsibility based on fault or blame is totally dismissed under any and all hypotheses or circumstances. There are cases –as in the instant Myrna Mack Chang versus Guatemala case- in which the intention of the State to cause harm or its negligence in avoiding it can be proven; fault or blame then becomes, here, the indispensable basis for responsibility of the State, [FN50] aggravated by that circumstance.

[FN50] Cf., in this regard, H. Lauterpacht, op. cit. supra n. (34), pp. 359-361 and 364.

VIII. The Juridical Consequences of Crimes of State: Aggravated International Responsibility and the Nature and Scope of the Reparatio.

41. Aggravated responsibility is, precisely, that which is consistent with a crime of State. The renowned Article 19 of the State Responsibility Project (1976) of the ILC (supra), in its provision regarding "international crimes," precisely had in mind the determination of an aggravated degree of responsibility for certain violations of international law. [FN51] It did not in any way intend to suggest an analogy with categories of domestic criminal law. Once aggravated responsibility has been accepted, its juridical consequences must be established.

[FN51] I. Sinclair, "State Responsibility: Lex Ferenda and Crimes of State", in International Crimes of State (eds. J.H.H. Weiler, A. Cassese and M. Spinedi), Berlin, W. de Gruyter, 1989, p. 242.

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42. Already in 1939, long before becoming the rapporteur of the ILC on International Responsibility of the States, Robert Ago reflected that the same material fact may be

apprehended by different rules within the same juridical order, ascribing juridical circumstances to it that are also different, generating the obligation to provide reparation or legitimizing application of a punishment. [FN52] It may thus require either the obligation to provide reparation, or application of a punishment, or both simultaneously; for R. Ago, “punishment and reparation may thus exist side by side, as effects of the same crime.” [FN53]

[FN52] Roberto Ago, "Le délit international", 68 Recueil des Cours de l'Académie de Droit International de La Haye (1939) pp. 424 and 426.
[FN53] Ibid., pp. 428-429.

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43. The same juridical fact can, thus, give rise to different consequences, such as reparation and punishment. For an especially grave illegal act (e.g. a grave violation of human rights or of International Humanitarian Law), compensatory reparation (for the victim or the victim’s next of kin) may not be sufficient, in which case a punitive reparation (e.g., investigation of the facts and punishment of those responsible) may be required. Both may be necessary for the realization of justice.

44. In 1958, Cuban jurist F.V. García Amador, who at the time was the ILC rapporteur on Responsibility of the States, noted that certain forms of reparation have a clear and distinctly punitive purpose (punitive damages/dommages-intérêts punitifs) and involve imputing criminal responsibility to the State for violation of certain international obligations –especially, grave violations of fundamental human rights, analogous to crimes against humanity. [FN54] Thus, the very “duty of providing reparation” (with an initial civil law connotation) varies according to “the nature and function of the reparation in specific cases;” reparation, thus, does not always have the same form or the same purpose, and in the case of punitive damages (cf. infra) it contains a criminal element of responsibility. [FN55]

[FN54] F.V. García Amador, "State Responsibility - Some New Problems", 94 Recueil des Cours de l'Académie de Droit International de La Haye (1958) pp. 396-398.
[FN55] Ibid., p. 409.

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45. The whole chapter on reparations for human rights violations requires greater conceptual and case-law development, based on recognition of the close relationship between the right to reparations and the right to justice. Said development is especially necessary in face of grave and systematic human rights violations, which in turn require a firm reproval of the illicit conduct of the State, and dissuasive reparations, to ensure non-recidivism of the injurious acts, taking into account both the expectations of the next of kin of the victim and the higher interests or needs of the society.

46. In effect, one cannot deny the close link between reparations and combating impunity, as well as ensuring non-recidivism of the injurious acts, always and necessarily from the perspective of the victims. True reparatio, linked to realization of justice, requires overcoming

obstructions of the duty to investigate and to punish those responsible, and putting an end to impunity. In other words, contrary to what the Inter-American Court maintained in the past, [FN56] it is my view that reparations can perfectly well be both compensatory and punitive, with the aim of putting an end to impunity and ensuring realization of justice –which is perfectly in accordance with the current stage of development of international law.

[FN56] In the judgments on "compensatory indemnification" (of 1989) in the Velásquez Rodríguez and Godínez Cruz cases, cit. supra n. (47).

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47. The provisions of Article 63(1) of the American Convention on Human Rights [FN57] do in fact open a very broad horizon for the Inter-American Court of Human Rights in the matter of reparations. Exemplarizing or dissuasive reparations, consistent with an aggravated responsibility, may contribute to ensure non-recidivism of the injurious acts and to the struggle against impunity. In my several years of experience as a Judge at the Inter-American Court, I have been able to corroborate how the States have less difficulty complying with pecuniary reparations than with reparations pertaining to the duty to investigate and punish those responsible for human rights violations, in other words, ultimately, the realization of justice.

[FN57] Article 63(1) de la American Convention provides that: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

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48. As stated in a Joint Separate Opinion in the Loayza Tamayo versus Peru case (Reparations, Judgment of 27.11.1998), treatment given to measures of reparation in International Human Rights Law has been unsatisfactory, because it "starts out from analogies with solutions of private law and, especially, of civil law, within the framework of domestic legal systems," strongly influenced by merely patrimonial content and interest. This criterion is inadequate and insufficient in International Human Rights Law, in which "the determination of reparations must take into account the personality of the victim as a whole," and the impact of the violation committed on the victim or the next of kin of the victim: the starting point must be a perspective that is not merely patrimonial, but rather focused on dignity of the human person. Non-pecuniary reparations are much more important than one might assume prima facie, even to make the violations cease and remove their consequences, [FN58] pursuant to the terms of Article 63(1) of the American Convention.

[FN58] Joint Separate Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli, paras. 6-8, 10-11, 14 and 17.

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49. While the concept of “punitive damages” is not foreign to comparative domestic case law, nor to the case law of international arbitration, [FN59] it is not my intention to invoke it here in the sense in which it has been used –in other contexts- as exemplary reparation that is necessarily pecuniary (involving considerable amounts [FN60]). Far from it. In the current context of protection, which has its own specificity, other, non-pecuniary forms of reparation have commonly been identified as “obligations to do,” once again suggesting a reductionist analogy with civil law solutions.

[FN59] Cf., e.g., inter alia, R.W. Hodgin and E. Veitch, "Punitive Damages Reassessed", 21 International and Comparative Law Quarterly (1972) pp. 119-132; J.Y. Gotanda, "Awarding Punitive Damages in International Commercial Arbitrations [...]", 38 Harvard International Law Journal (1997) pp. 59-105, respectively; and also cf. examples of the practice (both domestic and international) in D. Shelton, Remedies in International Human Rights Law, Oxford, University Press, 2000, pp. 74-75 and 288-289.

[FN60] And entailing the risk of a “commercialization” of justice.

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50. These forms of reparation (such as those contained in operative paragraphs 7, 8, 9, 10, 11 and 12 of the instant Judgment in the Myrna Mack Chang versus Guatemala case) can well be deemed both compensatory and punitive in nature (containing both civil and criminal aspects). They have exemplary or dissuasive purposes, in the sense of preserving remembrance of the violations occurred, of providing satisfaction (a feeling of realization of justice) to the next of kin of the victim, and of contributing to ensure non-recidivism of said violations (even through human rights training and education).

51. “Punitive damages” may also be conceived in this sense, akin to the “obligations to do” that are both compensatory and punitive (thus overcoming the dichotomy between civil and criminal aspects, typical of the regime of responsibility under domestic law). I would like to mention certain significant examples from the rich case law of the Inter-American Court regarding reparations. In the Aloeboetoe versus Suriname case (Judgment of 10.09.1993), the Court ordered a school reopened and the creation of a foundation to assist the beneficiaries. In the Villagrán Morales et al. versus Guatemala case (the “Street Children” case, Judgment of 26.05.2001), the Court ordered that an educational center be named after the victims in the case; in a similar manner, in the Trujillo Oroza versus Bolivia case (Judgment of 27.02.2002), the Court ordered that an educational center be given the victim’s name.

52. Other examples may be added. In the Cantoral Benavides versus Peru case (Judgment of 03.12.2001), the Court ordered the State to provide a university-level educational scholarship to the victim. In the Barrios Altos case with respect to Peru (Judgment of 30.11.2001), the Court ordered reparations in terms of educational benefits and payment of health service expenses; in the Durand and Ugarte versus Peru case (Judgment of 03.12.2001), the Court once again ordered payment of health services or expenses and psychological support. Said reparations for damages are in fact both compensatory and punitive; “punitive damages,” thus understood, actually have already been applied, for a long time, in the domain of international human rights protection – which makes us recall the phrase by Molière’s famous character, Monsieur Jourdain, qui parlait

la prose sans le savoir... [FN61] In evolving contemporary international law, “punitive damages” lato sensu [FN62] (beyond the merely pecuniary meaning inappropriately given to them) can be an appropriate response or reaction of the juridical order against a crime of State. [FN63]

[FN61] M. Jourdain: - "(...) Il y a plus de quarante ans que je dis de la prose, sans que j'en susse rien, et je vous suis le plus obligé du monde de m'avoir appris cela". Molière, Oeuvres Complètes (Le bourgeois gentilhomme, 1670, act II, scene V), Paris, Éd. Seuil, 1962, p. 515.
[FN62] It should not go unnoticed that, e.g., the Declaration adopted by the United Nations World Conference against Racism, Racial Discrimination, Xenofobia and Related Forms of Intolerance (Durban, 2001), when it foresaw measures or reparation, compensation, indemnification and others for human suffering and the “tragedies of the past” (paras. 98-106), and the respective Program of Action, in its provisions on reparations and indemnification (paras. 165-166), used a language that reveals affinities with the concept of “punitive damages” lato sensu.
[FN63] N.H.B. Jorgensen, The Responsibility of States for International Crimes, Oxford, University Press, 2003, pp. 231 and 280.
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53. In conclusion, the facts in the instant case, Myrna Mack Chang versus Guatemala, demonstrate that crimes of State do exist. The facts in the instant case indicate that most contemporary international juridical doctrine is mistaken in seeking to avoid the issue. While the expression “crime of State” may seem objectionable to many international jurists (especially those petrified by the specter of State sovereignty) because it suggests an inadequate analogy with juridical categories of domestic criminal law, this does not mean that crimes of State do not exist. The facts in the instant case are eloquent evidence that they do exist. Even if another name is sought for them, [FN64] the existence of crimes of State does not cease for that reason.

