ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 27, 2003

CASE OF THE "WHITE VAN"
(PANIAGUA MORALES *ET AL.* CASE)*
***V.* GUATEMALA**

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The March 8, 1998 Judgment on the merits issued in the *Case of the "White Van" (Paniagua Morales et al. Case) vs. Guatemala* by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") in which it:

> 1. Rule[d] that the State of Guatemala violated Article 7 of the American Convention on Human Rights in relation to its Article 1(1) to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez, Ms. Doris Torres-Gil and Mr. Marco Antonio Montes-Letona.
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> 2. Rule[d] that the State of Guatemala violated Article 4(1) of the American Convention on Human Rights in relation to its Article 1(1), to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López.
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> 3. Rule[d] that the State of Guatemala violated Articles 5(1) and 5(2) of the American Convention on Human Rights in relation to its Article 1(1), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López, Mr. Augusto Angárita-Ramírez and Mr. Oscar Vásquez.
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> 4. Rule[d] that the State of Guatemala violated Article 8(1) of the American Convention on Human Rights in relation to its Article 1(1), to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos, Mr. Manuel de Jesús González-López and Mr. Erik Leonardo Chinchilla.
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> 5. Rule[d] that the State of Guatemala violated Article 25 of the American Convention on Human Rights in relation to its Article 1(1), to the detriment of Ms. Ana Elizabeth Paniagua-Morales, Mr. Julián Salomón Gómez-Ayala, Mr. William Otilio González-Rivera, Mr. Pablo Corado-Barrientos and Mr. Manuel de Jesús González-López.
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> 6. Rule[d] that the State of Guatemala must conduct a genuine and effective investigation to determine the persons responsible for the human rights violations referred to in th[e] Judgment and, where appropriate, punish them.

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* Judge Salgado Pesantes informed the Court that, due to reasons of *force majeure,* he would be unable to participate in the deliberation and signing of the instant Order.

[...]

7. Rule[d] that the State of Guatemala is obliged to make reparation for the consequences of the declared violations and pay fair compensation to the victims and, where appropriate, to their next of kin.

[...]

8. Order[ed] the initiation of the reparations phase and entrust[ed] the pertinent action to its President.

2. The Judgment on reparations issued in the instant case by the Inter-American Court on May 25, 2001, in which it decided:

1. To order the State of Guatemala to pay:

A. For Anna Elizabeth Paniagua Morales

a. US$108,759.00 (one hundred and eight thousand seven hundred and fifty-nine United States dollars)[1], as compensation for the loss of earnings of Anna Elizabeth Paniagua Morales, and this amount shall be given to her daughter, María Elisa Meza Paniagua;

b. US$10,000.00 (ten thousand United States dollars), for the expenses incurred by the family of Anna Elizabeth Paniagua Morales, and this amount shall be given to María Ildefonsa Morales Chávez, as the victim's mother so that she may distribute it in accordance with the expenses that the family incurred; and

c. US$54,000.00 (fifty-four thousand United States dollars), for non-pecuniary damage caused to Anna Elizabeth Paniagua Morales and to her next of kin, this global amount to be distributed as follows: US$20,000.00 (twenty thousand United States dollars) for María Elisa Meza Paniagua (the victim's daughter), US$15,000.00 (fifteen thousand United States dollars) for María Ildefonsa Morales Chávez (mother), US$5,000.00 (five thousand United States dollars) for Antonio Paniagua (father), US$5,000.00 (five thousand United States dollars) for Blanca Lidia Zamora (the victim's sister-in-law), US$5,000.00 (five thousand United States dollars) for Alberto Antonio Paniagua Morales (brother) and US$4,000.00 (four thousand United States dollars), to be distributed equally between the siblings: Blanca Beatriz, Hugo Morani, Elsa Carolina and German Giovanni, all Paniagua Morales.