[FN64] Which would not avoid the skeptical exclamation of the legendary prince of Denmark:
"- (...) What do you read, my lord?
- Words, words, words".
(W. Shakespeare, Hamlet, Prince of Denmark, 1600, act II, scene 2).
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54. Crimes of State are much more than a possibility; as the facts of the cas d'espèce show, they are a reality. As long as attempts to evade the issue continue, contemporary international juridical doctrine will continue to succumb to the specter of State sovereignty, and it will continue to hold back the evolution of the law of nations in our days. As long as its existence continues to be denied, the human person, the ultimate one entitled to its inherent rights, and prior and superior to the State, will be denied protection and exercise of said rights, first of all the right to justice; the human person will also be denied reparations for abridgments of those rights.

55. As long as its existence continues to be denied, the State –hostage to a deformed structure of repression and impunity- will be deprived of its principal aim, the realization of the common weal. As long as its existence continues to be denied, in the midst of an empty semantic

imbroglio (which distracts attention from the central issue, which is the need to ensure that justice prevails), the Law itself will be deprived of its ultimate aim, which is precisely the realization of justice. As long as attempts to avoid the issue continue, treatment of the central chapter of the law of international responsibility of the State will continue to be unconvincing, in addition to being conceptually incomplete and juridically inconsistent. With this, the construction and consolidation of the true Rule of Law will regrettably be postponed, and in the framework of the latter, that of the true right to the Law, that is, the right to a legal order that effectively safeguards the fundamental rights of the human person.

Antônio Augusto Cançado-Trindade
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ TO THE JUDGMENT IN MACK CHANG V. GUATEMALA OF NOVEMBER 25, 2003

I. THE CASE LAW OF THE INTER-AMERICAN COURT AND THE CASE OF MACK CHANG

1. Since it began to exercise its contentious jurisdiction, the Inter-American Court of Human Rights has had the opportunity to rule on violations of the right to life by extrajudicial executions committed by State agents. It is still a matter that this international Court has to consider, even though, in recent years, it has heard matters of a different nature that begin to outline a new jurisdictional trend with regard to which relevant judgments and significant advisory opinions have been delivered that establish the position of the inter-American jurisdiction on other rights, which are also embodied in the American Convention and even in other international treaties acceded to by the countries of our hemisphere, and which the Court is called upon to apply.

2. In all the cases mentioned above, using a case law developed over the course of four decades, this international Court has ruled on the right to life, the corresponding State obligations, the pertinent reparations, and among these, the obligation of the State to investigate, prosecute and convict those responsible. The latter constitutes what I have called the “obligation to provide criminal justice” (cf. in this respect, several studies included in my book, La jurisdicción internacional. Derechos humanos y justicia penal, Ed. Porrúa, Mexico, 2003, particularly, pages 202 and ff., 258 and ff., 315 and ff., 354 and ff.), deeply rooted in that case law and inherent in the “rule of law”; in other words, the supremacy of law in a democratic society, with national and international impact. In this way, impunity, which is a powerful stimulus for violating human rights, as well as a flagrant injustice that harms the whole of society, is combated. The fight against impunity is evidently no less relevant or urgent that satisfaction of the pecuniary and non-pecuniary interests of the victim, and constitutes a reference point for the future development of the system to protect human rights in all countries.

3. The Mack Chang case, decided in the judgment to which this separate concurring opinion is attached, forms part of this traditional trend, although with its own characteristics. The State itself considers it a "paradigmatic case," which forms part of the legacy of an internal conflict "in which there was no legal system, nor any efficient and effective system for the administration of justice (para. 68). The development of the American democracies and the emerging culture with regard to human rights must abolish for ever the use of violence that eliminates lives, attacks freedom, and affects the integrity of all individuals. When this objective is achieved, the Inter-American Court will be in a position to dedicate itself almost exclusively to other issues, which characterize a different phase, as the European Court of Human Rights does today in most cases.

4. Any violation of the rights and freedoms of an individual merits censure, but the violation of the principal right – the right to life – on whose recognition and protection depend the continued existence and effectiveness of all the other rights, is particularly deplorable. Unlawful deprivation of life reveals the persistence of old authoritarian patterns that are the testimony of somber times during which the essential juridical rights were disdained for the sake of the alleged needs of public security and peace, which can never be a valid argument to disregard, suppress or reduce the basic rights of the individual. In the face of any manifestation of authoritarianism, it is necessary to reaffirm that the protection of human rights is – and has always been, as revealed by the writings of the Enlightenment, in Europe and in America – the goal to which political organization is directed and the reference point to verify both the State's ethical commitments and the legitimacy of the conduct of its agents.

5. Our Court has also examined and ruled on facts that affect access to justice; namely, the preservation of and respect for judicial guarantees and jurisdictional measures for the protection of the fundamental rights. This access implies both the ability and the possibility of having recourse to bodies that provide justice independently, impartially and competently, of formulating claims, contributing or requesting evidence and arguing in favor of interests and rights (procedural justice), and also of obtaining a final judgment that satisfies the substantive requirements of justice (substantive justice). Without the latter, justice would be sterile: the simple appearance of justice, an ineffective instrument that does not produce the result for which it was conceived. Consequently, both manifestations of access to justice must be emphasized: procedural and substantive, and all actions must be channeled so that both aspects can be achieved.

6. Access to justice, one of the outstanding issues of contemporary life, presumes the clarification of unlawful facts, the timely correction and reparation of the violations committed, the re-establishment of conditions of peace with justice, and the appeasement of the public conscience, troubled by the fact that the law has been broken, as a general control of conduct and the subjective rights recognized to individuals, and as a measure for all individuals to achieve their potential. This case, as others which have been heard by the Court, provides a dramatic example of the harm to which effective judicial protection is subjected, in conditions that also have singular characteristics.

II. ACTS OF ACCEPTANCE AND ACKNOWLEDGMENT BY THE STATE

7. Faced with the attribution of facts and the submission of the respective claims, through the exercise of the international procedural action on human rights, the defendant States may file objections and a defense or acknowledge such facts and claims through juridical acts that produce certain substantive and procedural effects. In addition to discontinuance, which is incumbent on the plaintiff in the proceeding, the norms of the inter-American jurisdiction establish the "acquiescence (of the defendant) to the claims of the party who has brought the case" (Article 52(2) of the Rules of Procedure of the Inter-American Court of Human Rights) and also stipulate "the existence of a friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute" (Article 53 of the same Rules of Procedure).

8. For the effects of the instant case and others that have been submitted or may be submitted to the Inter-American Court, it should be noted that the conduct of one party or the agreement of both does not necessarily bind the Court, which has a greater commitment to factual truth and the effective protection of human rights than to formal truth and the apparent protection of human rights. Indeed, the jurisdictional organ may order that consideration of a case should continue, "taking into account the responsibilities vested in it to protect human rights," even though facts have occurred that reveal, as regards their author, an intention to abate the proceeding and to settle the conflict (Article 54 of the Rules of Procedure).

9. In several cases processed in recent years, the States attributed with international responsibility, as a result of facts that violate the American Convention, have acknowledged these facts and the international responsibility arising from them. This attitude, which the Court has expressly assessed, must be emphasized to the extent that it reveals a constructive attitude and assumes, with objectivity and a helpful juridical attitude, the consequences that international law – and also domestic law – attribute to the unlawful conduct of the State agents or other persons who act with the agreement, sponsorship or tolerance of the State.

10. This laudable practice underscores the progress of democratic principles and the willingness to respect the rights of the people. The State that acquiesces or acknowledges the facts attributed to its agents, when that acquiescence or acknowledgement is justified, demarcates its ethical, juridical and political position from the deviations in which certain public servants incur. This timely demarcation has a high moral value and, frequently, has important preventive effects; it shows that the State does not accept the conduct of those who undermine its legal system – even when it must respond for it in international forums – and is not willing to fight legal battles that lack grounds and obstruct the true exercise of justice.

11. As I have indicated previously, the Rules of Procedure of the Inter-American Court provide certain grounds for considering acts of acquiescence or settlement during the course of the proceeding. On this basis, and taking into account the principles that regulate international human rights proceedings (the nature of the corresponding procedural acts, in relation to their characteristics and the juridical purpose of their authors, the evidence gathered in the proceeding, and the explanations requested from the parties), the Court must establish the nature of those acts of settlement or acquiescence and the scope that may and should be attributed to them in the interests of legal certainty and the final nature of the proceeding itself.The final position of the parties, from the perspective of their obligations, rights and interests depends on how the Court defines the foregoing. By proceeding in this way, the Court develops and interprets its norms, in

accordance with the authority inherent in its jurisdictional function and, thereby, exercises the attribution of facts and the authority to interpret and apply assigned to it by the international treaty (Articles 33.b) and 62(1), as well as Article 1 of the Statute of the Inter-American Court of Human Rights).

12. Thus, the Inter-American Court is called on to advance in the jurisprudential examination of different acts of settlement or acts which have the effect of clarifying facts that were initially disputed, based on the declarations or acknowledgements of the State, or which permit litigations to be concluded by means of decisions that constitute alternatives to the typical judgments of declaration or conviction. As I have mentioned, the American Convention itself, as well as the norms deriving from it – in this respect, the corresponding indications in the Rules of Procedures of the Inter-American Commission and Court – consider solutions emanating from friendly settlement, discontinuance and acquiescence, to which can be added, in the sense mentioned above and without forgetting their natural characteristics, acknowledgements of the facts and judicial confessions that have occurred while some cases were being processed.

13. There is still no uniformity in the statements made by States about acts of this type that are part of the international proceeding, or how they classify them. At times the term acquiescence is used. At other times, there is an allusions to the State's "institutional responsibility." In other cases, expressions such as the "acknowledgement of international responsibility," are invoked. Consequently, it is necessary to advance towards greater conceptual precision, which may involve new developments in the procedures of the parties and of the inter-American Court itself. There is also a need to establish a new practice in this respect: the precise indication of the facts that the State admits to and the claims to which it acquiesces, in the context of the acknowledgement of international responsibility and its consequences. This would go beyond the mere acknowledgement of international or institutional responsibility - I will return to this point below – which does not always clarify the defendant's intention and the scope that the latter attributes to it.

14. In my concurring opinion to the judgment of September 18, 2003, in Bulacio v. Argentina, I attempted to approach this matter, indicating that two procedural definitions may coincide in an acknowledgement of responsibility – I am not saying that they always or necessarily coincide, because this will depend on the intention of the act and the way in which it is stated – both with substantive consequences: confession and acquiescence. Acquiescence – according to Alcalá-Zamora – is "an act of regulation or waiver of rights": a waiver of the right to defense (El allanamiento en el proceso penal, EJEA, Buenos Aires, 1962, pp. 129 and ff.). "Confession is limited to de facto affirmations and acquiescence to the juridical claim" (Proceso, autocomposición y autodefensa (Contribución al estudio de los fines del proceso), Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 3ª ed., México, 1991, p. 96). Consequently, it will be necessary to examine the nature of the act of acknowledgement formulated by the State, in the context of the international proceeding and of the acts of the parties that occur within this.

15. The authentic scope of the statements made by some of the parties is not always clearly established, particularly those statements that, made by the State, may define the course of the proceeding and the content of the final decision. Obviously, I am not referring only to the scope

that an external interpreter attributes to them, but to the scope that the organs that issue the statements wish to impart to them, which thereby commits the procedural position and substantive obligations of the State and, likewise, the defense and the substantive rights of the individuals.This is why other procedural parties are reticent to accept the statements of the State at face value and request the Court to establish the nature and scope of such statements. If the statement is not plain to the Court and to all the parties, the Court must examine it in light of different information – precedents, circumstances, clarifications, organ that issues it, etc. – and establish its juridical scope and consequences.

16. The recognition of institutional responsibility – as has been stated in various cases, including the Maritza Urrutia case, decided on November 27, 2003, during the same session in which the Court delivered judgment in the Mack Chang case – may only signify the acknowledgement that there is a continuity in the State's obligations, beyond the periodic changes in the public administration, or the acceptance that there were shortcomings in the exercise of a general function of protection or guarantee that the State has with regard to all persons subject to its jurisdiction. This does not necessarily mean acknowledgement of concrete and specific conducts – acts or omissions – of State agents that resulted in direct violations of rights and freedoms established in domestic law and in the international Convention, which would give rise both to a judgment by the Inter-American Court in relation to the State itself, and to individual prosecution and punishment by the domestic courts in exercise of the "obligation to provide criminal justice" that the State has in accordance with its own legislation and with a guilty verdict from the international court.

17. The Inter-American Court is called upon to establish the truth, a factual and historical truth, which will then be framed in the legal truth that characterizes the inviolable judgment, and to adopt its decisions, based on the legal truth, taking into account the higher interest implied by the defense of human rights. If the Court is empowered to go beyond discontinuance, acquiescence or an agreement on reparations when it deems that this is pertinent for significant reasons, it can do so with all the more reason when the meaning and scope of a party's statements are not sufficiently clear and when, consequently, the other parties request the jurisdictional organ to provide clarifications or explanations that allow the situation created by these statements to be defined. When undertaking this logical exercise in the performance of its jurisdictional attributes, the Court can assess dubious or insufficient statements, in its own terms, or relate them to other information provided to the proceeding, so as to combine everything in order to establish a sound basis for the adoption of its decisions.

III. ADMISSION, ACKNOWLEDGEMENT AND EVIDENCE OF THE FACTS

18. The State has made various statements, which it classifies as acknowledgement of international or institutional responsibility, international acknowledgement of institutional responsibility, "absolute acquiescence," "plain [acknowledgement of] the facts set out in the application," "acquiescence [...] to the claims of the petitioner," "acknowledgment of the facts set forth in the application and unconditional acknowledgement [by the State of] its international responsibility (cf. Chap. VI of the judgment). I repeat that the State's attitude is admirable when, by drawing attention to the existence of facts that violate human rights it attempts to bring them into the open – or it admits, to a greater or lesser degree, the pertinent reports of other

international instances, such as the Inter-American Commission or entities of civil society, such as non-governmental organization – and accepts the adverse juridical consequences resulting from them, and states this position before international justice. In the Inter-American Court's experience, there has been an increase in cases of acquiescence or acknowledgement of responsibility, which is an encouraging precedent.

19. Since, the application sometimes alludes to the acknowledgement of the facts, it is worth clarifying that this document of June 19, 2001, considers facts of two main types: those relating to the deprivation of the life of Myrna Mack Chang and those relating to the investigation of this fact and the punishment of those responsible. Regarding the former, it alludes expressly to a plan of the intelligence service; and, regarding the latter, it mentions the lack of a genuine and effective investigation within a reasonable lapse of time and de facto and de jure mechanisms that prevent adequate administration of justice (para. 209 of the application brief of the Inter-American Commission on Human Rights). These – as they appear reported in the application – would be the facts that the State acknowledges when it refers clearly to this procedural act.

20. Despite the emphatic statements of the State in several acts of the international proceeding, particularly those made or provided after the public hearing of February 19, 2003, had been held, the other parties to the proceeding expressed some reservations or doubts and asked the Court to establish their scope. This request was reasonable if we bear in mind that, during the proceeding, various statements were made, which, interpreted in different ways, could also lead to different consequences. To sustain its final ruling, the Court must be certain of the position of the parties and thus, have a firm basis for establishing the corresponding conclusions and decisions. This need justifies the Court's agreement to continue the judicial proceeding and use different sources of information that will provide greater certainty to its final decisions.

21. I believe that the Inter-American Court should take into account – as indeed it did – the State's acquiescence or acknowledgement of facts, claims and international responsibility, particularly the most recent version that was offered by the Minister of Foreign Affairs on March 3, 2003. Nevertheless, even though this procedural act of the State, with evident pecuniary repercussions, could imply, if considered in isolation, the "unconditional [acceptance of] international responsibility in the Myrna Mack Chang case" (para. 109), and appear as "total and unconditional acquiescence by the defendant State" (para. 111), in the context of the proceeding and within the series of acts that occurred during the proceeding, it does not appear sufficient to sustain the final result of the litigation, without greater analysis. Accordingly, the Court considered other information from the proceeding that, associated with the [acquiescence] and pointing in the same general direction, allowed the final decision to have a firmer and more reliable basis.

22. In view of the foregoing, the Court has relied on the following four sources of information and decision: a) the State's affirmation, through the Minister of Foreign Affairs of Guatemala, in the above-mentioned communication of March 3, 2003, which that official handed to the President of the Inter-American Court at the seat of the Court; b) the probative elements that appear in the body of evidence introduced by the Inter-American Commission and the representatives of the victim's next of kin: testimony, reports and documents; c) the reports of a general nature, with specific references to this case, which were prepared at the end of the civil

conflict in Guatemala, which was the context in which the unlawful deprivation of the life of Myrna Mack Chang took place (Informe de the Commission para el Esclarecimiento Histórico (CEH), and Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REMHI)), and d) the book on these events prepared by the current Minister of Foreign Affairs of Guatemala, before taking office, which appears in the case file, and in which certain patterns of behavior of specific authorities are described and direct reference is made to the Mack Chang case (cf. Edgar Gutiérrez, Hacia un paradigma democrático del sistema de inteligencia en Guatemala, Fundación Myrna Mack, Guatemala, 1999, particularly. pp. 21, 58 and ff., 81 n. 47).

23. These four sources of information, which coincide with regard to the death of Mrs. Mack Chang and other aspects of the case sub judice, or complement each other, allow us to affirm that the victim was unlawfully deprived of her life and that, in order to perpetrate this fact, there was an agreement between officials of the Presidential staff who planned the surveillance and execution of the Guatemala anthropologist, and that at least one person participated in the execution who has been prosecuted and convicted of the violation of Article 4 of the Convention, as described in the corresponding chapter. The combined examination of all the aforementioned elements of judgment supports these affirmations. The full acknowledgement of the facts made by the State's Minister of Foreign Affairs tallies with the information that appears in the other sources. It is in this respect that "the Court concludes that the international responsibility of the State has been established for violations of the American Convention in the instant case, and this responsibility is aggravated by the circumstances in which the facts of the case occurred" (para. 114).

24. If each of these sources of information – particularly, the acquiescence – might, in the opinion of some courts, be sufficient to decide this case in the way in which the Inter-American Court has, the four, examined together, provide more weight to sustain the Court's decision about the facts of this case, whose specific gravity evidently results from the violation of the right to life, but also from the way in which this was planned, prepared, carried out, and concealed. All the characteristics of the assassination explain the obstruction of justice that, in itself and through the acts and omissions duly described in the judgment, violate the rights established in Articles 8 and 25 of the American Convention.

25. It is possible that, when hearing the Myrna Mack Chang case, the members of the Court, who took into consideration some of the material evidence that I have referred to above, opted to abide by these specific sources of information when voting on each of the operative paragraphs of the judgment. I believe that, what is more relevant, finally, is that the unanimous vote on the matters of greatest pertinence concerning the merits of the case reveals that all the members of the Court reached the same conclusions on the facts, their meaning and their characterization from the perspective of the applicable treaty norms, even though they formed this opinion and supported their vote using different ways to access the truth.

IV. RESTRICTIONS OR RESERVATIONS TO ACKNOWLEDGEMENT BY THE STATE

26. I believe it is also interesting to make some observations on the contradiction or at least the discrepancy that sometimes exists between certain declarations made by the State, through

representatives who are qualified to issue them, and possible declarations by other organs with competence to decide on contentious matters under domestic legislation. From the perspective of domestic law, this responds to the principle of the separation of powers, which assigns each power specific attributes that the others cannot assume or substitute. Nonetheless, from the perspective of international law, this matter requires clarification of the State's international responsibility and of the resolutory attributes of an international court, which are incontestable – when this is established in the international norm that has been sovereignly accepted by the State party to a treaty, as indeed happens in light of the American Convention – and must be complied with by the State, owing to its treaty obligations.