B. For Julián Salomón Gómez Ayala:

a. US$25,855.00 (twenty-five thousand eight hundred and fifty-five United States dollars), as compensation for the loss of earnings of Julián Salomón Gómez Ayala, and this amount shall be divided equally and given to the victim's son, Julio Salomón Gómez Flores, and to his companion, Bertha Violeta Flores Gómez;

b. US$3,000.00 (three thousand United States dollars), for the expenses incurred by the next of kin of Julián Salomón Gómez Ayala, and this amount shall be divided equally and given to the victim's parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, and his companion, Bertha Violeta Flores Gómez; and

c. US$27,000.00 (twenty-seven thousand United States dollars) as compensation for the non-pecuniary damage caused to Julián Salomón Gómez Ayala and to his next of kin, this global amount to be distributed as follows: US$20,000.00 (twenty thousand United States dollars), distributed in equal parts to Bertha Violeta Flores Gómez, the victim's companion, Julio Salomón Gómez Flores, his son, and his parents, Petronilo Gómez Chávez and Blanca Esperanza Ayala de la Cruz, and the amount of US$7,000.00

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[1] Paragraph 225 of the May 25, 2001 Judgment on reparations in the *"White Van" (Paniagua Morales et al.) Case* provides that: "[t]he State may comply with its obligations by making the payments in United States dollars or the equivalent in Guatemalan currency, using the exchange rate between these two currencies in force in the New York, United States, market on the day before the payment, to make the calculation."

(seven thousand United States dollars) to be distributed in equal parts to the siblings: Danilo Abraham, Deifin Olivia, Ingrid Elizabeth, Israel, Jorge Isaías, Douglas Moises and Lidia Marisa, all Gómez Ayala.

C. For William Otilio González Rivera:

a. US$32,545.00 (thirty-two thousand five hundred and forty-five United States dollars) as compensation for the loss of earnings of William Otilio González Rivera, and this amount shall be given to his alleged son, as established in paragraphs 133 to 135 of th[e] judgment;

b. US$2,000.00 (two thousand United States dollars) for the expenses incurred by the next of kin of William Otilio González Rivera, and this amount shall be given to Salvador González Najarro, as the victim's father, so that he may distribute this amount in accordance with the expenses that the family incurred; and

c. US$25,000.00 (twenty-five thousand United States dollars) for the non-pecuniary damage caused to William Otilio González Rivera and his next of kin, this global amount to be distributed as follows: US$20,000.00 (twenty thousand United States dollars), allocated in equal parts to Salvador González Najarro and María Asunción Rivera Velásquez, the victim's parents and to his alleged son, as established in paragraph 145 of the [...] judgment; and the amount of US$5,000.00 (five thousand United States dollars), to be distributed in equal parts between the siblings Santos Hugo, José Alfredo, Julio Moises, Anatanahel and Leidy Rosibel, all González Rivera.

D. For Pablo Corado Barrientos:

a. US$32,814.00 (thirty-two thousand eight hundred and fourteen United States dollars) as compensation for the loss of earnings of Pablo Corado Barrientos, and this amount shall be given to Juana Barrientos Valenzuela, the victim's mother.

b. US$2,000.00 (two thousand United States dollars) for the expenses incurred by the next of kin of Pablo Corado Barrientos, and this amount shall be given to Juana Barrientos Valenzuela, as the victim's mother.

c. US$22,000.00 (twenty-two thousand United States dollars) for the non-pecuniary damage caused to Pablo Corado Barrientos and his next of kin, this global amount to be distributed as follows: US$20,000.00 (twenty thousand United States dollars), allocated to his mother, Juana Barrientos Valenzuela; and the sum of US$2,000.00 (dos thousand United States dollars) to be distributed equally between the siblings, Francisca and Tino Corado Barrientos.

E. For Manuel de Jesús González López:

a. US$78,372.00 (seventy-eight thousand three hundred and seventy-two United States dollars) as compensation for the loss of earnings of Manuel de Jesús González López, to be distributed as follows: US$39,186.00 (thirty-nine thousand one hundred and eighty-six United States dollars) shall be given to his wife, María Elizabeth Chinchilla, and US$39,186.00 (thirty-nine thousand one hundred and eighty-six United States dollars) shall be distributed in equal parts between the victim's three children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla; in other words, US$13,062.00 (thirteen thousand and sixty-two United States dollars) each.

b. US$3,000.00 (three thousand United States dollars) for the expenses incurred by the next of kin of Manuel de Jesús González López, and this amount shall be given to María Elizabeth Chinchilla.

c. US$40,000.00 (forty thousand United States dollars) for the non-pecuniary damage caused to Manuel de Jesús González López and to his next of kin; this global amount shall be given, in equal parts to María Elizabeth Chinchilla, the victim's wife and to his children, Karen Paola, Silvia Argentina and Manuel Alberto, all González Chinchilla; in other words, US$10,000.00 (ten thousand United States dollars) each.