27. For the effects of the American Convention and of the exercise of the contentious jurisdiction of the Inter-American Court, the State is considered integrally, as a whole. Accordingly, responsibility is global, it concerns the State as a whole and cannot be subject to the division of authority established in domestic law. At the international level, it is not possible to divide the State, to bind before the Court only one or some of its organs, to grant them representation of the State in the proceeding – without this representation affecting the whole State – and excluding other organs from this treaty regime of responsibility, leaving their actions outside the "treaty control" that involves the jurisdiction of the international court.

28. When the organ that represents the State in its international relations and whose acts bind the former at this level – generally the Head of State or the Minister of Foreign Affairs, who act for themselves or by duly confirmed authority – make declarations, acknowledge facts, accept claims or put forward a defense, they do so in representation of the State itself, thus binding it before the international body. Hence, these acts of the State's intent cannot be conditioned to what national bodies may state, considering the way in which a case is processed before a specific national body under domestic legislation. This happens, for example, when the executive authority declares that the State, in representation of which it is acting, acknowledges facts that may entail criminal consequences, or acquiesces to claims set out in the application, which also involve domestic effects, but at the same time – on a subsequent occasion – reconsiders the scope of its declaration, even though this has been emphatic and decisive, and protects the ruling that the domestic judicial organ may deliver.

29. I wish to establish clearly the meaning of the observations that I am making. I am in no way disregarding the fact that the Inter-American Court is not a criminal court, and is not called on to rule on the individual criminal responsibility of those who, in the performance of public duties, violate human rights, incurring in conduct classified as an offense or crime. Establishing these individual responsibilities is a matter for the domestic criminal jurisdiction only – although this could eventually correspond to international criminal justice, in the appropriate circumstances – and, in this respect, the human rights Court cannot convict individuals. Nor am I suggesting that one power of the State can predetermine the conduct of the others in a democratic regime with separation of powers and distribution of functions. However, acknowledgement of facts by the State implies that the latter is admitting the truth of those facts and acquiring the obligation to accept the respective consequences, of both a criminal and any other nature.

30. This connection between the acknowledgement of the facts and the acquiescence of the State – assuming that it is formulated clearly and completely, without phrases that sow doubts or

conditions that could lead to different conclusions and results – is perfectly clear, because (since acknowledgement and acquiescence have intervened) the Convention allows the Inter-American Court to begin to hear and decide the issue of reparations on the basis that it has been undisputedly established: that the violation claimed in the application has occurred; what this consisted in, and that it was carried out by State agents or other persons for whom the State must respond (Articles 63(1) of the Convention and 52(2) of the Rules of Procedure). Subsequently, it will be possible to order compliance with the obligation to provide criminal justice that concerns the State, and the latter will have to define, under its own legal system, which persons must respond individually for the criminal facts that have occurred and been acknowledged by the State in the international judicial forum.

31. If the State conditions or subordinates subsequent acts to the existence of certain facts – which is not the same as the issue of individual convictions for the latter – any acknowledgement of facts or acceptance of claims stated by the authority with the competence to manage international relations and represent the State in matters of this nature, even those formulated by the Head of State himself, will lack certainty, require confirmation, or be open to rectification by another national authority, through an act of domestic law which could contradict, modify or revoke it. This would sow absolute doubt with regard to compliance with the international commitments assumed when the State formally accedes to an international convention and accepts the juridical consequences deriving therefrom. In the terms of the Vienna Convention on the Law of Treaties, a State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty, to which it acceded freely.

32. The lack of certainty of the acknowledgement that I referred to above would lead to practical consequences that would tarnish the performance of the international jurisdictions – and, in any case, that of those related to the protection of human rights. Likewise, once the principles of legality and justiciability inherent in the international jurisdiction were “touched,” it would undermine the access of individuals to such jurisdictions and affect legal certainty, and it would also curb the prompt functioning of these instances, which, nowadays, are one of the principle bastions of the world order, and whose competent performance is of interest to the States themselves. International justice would be compromised, suspended or subordinated to specific domestic acts, which are predictable or unpredictable from the international, and even the national, perspective. If this were so, the international courts would have to systematically disregard acknowledgements and acquiescence made by the States, so as not to risk the effectiveness of their own rulings.

V. RESPONSIBILITY OF THE STATE AND OF ITS AGENTS

33. In the instant case, as I have said, the State’s acknowledgement of the facts refers to those facts included in the application submitted by the Inter-American Commission; moreover, the acquiescence to the claims contained in this application, which initiated the proceeding, covers all the facts, without any reservation. These include the participation of several persons in the violation committed under different juridical classifications described in criminal law: perpetrators, intellectual authors, accomplices, accessories. The existence of a complex criminal participation, with the corresponding different individual responsibilities may be inferred from the characteristics of the facts perpetrated, as well as from the probative elements gathered and assessed by the Court, and also from the broad acknowledgement made by the State.

34. It is not possible to concentrate "criminal responsibility" for homicide in the State, as this would continue to leave individual responsibilities unidentified and unpunished. The idea of a State crime, a dramatic and effective term from a public and political perspective, involving the existence of "conspiracy networks" within the formal power, may imply, in view of its very broad scope, that criminal participation is attributed to all those who are part of the State – and, indeed, constitute the State itself – a conclusion which is evidently excessive and entails the temptation to subordinate effective and specific individual criminal responsibility to a hypothetical and general State responsibility or, at least, to hide the former under cover of the latter. The consequences of this are foreseeable; sometimes it is proposed in good faith, but its results may be contrary to those desired.

35. As is always said, there is a State obligation to investigate facts that violate human rights, prosecute those who participate in them, deliver the corresponding convictions and carry out the respective punishments. This is the "obligation to provide criminal justice" which I referred to above and which leads to the system of reparations established in Article 63(1) of the Convention, according to the progressive interpretation of the Inter-American Court in a development which is one of the best contributions to its case law for the protection of human rights. For this criminal justice to be effective, it must be complete, not selective, and it must be implemented within a reasonable lapse of time. Otherwise, there will be absolute or relative impunity – and the latter is still impunity – which constitutes the best "safeguard" for the violation of human rights.

36. The judgment in the Mack Chang case deals with these issues. On the one hand, it is not satisfied by the prosecution and conviction of one of those responsible for the unlawful acts, when there are elements (including, as I said above, the State's acknowledgement of the facts) to suggest that they were perpetrated by several individuals. Evidently, it would not be the same if, owing to the characteristics of the case, it was probable and credible, that the authorship of the violations was confined to a single person. In the case to which this judgment refers, the Court has understood that there has been participation in facts that violate human rights, which constitutes criminal participation under domestic criminal law.

37. This criminal participation can include the forms of authorship included in one section of legal writings and is usually established in domestic legislation: immediate or mediate intellectual authorship or perpetration, and can also include forms of complicity, and even concealment by previous agreement between the participants. Thus, it is feasible that concealment is an autonomous offense, owing to agreement after the facts that constitute the crime, as classified in different criminal codes. This is how I understand the statements in the judgment that allude to "identify, prosecute and punish all the intellectual authors, perpetrators, and others responsible for the extrajudicial execution of Myrna Mack Chang, and for concealment of the extrajudicial execution and the other facts of the instant case, irrespective of the person who has already been punished for these facts" (para. 275). The exclusion from justice of one or some of those responsible, should there be several, would maintain impunity and leave the State's obligation to provide criminal justice unfulfilled, at least in part.

VI. DELAY IN JUSTICE. REASONABLE TIME

38. The excessive delay in providing justice is, in some ways, the denial of justice. “Justice delayed is justice denied,” states an old and often invoked adage. In this context, the requirement to observe a reasonable lapse of time when settling disputes related to the issue of human rights has several aspects. The first refers to the time for developing a proceeding against any individual. Thus, the Court has indicated that “the principle of ‘reasonable time’ to which Articles 7(5) and 8(1) of the Convention refer is to prevent accused persons from remaining in that situation for a protracted period and to ensure that the charge is promptly disposed of” (Suárez Rosero case, Judgment of November 12, 1997, Series C No. 35, para. 70).

39. In the premise described above, the requirements of the principle of reasonableness, applied to the time that a proceeding may take, do not cease, from the perspective of and with regard to human rights. There are at least two other cases which involve this principle. One of them is associated with the request for justice at the domestic level, prior to the recourse to international protection resulting from the possibility that the Inter-American Commission may admit a petition, even though the remedies under domestic law have not been exhausted previously, according to Article 46(1)a) of the Convention, when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies” (Article 46(2)c)). Here the rule of the “substantive defense” of the individual is stated, which is linked to the pro homine principle, characteristic of the human rights protection regime and which may be invoked both to understand the meaning of a norm and also to include it in the principle that justifies it, specifically, in order to rule on a contentious issue.

40. Another premise for the exercise of the principle of reasonable time, always in favor of the effective protection of human rights and the efficient implementation of the consequences of this protection, relates to the proceeding, in its broadest sense, that the State must undertake against those responsible for facts that violate fundamental rights, in order to comply with the much-cited obligation to provide criminal justice. The latter is framed within the access of the victim to the legal remedies established by the State. If this access is impeded, or conditioned to numerous or unattainable requirements, or if there is excessive delay, the norm ensuring that all persons have the right that the determination of their rights and obligations shall be made within a reasonable time is violated. Evidently, the final juridical situation of the victim and his successors, if applicable, may depend on the decision adopted by the State in the proceeding to prosecute the unlawful conduct.

41. The timeliness in deciding a matter, using the procedures established in the State’s legal proceedings, must be examined from the perspective of different factors that may explain the delays that could arise, as noted in the case law of the European Court of Human Rights, which has been used by the Inter-American Court. The Court has established a principle that originates in European case law: complexity of the case, processing of the proceeding by the authorities, exercise of the right of defense, among other elements that merit consideration (cf. Genie Lacayo case, Judgment of January 29, 1997 (Nicaragua). Series C, No. 30, para. 77, which invokes Eur Court H.R., Motta judgement of 19 February 1991, Series A, num. 195-A, para. 30, and Ruiz Mateos v. Spain judgement of 23 June 1993, Series A, No. 262, para. 30. Also, cf. the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, Series C No. 79, para. 134, and the Constitutional Court (Aguirre Roca, Rey Terry and Revoredo Marsano v.

Peru), Judgment of January 31, 2001, Series C No. 71, para. 843. Among the more recent cases, I should mention that the problem of reasonable time has also been considered in Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago, Judgment of June 21, 2002, paras. 143 and ff.) and reiterated in recent judgments; observing the complexity of the case, the procedural activities of the interested party, and the conduct of the judicial authorities.

42. However, this protracted delay may, in itself, fragrantly violate the principle of reasonable time, irrespective of these indicative considerations. In one case, the Inter-American Court considered that five years would more than correspond to reasonable time (Genie Lacayo case, Judgment of January 29, 1997, Series C No. 30, para. 81) and, in another, it considered that a period of fifty months "far exceeds the 'reasonable time' contemplated in the American Convention" (Suárez Rosero case, Judgment of November 12, 1997, cit., Series C No. 35, para. 73). As I have already said, the principle of reasonableness, with its natural temporal references, encompasses not only the proceeding against any individual, but also the proceeding to comply with the obligation of criminal justice entailed by a judgment on reparations. In the instant case, the duration of the proceeding, with all its implications and different aspects, has been more than double these periods, without a final decision being pronounced. At "the time of this judgment, after more than 13 years, the criminal proceeding is underway and the remedy of cassation is pending a decision, so that the final judgment that will decide on and punish those responsible for the extrajudicial execution of Myrna Mack Chang has still not been rendered" (para. 272).

VII. "AGGRAVATED" RESPONSIBILITY

43. Paragraph 114 of the judgment, which I have quoted above, contains a reference to the "aggravation" of State responsibility, taking into account "the circumstances in which the facts occurred." This phrase gives rise to a comment. In criminal law it is common to speaking of aggravating circumstances or, in more modern terminology, of criminal factors that imply or underscore a more serious conduct and, on the basis of the simple or general circumstance, define a special one. In both premises, the legislator reflects, in the criminal treatment of the facts and of the person responsible, their greater seriousness taking into account information such as the rights violated (in addition of the central right subject to protection: e.g. life), the link between the perpetrator and the victim, the means or way of execution, the causes or motives, the psychological connection, or purpose of the offender (Cf. López Bolado, Jorge D., Los homicidios calificados, Plus Ultra, Buenos Aires, 1975; and Levene (h), El delito de homicidio, Depalma, Buenos Aires, 1977, pp. 173 and ff.). In the case of aggravating circumstances, it is for the trial judge to apply the consequences established in law, and in the case of an aggravated criminal offense, the law itself establishes a more severe general punishment. Lastly, within this generic punishment, it is for the court to adapt the punishment, bearing in mind the act perpetrated and the guilt of the agent.

44. All the foregoing may be considered when examining the instant case, without forgetting, obviously, that the Inter-American Court does not operate in the sphere of criminal justice, which corresponds to the domestic jurisdiction. Therefore, my observations only serve to establish an illustrative analogy. Indeed, in this hypothesis, there is an objective aggravation of the facts, inasmuch as it is significant, in view of the elements of available information to which I have already referred, that this was not an isolated crime, the product of the design of one individual,

but that there was an elaborate plan to deprive the victim of her life owing to her activities – social research and dissemination of the results, which entailed a critical vision of official programs – and that security agents and officials took part in the plan. This apparatus, which had important resources of power, placed itself at the service of actions that implied violation of the victim's most relevant right, the right to life, to terminate the tasks that she was carrying out and warn other individuals of the consequences that similar work would entail, even though it was legal according to the norms in force when the facts occurred.

45. One notable aspect of the gravity of this case resides in the obstacles created to the due investigation of the facts and the criminal prosecution of those responsible. The judgment contains a detailed description of these obstacles and of the "labyrinth" represented by the still unfinished investigation of the crime, and also the consequences of this investigation for those who took part in it and attempted to clarify the events and identify the authors. In this respect, we should recall the reports of the witnesses whose statements appear in the file, such as Rember Aroldo Larios Tobar, former head of the Criminal Investigations Department of the Guatemalan National Police (para. 127.e), and Henry Francisco Monroy Andino, former criminal trial judge (para. 127.f). In the context of these problems and their effects on the life and security of those who intervened in the tasks of investigation and prosecution, I consider it relevant that the judgment has decided that the State should honor publicly the memory of José Miguel Mérica Escobar, the member of the police force who participated in the investigation into the homicide of Mrs. Mack Chang and was assassinated (para. 279).

46. The aggravated seriousness of the facts must certainly be taken into account when making the reproach that a judgment on human rights violations implies, as in the case of this final ruling. It will be necessary to weigh this in the decisions duly adopted by the domestic criminal jurisdiction regarding sentences of imprisonment and also, if applicable, other punishments, such as: deprivation of rights or functions, disqualification, compensation, etc.

47. There remains the question of how this aggravated seriousness may affect the reparations decided by the Inter-American Court. In my opinion, it is perfectly possible that it influences acts of non-pecuniary compensation, such as publication of the judgment, expression of guilt and requirement of apology in official declarations, and commemoration of the memory of the victim. There are also the strictly patrimonial consequences – compensation for pecuniary and non-pecuniary damage, concepts that have their own importance and observe their own norms – that would arise if we tried to use that aggravated seriousness as a basis for establishing "punitive damages," a concept that has not been included in the case law of this Court, because it corresponds more to the idea of a fine than to that of the reparation of damage and, in any case, it would be payable by the Treasury, which implies an additional burden for the taxpayer and also a reduction in the resources that should go towards social programs.

48. Among the observations arising from the conduct of any State obliged to guarantee conditions of public security and to recognize and protect scrupulously the rights of its citizens – both tasks inherent in the preservation of the rule of law in a democratic society – I believe that the Inter-American Court's indication that security agencies should be subject to the norms of the democratic constitutional order, international human rights treaties and international humanitarian law is particularly significant (para 284). Even the fight against extremely serious

criminal behavior cannot serve as an argument for eroding the system of rights and guarantees built up by humanity over several centuries with infinite efforts and sacrifices.

49. Preservation of the rule of law must be ensured without infringing the principles and norms that characterize it. On this point the judgment of the Inter-American Court in the Maritza Urrutia case (concerning the problem of torture), which was rendered immediately after the judgment in the Mack Chang case, has been emphatic. In this matter, the Court asserted that the investigation and prosecution of the most serious crimes, whatever their nature, could not be invoked as justification for violating the human rights of the accused. The absolute prohibition of torture, in all its forms – physical and psychological – is part of international jus cogens.

VIII. THE VICTIM OF FACTS THAT VIOLATE HUMAN RIGHTS

50. The important judgment to which I add this concurring opinion again gives rise to an observation regarding the victim of a violation: the scope of this concept in view of the affected possessions and rights established in the American Convention – or in any other applicable instrument – and the implications as regards the relationship between the impairment of a right, the person who suffers it, and the measure in favor of the latter that this Court provides in its judgment. The protection of the victim – and, evidently, the prevention of violations of the human rights of all individuals – constitute the desideratum of the inter-American system and the raison d'être of the institutions that form part of it, such as the Inter-American Court. Thus, several judgments have examined the concept of victim, which then allows us to identify with suitable precision those who possess the right to the reparations that the Convention establishes, which are included, qualitatively and quantitatively, in the Court's judgments. I have dealt with the issue in another of my opinions (Cf. Separate concurring opinion of Judge Sergio García Ramírez in ICourtHR, Bámaca Velásquez case, Judgment of November 25, 2000, Series C No. 70, 2001, pp. 171 and ff., paras. 2 to 5).

51. In law, the victim is the person who suffer injury to the juridical possession protected by a right or freedom with the necessary relevance to appear in the elevated category of "human or fundamental" rights. Article 63(1) of the Convention, which provides a framework for the Court's decisions on reparations, which, in turn, are a prominent chapter of the system to protect human rights – without reparations, the latter would be deprived of practical effects – indicates that, if it finds that there has been a violation of a right or freedom, the Court "shall rule that the injured party [Sp. lesionado] be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party" [Sp. la parte lesionada] (emphasis added).

52. As can be seen, the American Convention identifies the active subject of the violation as the "injured person" [Note: see the Spanish version above] or the "injured party", that is, as a person (according to the term used in Article 1(1) of the Pact of San José) who suffers the injury (violation, infringement, reduction: in brief, an attack on, not merely the danger of the affecting) of a possession – due to the violation of a right or freedom established in the Convention – and, thus becomes a "party" in a litigation (I allude to party in the substantive sense and to litigation as a substantive datum prior to the proceeding, a measures that is part of it, following the

"Carneluttiana" terminology), where the State and the injured person come face to face, even though, in the procedural dispute, the parties act in a formal sense which the Convention itself recognizes. In the terms of Article 63(1), the guarantee of the right or freedom violated corresponds to the injured person and the payment of the compensation – which, as the Court's case law has reiterated, is one, but not the only type of reparation – to the injured party.

53. The Rules of Procedure of the Court, adopted in 2000 and in force today, define the "victim" and the "alleged victim." Thus, the term victim refers to "the person whose rights have been violated, according to a judgment pronounced by the Court" (Article 2(31)), and alleged victim refers to "the person whose rights under the Convention are alleged to have been violated" (Article 2(30)). It is obvious that, according to these Rules of Procedure, the concepts of victim and alleged victim are the same as injured person or injured party, on the one hand, and alleged injured person or alleged injured party, on the other. Although the Convention does not use the term alleged, this provides a natural designation for the individual who has been indicated as a victim, while awaiting delivery of the decision that transforms this procedural and preliminary designation into a confirmed and final juridical classification. Thus, the relationship that I mentioned above between injured person and injured party, on the one hand, and compensation, on the other, is also established as regards victim or alleged victim and compensation.

54. However, the Rules of Procedure of 2000 (the fourth Rules of Procedure in the history of the Inter-American Court), which have expanded the role of individuals before the Court, bringing the substantive part and the procedural part increasingly closer – to the extent allowed within the procedural framework of the Pact of San José – has included references to the next of kin. This expression refers to the "immediate family, that is, the direct ascendants and descendants, siblings, spouses, or permanent companions, or those determined by the Court, if applicable" (who may be linked to the direct and immediate victim by a reasonably close relationship, and by affection owing to being a member of the same household, which leads to them being treated with the same relevance and the same consequences as the other members of the "immediate family").

IX. THE POSSESSOR OF THE RIGHT TO COMPENSATION

55. These clarifications, related, above all, to the procedural legitimization of those closest to the person who has endured the injury directly and immediately, do not exclude the possibility – widely explored and recognized in this international Court's case law – that the next of kin or those closely connected may, in turn, become victims of human rights violations, if injuries of this nature are constituted in relation to them and, thus, the adequate and necessary conditions are met to receive the compensation corresponding to the injury they have suffered to their own possessions or rights.

56. The injury to a freedom or a right may occur directly, through the "blow" that the act or omission of the agent signified, immediately and autonomously, to the juridical possession of the subject (for example, death caused by a State agent), or indirectly, as a result of this conduct, which was not proposed to cause the harm that "indirectly resulted," either because this is a notorious and necessary consequence of the act committed, or because it is part of the chain of cause and effect resulting from the violation, in the circumstances of a specific case (for

example, the intense suffering of a mother owing to the abduction, torture, disappearance or death of her child). In this hypothesis, the harmful result stemming from the indirect effect was not wanted or produced immediately by the violation. In other words, it was not the goal sought by the State agent, nor the motive or reason for the conduct that violated the human rights, as is the deprivation of life, in the previous example.

57. However, once this indirect injury has occurred, health, safety, patrimony, etc. have already been affected and the corresponding right and principle listed in the American Convention has been violated. The person who is thus affected becomes a victim – planned or unexpected, chosen or eventual – of a violation and, accordingly, appears before the international proceeding and benefits from the judicial decisions on reparation of damage. At one remove in the group of subjects who arrive on the scene of international justice is the person who is not explicitly recognized as being the direct or indirect victim, but who suffers certain adverse consequences derived from the violation, and who has, indeed, been victimized by the violation committed. This is the case of those who endure pain, suffering and anguish as a result of the latter (cf. para 225 of the Judgment, which refers to the development made by the Inter-American Court's judgments in the "Street Children" (Villagrán Morales et al.) and Castillo Páez cases. Reparations), and to whom some compensation is granted in reparation for non-pecuniary damage, owing to the suffering that the facts caused them. Hence, in one area of "case law development," there is a category of persons who do not appear under the heading of direct victims and are just beginning to be classified as indirect victims, but who are owed reparation, because they have been prejudiced by the facts submitted to the Court's consideration. In brief, all these subjects are encompassed in the concept of "Beneficiaries" (Chap. XIII of the Judgment) that the Court generally uses, which encompasses direct victims, indirect victims and other persons who are located on the narrow and elusive dividing line between the latter and third parties.

58. The issue to which I am now referring, arises more pointedly in the case of those who endure suffering, which may be very intense, owing to the aggression against another person. Thus, for example, the suffering of a mother owing to what is done to her child; a suffering so natural and evident that it does not even need to be proved – as the case law of the Inter-American Court has maintained – contrary to the case of the suffering caused to other next of kin, the suffering of a mother is presumed juris tantum. If this is so, what substantive difference is there between the suffering caused to the direct victim of the action of the agent and the violation of the mental or moral integrity of the close next of kin, who suffers this as soon as the unlawful conduct of that agent occurs?

59. It is evident that, as I mentioned a few lines previously, we are faced with a fragile, elusive dividing line between those who are recognized as direct or indirect victims, and those who are not always classified as such, but benefit from the reparations decided by the Court. In some cases, this line seems clear; in others, it is particularly hazy. If a person is affected by the violation committed, should they not be considered a victim? – because they truly suffer from the fact that a protected possession is affected and a specific right established in the Convention is infringed – even though, technically, they are classified as an indirect victim? And if they are not victims, how should they be classified, and where does their right to receive some compensation arise from? I return to the example I gave in the preceding paragraph: the closest relative of the person who loses his life or suffers severe harm, endures great pain and suffering as a result of

this and, consequently, his mental integrity (which is one of the possessions protected by Article 5(1) of the American Convention) is affected, even though the agent who perpetrated the violation did not propose to affect this integrity. Even so, through his unlawful conduct, the latter has caused this suffering to occur and, thus, has violated the mental integrity of the third person.

60. The fact that some compensation for the non-pecuniary damage caused to other persons is ordered, regardless of the non-pecuniary damage caused to the immediate and chosen victim, underscores that the former have a legal title that gives them a right to this compensation, a title that relates to the one possessed by those who are expressly considered as victims. The right to compensation arises from a presumption that is the same in both cases: they have suffering harm to their mental integrity, owing to an unlawful external conduct by a State agent, which violates the American Convention.

61. The protection system constructed by the Pact of San José makes no distinction between direct and indirect effects, nor does it take into account their mediate or immediate nature. There is a single source of the harm: the violation of a right; in this case, the right to mental integrity. The juridical effect for the State is the same: the obligation to repair the harm caused unlawfully. The decision of the Court is identical in both cases: the payment of a certain amount as compensation for non-pecuniary damage, to alleviate the pain caused. In view of the foregoing, I believe that the Court's approach is correct when examining this problem in the present case and deciding that "the next of kin of Myrna Mack Chang must be considered victims because the State has violated their mental and moral integrity" (para. 232 of the judgment).

62. It is true that reconsideration of these concepts may extend the universe of victims, but it is also true that many persons are affected by a fact that violates a right and suffer impairment of the juridical possessions that the Convention protects. If we review the case law of the Inter-American Court, we will see that there are a large number of reparations of a compensatory nature motivated by non-pecuniary damage caused immediately to the person who is first the alleged victim and, subsequently, the proven victim. There are also such reparations to subjects whose injury and whose right are verified during the proceeding; and although they are not recognized as victims, they are recognized the characteristic consequences of being a victim: reparation.

X. FREEDOM OF EXPRESSION

63. I believe that, in addition to the violations established by the Inter-American Court, the Myrna Mack Chang case may entail an attack on the freedom of expression embodied in Article 13 of the American Convention on Human Rights, more precisely and relevantly than the Maritza Urrutia case, in which the Inter-American Commission proposed this type of violation. In the latter case, this international Court considered – and I share that decision – that the facts identified as violating Article 13 were more adequately encompassed in other concepts, such as "the right not to be compelled to be a witness against [one]self or to plead guilty" (Article 8(2)g)) and the prohibition to inflict degrading treatment (Article 5(2)) (para. 103 of the Judgment in Maritza Urrutia v. Guatemala, of November 27, 2003).

64. In the Mack Chang case, the reaction of the authorities that finally culled her life arose, according to the information in the case file, from the anthropologist's research and publications on the internal displacements of groups of the civilian population of her country. It was not verified that Myrna Mack had belonged to a rebel fighting group or had taken part in activities of resistance – possibly armed resistance – to the forces of public order. The factor that may have attracted the attention of the State agents who finally intervened in the deprivation of her life was the publication of the results of her research on this issue, which involved a serious questioning of specific Government policies and actions.

65. Indeed, in the chapter on proven facts, it is stated that Myrna Mack Chang, a professional anthropologist, who had obtained her postgraduate degree in England (para. 134.1), "studied the phenomenon of the internally displaced and the Guatemalan Comunidades de Población en Resistencia (CPR) during the civil war years." She was a founding member of the Guatemalan Association for the Advancement of Social Sciences (AVANCSO), created "in order to conduct research into the causes and consequences of the displacements of the rural indigenous communities, the living conditions of the victims of this phenomenon, and Government policies for the displaced." Based on her research, she concluded that "the principal cause of the displacements was the counterinsurgency program," called "Government efforts to resolve these problems minimal, and criticized the Army's policy towards those displaced" (para. 134.2). The same chapter on the proven facts in this case states that "the extrajudicial execution of Myrna Mack Chang was politically motivated, owing to her research activities on the Comunidades de Población en Resistencia (CPR) and the respective policies of the Guatemalan Army. This situation led her to be considered a threat to national security and to the Guatemalan Government" (para. 134.7).

66. Evidently, I am not attempting to examine here the scientific or technical bases for her research work, nor the truth or error of her conclusions. This is entirely beyond the Court's assessment and my comments. What I must stress is that the victim had "freedom of thought and expression," and that this right included "the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of [her] choice" (Article 13(1) of the Convention).

67. Article 13(2) of the Convention establishes the limits to this freedom: respect for the rights and reputation of others, or protection of national security, public order, or public health or morals, which could lead to subsequent responsibilities if they are affected unduly. Even assuming that Myrna Mack's publications had, in some way, represented infringements of these individual or collective assets or rights – which has not been shown – it is evident that the means to punish such excesses should be adapted to the provisions of the law. It is not necessary to weigh the difference between this possible juridical response and the de facto response which occurred.

68. A right or freedom is violated not only when its exercise is absolutely prevented using methods that make it materially impracticable, but also when the conditions are created that try to make it impossible to exercise it, or involve the possessors of the right or freedom in extreme situations that signify, in reality, impediments that cannot be overcome at all or only with difficulty. Access to justice is illusory – and the individual's judicial guarantees are violated –

when the defense of the rights through legal proceedings is subject to charges or requirements that place it outside the reach of individuals (an issue that the Court will examine in the Cantos case), or when measures of intimidation are invoked that instill fear or terror in the potential petitioners, who therefore cease to exercise the rights that they nominally possess.

69. The attack on Myrna Mack Chang had the purpose – as can be seen from the file – of dissuading or punishing her conduct in relation to her research or publications; in other words, of violating the freedom of thought and expression that she nominally enjoyed under domestic legislation and the international norms that I have referred to. The acts of intimidation that the anthropologist Mack Chang endured before her death have been narrated by witnesses in this case, such as Clara Arenas Bianchi, an AVANCSO Board member (para. 126.b), Julio Edgar Cabrera Ovalle, bishop of Quiché (para. 127.a), and Helen Beatriz Mack Chang, the victim's sister (para. 127.d).

70. Furthermore, the repression that she endured also extends to the exercise of the freedom of expression of society as a whole, because its members are prevented from imparting their ideas for fear of suffering consequences such as those that occurred in this case, or are deprived of the possibility of receiving freely the information and ideas of those whose opinions differ from what is considered acceptable by the authorities.

XI. OTHER ISSUES

71. I believe that, in the future case law of the Inter-American Court, other issues may arise that appear in this judgment and in previous ones, or that they engender. For example, this Judgment reiterates the Court's position, followed systematically in numerous judgments, that the amounts it establishes to be delivered as compensation should be returned to the State when they are not claimed by the beneficiaries in a specific period of time, if this is possible. It is worthwhile exploring the possibility of these amounts being applied to other concepts linked to human rights, in accordance with the characteristics of the case referred to in the respective judgement and, to the relevant extent, the approach concerning application of resources to a socially useful end that is closely linked to the victims, which has been outlined in other judgments such as those in the Aloeboetoe (Suriname) and the Mayagna Awas Tigni Community (Nicaragua) cases. It may be considered – although I am not affirming this at the present time – that this destination is more in keeping with the general regime of reparations and the protection of human rights than the simple return to the State of an amount that for a long time has been excluded, owing to the judgment, from regular public expenditure and was attributed, by the judgment, to a purpose linked to the protection of those rights.

72. It will also be interesting to examine some implications of the system of reparations in favor of the victims, since they should be able to enjoy the rights resulting from the unlawful act in the best conditions. In this respect, it is interesting to recall that the inter-American jurisdiction is complementary to the domestic jurisdiction, and only supplements it when the latter does not protect internationally recognized rights effectively. In other words, this jurisdiction intervenes to satisfy the right of individuals – among other related purposes of the greatest transcendence that I will not attempt to examine now – and should not, in any way, signify a reduction in the terms of the subjective rights and their substantive consequences. This idea is included in the

norms of interpretation contained in Article 29 of the Convention. It may be seen, in particular, in subparagraph (b) of this article, which prohibits any interpretation of the Pact of San José that "restrict[s] the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party."

73. In several judgments, the Inter-American Court has referred to national legislation and/or instances of domestic law in order to quantify the financial consequences of the violation committed. Obviously, in these cases, the Court has abstained from formulating a guilty verdict, leaving it to the domestic system to adopt the relevant consequences of the violation committed. To the contrary, it has established the guilty verdict clearly, when this has been pertinent, as corresponds to its jurisdictional obligation. Nevertheless, at the same time, it has recognized that some aspects of that decision may be defined more adequately under national law and by the domestic authorities, as has occurred in cases that involve labor compensation, commercial calculations, determination of possession or ownership, etc., although this obviously does not imply leaving the definition of essential points of the guilty verdict in the hands of third parties or waiving the authority to monitor compliance with its decisions, which is inherent to its jurisdictional mandate and without which it could not comply with the attributes and obligations assigned to it in Articles 33.b), 62(1), 63(1) and 65 of the Convention.

74. In other words, there are considerations of a practical nature, and even of fairness, that justify the possible and appropriate referral of certain aspects to domestic norms and instances, so that they may be implemented within the framework of the declaration of the guilty verdict previously formulated by the international Court. In this respect, the objective application of domestic law could possible improve the victim's situation as regards pecuniary issues. In this case, is it pertinent that the international judgment should obstruct the injured party's possibility of obtaining a more favorable result before domestic legal proceedings, if this is possible under national norms? If the answer to this question is negative, could it then be understood that the Court's decision constitutes a "base" or "minimum limit" of compensation, which could be improved before the domestic instances, when there are grounds in domestic law to achieve this advantage? Is it not possible that the non-pecuniary reparations ordered by the Court may be expanded and improved when the State, by mutual agreement with the beneficiaries – and even without this agreement – determines this expansion or improvement? If so, why cannot the pecuniary reparations also be expanded and improved, should this improvement be obtained at the domestic level, provided that it does not harm the base or limit established in the decision of this international Court?

75. As is its custom, in this judgment, the Inter-American Court has ordered that the amounts which the State must pay for compensation may not be affected by taxes or other charges. This provision, which is invariably included in judgments on reparations, has the legitimate and understandable purpose of preventing the Court's decision from being circumvented by a fiscal or other measure, and the victim or his next of kin, their representatives and legal assistants, being deprived of the compensation established by the Court. I believe that the concept of preserving the amount of the reparation that should reach the hands of the beneficiaries must be firmly maintained.

76. Considering this objective, which I fully share, but also the characteristics of the tax system – which the Court's decision does not question – I consider that, in many cases, it would be possible to accommodate this intention, without excluding the beneficiaries of the compensation from the national fiscal regime. It would be sufficient to avoid the net amount of the compensation to be paid by the State being reduced by taxes. This could be achieved – I mention this as an alternative worth considering – by other procedures than fiscal exclusion. For example, the State could pay a higher amount than the one allocated by the Court, so that, once the tax has been deducted, it will be identical to the amount established in the judgment. The beneficiary of the compensation could also be paid bonifications, as established by the national tax system. This would allow the Court's ruling to be complied with, on the one hand, and respect the domestic fiscal regime, on the other. What is not acceptable is the reduction of the compensation by a tax deduction, which is not compensated by another means in order to reimburse the net value established for the compensation.

77. In this respect, I have stated: "Strictly speaking, it is not a question of the beneficiary – the taxpayer in fiscal terms – remaining outside the State's tax system, but that the compensation owed should not be reduced by this concept. Therefore, it should be understood that the compensation is established in net terms. It would be for the State, if applicable, to order the exemption or to pay a higher amount, so that the amount of the tax could be deducted from this and the total amount of the compensation would remain the same" ("Las reparaciones en el sistema interamericano de protección de los derechos humanos", in García Ramírez, La jurisdicción internacional…, cit., p. 308). The Court formulated some interesting considerations on this point in the Suárez Rosero case, even though, finally, it did not adopt the decision that could be inferred from them, but once again used the traditional formula for its decisions. When deciding that the amounts established for compensation should be paid "promptly and in full," it stated a pertinent general principle: "It is incumbent on the State to exhaust all measures to ensure prompt and effective fulfillment of this obligation, under the conditions and within the time limits established in th[e] judgment and, in particular, to adopt suitable measures to ensure that the legal deductions that [...] financial institutions charge on all monetary transactions shall not abridge the beneficiaries' right to receive the full amounts ordered for them." (ICourtHR, Suárez Rosero case, Interpretation of the judgment on reparations (Art. 67 of the American Convention on Human Rights), Judgment of May 29, 1999, Series C No. 51, para. 45(2)).

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE HERNÁN SALGADO-PESANTES

In the Myrna Mack Chang Case, I have concurred with my colleagues concerning this judgment although my reasoning shows another criterion that I would like to record.

1. During processing of this case, the State took several stands under the common denominator of "institutional responsibility", a situation that was taking place since the

Commission. At the moment of the public hearing before the Court, the State did not accept that its position showed acquiescence, this happened later upon conclusion of the hearing.

2. In this context and pursuant to Article 52(2) of the Rules of Procedure. "the Court, after hearing the opinions of the parties, shall decide about the appropriateness of the acquiescence and its legal effects." In my personal opinion, the Court should deem the delayed State acquiescence inapplicable.

3. Although the acquiescence can take place during any stage of the trial, even before delivering judgment, the acquiescence shall be a useful instrument for the method and promptness of the process, and above all, with regard to human rights it should serve the higher interests thereof. Therefore, Article 54 of the Rules of Procedure stipulates that: "The Court, considering its responsibilities of protecting human rights, can decide that the discussion of the case should go on, despite the conditions indicated in the preceding articles."

4. I think the sub judice case did not contribute to the method and promptness of the process. Upon conclusion of the hearing and the taking of witnesses' statements and of the expert opinion, the existing evidence was enhanced and turned out to be adequate so that the Court judges –with full certainty - rule about this case.

5. The acquiescence under discussion does not help the cause of human rights because the testimonial evidence provides facts the State did not want to accept in its previous procedure, both before the Commission and the Court. These facts had to be recorded in the Court judgment, as agreed upon, and they could not be ignored due to the State delayed acquiescence.

6. In conclusion, the acquiescence by a State should be consequent with the protection of human rights and in accordance with the principle of procedural cooperation governing party conduct before bodies of the Inter-American system for the protection of human rights. Given these conditions before the Court, it would not be necessary to proceed with the merits of the case or adduce testimonial evidence and evidence of opinion. As it is known, this situation has been regularly taking place in the practice of the Court.

7. Finally, and even though it does not concern this case, I would like to express my conviction that for a friendly solution before the Court, the only viable solution, in accordance with the superior interest of human rights, is a previous declaration of acquiescence by the State. There is no other choice.

Hernán Salgado-Pesantes
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE ALIRIO ABREU-BURELLI

When adding my vote to the other Judges of the Inter-American Court of Human Rights, on the judgment of the Myrna Mack Chang vs. Guatemala Case, I would like to submit, separately, the following considerations:

I.

Based on what was narrated on the Judgment, the Inter-American Commission on Human Rights claimed, in its application, that the State of Guatemala is responsible for an arbitrary deprivation of the right to life of Myrna Mack, since her murder, perpetrated on September 11, 1990, was a consequence of a military intelligence operation arising from a previous and careful plan by the high command of the Chief of Staff. Said plan aimed at, in the first place, disguising the abettors and perpetrators of the murder, obstructing the police investigation, and leaving the murder as much as possible immersed in impunity. The Commission added that the State has not made used of all the available means to undertake a serious and effective investigation for a complete elucidation of the facts, the process, the prosecution and punishment of the responsible parties, both abettors and perpetrators within a reasonable period. This situation has been aggravated by the existence and tolerance by the Guatemalan State of mechanisms of fact and law preventing the administration of justice.

The State has taken, in the proceeding before the Court, a complex attitude toward the application filed by the Commission. First, it objected to preliminary objections for not depleting the resources of internal jurisdiction, nullity of the subject of the request, lack of veracity regarding the fulfillment of the State duty to persecute and punish the stated violation, lack of solution of State statements regarding variation and revision of the contents of the report by the Inter-American Commission on Human Rights, that led to the filing of the application before the Court, lack of assessment of State implementation of recommendations set forth in the report by the Inter-American Commission on Human Rights, a wrong and extensive interpretation of the recognition by the State of Guatemala; inadmissibility of the application because the State did not solve issues related to the depletion of resources of the internal jurisdiction during the procedural stage corresponding to the declaration of admissibility of the case by the Inter-American Commission on Human Rights, conflict of legal systems (national vs. Inter-American regional), to the detriment of the right conferred on the State and the unions, and wrong interpretation by the Inter-American Commission on Human Rights regarding remedies, recourses, and the observance of the national legal system, represent by themselves a violation of the human right to administer justice.

On February 18, 2003, the State dropped the preliminary exceptions, even when it sustained as the leading defense to be considered, in the final judgment, its allegation about “the wrong and extensive interpretation of the recognition by the State.”

When dropping the preliminary exceptions, the State recognized the acceptance of the following facts:

a) the violation to the rights to life, integrity, and dignity of the human person in the case of Myrna Mack Chang, on September 11, 1990, whose abetment, guilt, and direct material liability,

was declared by the court having jurisdiction in the person of Noel de Jesús Beteta Alvarez and who was identified by the same court as the State agent at the moment of the wrongdoing;
b) the State institutional liability for lawbreaking by the State agent Noel de Jesús Beteta Alvarez in the facts herein, pursuant to Article 3 from the Political Constitution of Guatemala;
c) The State institutional liability when, due to non compliance with Article 3 of the Political Constitution of Guatemala and Article 4 of the American Convention, it did not guarantee the right to life and integrity of Myrna Mack Chang; and
d) the institutional State liability for a slow process that started on February 1994 aimed at the identification and punishment of the abettors of the violation of the right to life of Myrna Mack Chang and that extended beyond the reasonable period foreseen by numeral 1 of Article 8 of the American Convention and that represent, per se, a violation of the rights to access to justice and with respect to the principles of due process and due guarantees foreseen by the same numeral 1º of Article 6 of the American Convention.

In the light of the question asked at the public hearing by one of the Court judges to the State agent about the scope of the acceptance of his liability for the facts charged in the application, he responded that it was not a case of acquiescence since, in the case, "there is not such a concept." The ambiguity in the statement of the acceptance of the State facts, made the Court to order the continuity of the probative process, whose result was, according to the judgment, an absolute proof of the circumstances leading to the death of Mrs. Myrna Mack Chang with a direct involvement of State agents, hindering of the investigation of the facts, legal ineffectiveness for the prosecution and punishment of the liable parties, with a resulting violation of Articles 4, 5, 8, 25, all pursuant to Article 1(1) of the American Convention on Human Rights.

II.

In the public hearing on February 18, 2003, the Court heard the testimony of Lucrecia María Hernández Mack, daughter of the victim, who declared that "after the death of her mother, justice is a pursuit intrinsic to her family. She felt outraged after finding out that the State, that should protect them, killed her mother because it was not a member of the State who happened to kill her, but the murder was ordered by the Department of Presidential Security of the Chief of Staff of Guatemala, and her country, especially the courts of law, have not done anything to undertake a due and prompt judicial proceeding...; the little progress made in her mother's case has not been the result of the State good faith..., on the contrary, the State has done everything possible to hinder the case, since they murdered the police officer in charge of the investigation and pointed to Noel de Jesús Beteta as the perpetrator, several appeals and legal protections have been filed, thus going beyond the applicable deadlines to solve them, her family, the attorneys, and AVANCSO personnel and the Myrna Mack foundation have been victims of threats and intimidation."

As stated before, these facts: involvement of senior government officials as the murder abettors, a lack of effective and timely justice, impunity of one or some perpetrators, and with respect to all the abettors, were established during the probative debate, and the statement by Lucrecia Hernández Mack that "the State, that should protect them, killed her" was supported as irrefutable truth.

On February 24, 2003, the Ministry of Foreign Affairs of Guatemala stated, in a brief addressed to the Court, the "true scope of the acceptance of Guatemala's liability" in the Mack Chang case. In regards to the matter, he stated: "the order I gave (to the State agent), was to simply accept the facts set forth in the application and, in accordance with the general principle stated in Article 52 of the Rules of Procedure of the Court, inform to this court of law that Guatemala accepts unconditionally its international liability in the case," to conclude that "under these special circumstances, I allow myself to request… the real intention of absolute acquiescence by the Government of Guatemala, to be on record in the present communication."

III.

The gravity of cases like this, where senior government officials charged as abettors, by express orders of physically eliminating a given person on ideological grounds, is not attenuated by internal conflicts, at a given moment, that might affect a country. There are elementary constitutional, or international law or humanitarian international law or ius cogens, rules proscribing, in absolute terms, extrajudicial death. There is not a justification for an arbitrary death, even less when State agents perpetrate it. Almost every country in the world has assumed in its political constitution, and through international treaties, the obligation to respect the right to life and the other fundamental rights of the human person and to create the legal mechanisms and necessary guarantees for complying with said obligation. It is easy to understand the feelings of pain and impotence of a person and his/her next of kin, due to the maximum damage by the State that was supposed to protect them. It is possible to understand the indignation of a daughter who relates her mother's murder in the hands of senior State officials and who is afraid that the crime will not be punished as a result of abetting, tolerance, or inefficiency of the authorities of the State in charge of administering justice.

The State recognized the application facts and, particularly, the facts referred to by Lucrecia María Hernádez Mack, when stating her "real intention of absolute acquiescence." This acquiescence, stated very late after the evidence hearing, did not have the effect of concluding the process on the merits. However, it can be interpreted, beyond its court effects, as reparation for Myrna Mack Chang's next of kin for the violation to her right to life and the direct violations of the rights due to hindering and obstruction of a proper administration of justice. Besides its interpretations as a reparation offered by the State, the acquiescence can become highly relevant as a purpose and guarantee that the fact will not be repeated.

Even though it is true that this is not the only case in the American continent of a violation of the right to life of a person by senior government officials, or due to several extermination policies, the peculiarity of this process is that it has involved a full acceptance of these facts by the State. It is suitable to repeat that this acceptance can be understood as part of a process of reconciliation and a real establishment of a law and guarantee system characteristic of a democracy. The Court has stated repeatedly that democracy increasingly needs a bigger recognition of human rights, and that the Rule of Law, democracy, and personal liberty are consubstantial, particularly, with the protection regime set forth in the Convention. . "In a democratic society –as stated by the Court- the rights and liberties of the human person, his guarantees and the Rule of Law, represent a triad whose components can make sense and be defined as a function of the others."

I consider that the State recognition that senior government officials planned, as abettors, the death of Myrna Mack Chang, can become especially relevant if this conduct, understood as means of reparation and a guarantee that the fact will not be repeated by representatives from the Executive Branch and, thus, State representatives, is equally assumed by other government Branches responsible for punishing violations of human rights motivating this process.

Only a State of justice and respect for human dignity shall guarantee peace. Only when States fully assume, facing the international community and the individual, their liability and offer the guarantees to preserve the rights of the human person, can facts as serious as the ones herein be avoided.

Alirio Abreu-Burelli
Judge

Manuel E. Ventura-Robles
Secretary

REASONED AND PARTIALLY DISSENTING OPINION OF JUDGE ARTURO MARTÍNEZ-GÁLVEZ

In my capacity as ad hoc Judge for the present Myrna Mack Chang case, whose application was filed by the Inter-American Commission on Human Rights against the State of Guatemala, I issue the following ruling:

I. In the present matter, regarding the acquiescence by the State of Guatemala, the Court, however, assessed the evidence of the facts that due to this procedural act stopped being controversial, since the acquiescence was absolute and unconditional. I think knowing and assessing the evidence was unnecessary, since, as indicated; with said acquiescence controversial facts were no longer present. The State liability was fully determined by the acceptance of the facts and pretensions of the plaintiff. The acquiescence as the act of conforming to the application inevitably can be interpreted as the proceeding connection of the application to the facts and the plaintiff pretension, is the submission or acceptance by the defendant, complying with the pretension stated by the plaintiff in his application. Subparagraph 2 of Article 52 of the Rules of Procedures of the Court, as invoked by the Court, regulates this procedural body contained in the Chapter titled “Early Termination of the Proceedings”, with the immediate effect of, precisely, an early termination of the proceedings.

In Articles 32 and 33 of the Rules of Procedure of the Court, the application factors are stated, and one of them is the statement of the facts and evidence for each of them.Therefore, the acquiescence is unmistakably the acceptance of said facts, despite the proceeding phase, with the immediate effect of an early termination of the proceedings or as indicated by Article 52, the dismissal of the case. Technically, it cannot be said that the proceeding contradiction has been filed, which in the international context has absolute validity.

Certainly Article 54 contained in this Chapter states that the Court, considering its responsibilities of protecting human rights, it can make the decision of pursuing the discussion of

the case, even in the light of the suppositions set forth in Articles 52 and 53, but their interpretation, in my opinion, should be done in the sense that the Court can make the decision of pursuing the discussion of the case if, despite the acquiescence, it is necessary and convenient for a better understanding of the facts, to adopt said power, but in the sub judice case, there were not new elements subject to discussion, since the acquiescence is absolute and unconditional. If there were new facts, they would be subject to an application revision, which, in the proceedings, would have been untimely. The facts set forth in the application were extensive, and the sued State conformed to them.

II. The Court in the judgment, in the chapter corresponding to the assessment of the evidence, relies upon the reports of the Commission on Historical Elucidation and the Interdiocesan Project for the Recovery of Historical Memoirs; however, I think said documents do not represent by themselves facts stated therein, even though it is known that the Court in previous rulings has granted them probative value. Moreover, the State acquiescence proceeding, in itself, cannot be categorized as probative documents, on which to base an unfavorable ruling for the defendant.

III. The Court considers that there has been a delay in the administration of justice, since there is in the proceedings a considerable amount of presentation of actions, from both parties, numerous requests for objections, amnesty, and unconstitutionality; moreover, several of the orders repelling said actions were appealed, both in the processing of the actions and their corresponding appeals, such as non compliance of proceeding time limits and jurisdiction debates in the prosecution of the responsible parties. Concerning this appraisal of the time elapsed, it is the result of proceeding activity by both parties, the gravity of the wrongdoing, its proceeding complexity, and the interpretations of the annulled Penal Procedural Code and the new Penal Procedural Code by the jurisdictional bodies and the parties themselves, an effective exercise coinciding with the prosecution of the perpetrated fact, and moreover, their interest in proving the truth thereof.

IV. With respect to the operative paragraphs of the judgment, I think the sums to be paid on account of damages are very high considering that the State of Guatemala has a high budget deficit and is suffering from acute poverty. The economic efforts by the plaintiff in the aftermath of the proceedings are evident, but it is also fair to consider that damages must be in accordance with the financial situation of the State and the overwhelmed taxpayer bearing the tax burden.

Arturo Martínez-Gálvez
Judge ad hoc

Manuel E. Ventura-Robles
Secretary