F. For Erick Leonardo Chinchilla, a reparation in the amount of US$8,000.00 (eight thousand United States dollars), [...] to be given to his mother, María Luisa Chinchilla Ruano.

> G. For Oscar Vásquez and Augusto Angárita Ramírez, a reparation in the amount of US$8,000.00 (eight thousand United States dollars), [...] to be given to each of the victims or, if applicable, to their heirs.
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> H. For Doris Torres Gil and Marco Antonio Montes Letona, a reparation in the amount of US$3,000.00 (three thousand United States dollars), [...] to be given to each of the victims or, if applicable, to their heirs.
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> 2. That the State of Guatemala must investigate the facts that generated the violations of the American Convention on Human Rights in this case, and identify and punish those responsible.
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> 3. That the State of Guatemala must provide the resources and adopt the other necessary measures for the transfer of the mortal remains of Pablo Corado Barrientos and his subsequent burial in the place chosen by his next of kin [...]
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> 4. That, in accordance with Article 2 of the American Convention on Human Rights, the State of Guatemala must adopt, in its internal legislation, the legislative, administrative and any other kind of measures necessary to set up the register of detainees [...], guarantee its reliability and publicize it.
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> 5. That the State of Guatemala must, in fairness, pay, in reimbursement of the expenses and costs generated in the inter-American jurisdiction, the amount of US$20,000.00 (twenty thousand United States dollars) to the lawyer, Mark Martel, representative of the next of kin of the victims, Anna Elizabeth Paniagua Morales, Oscar Vásquez and Manuel de Jesús González López; the amount of US$2,000.00 (two thousand United States dollars) to the lawyer, René Argueta Beltrán, representative of the next of kin of Erick Leonardo Chinchilla and Pablo Corado Barrientos; and the amount of US$1,000.00 (one thousand United States dollars) to the lawyer, Avilio Carrillo Martínez, representative of the next of kin of William Otilio González Rivera.
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> 6. That the State of Guatemala must comply with the measures of reparation ordered in the [...] judgment within six months of its notification.
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> 8. That it shall monitor compliance with th[e] judgment and shall close this case once the State of Guatemala has fully complied with all its provisions.

3. The December 12, 2001 brief in which the State of Guatemala (hereinafter "the State" or "Guatemala") asked the Court for the addresses of the beneficiaries of the reparations to "pay them the amounts of money [...] for reparations" in the case. On that same date the Secretariat of the Court (hereinafter "the Secretariat") forwarded the request to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and to the victims or, if applicable, to their next of kin and their representatives, informing them that December 17 of that year had been set as the deadline for them to submit the information requested.

4. The December 14, 2001 note by the State, in which it reported that the respective funds to comply with the pecuniary reparations ordered by the Court in the instant case "ha[d] been appropriated," and therefore the State "ha[d]

summoned the beneficiaries accordingly," and that a communiqué would also be published in a widely read newspaper.

5. The December 18, 2001 note by the Secretariat in which, under instructions by the President of the Court (hereinafter "the President"), it pointed out to the State certain inconsistencies and omissions in the names listed in the communiqué that it was going to publish, regarding the information on beneficiaries of the reparations available in the file at the Court. The State replied, in its December 20, 2001 note, that Francisco Corado Barrientos, Avilio Carrillo Martínez and René Argueta Beltrán "[were] not included in the communiqué [because] they had already been located."

6. The December 17 and 21, 2001 communications by the Inter-American Commission and those by Mark Martel –representing some of the next of kin of the victims-, on December 17 and 18, 2001, in which they sent some of the addresses requested for the beneficiaries (*supra* Having Seen 3). In its last communication, the Commission pointed out that it was "under the understanding that [the State was] in contact or ha[d] the necessary information to communicate with [...] the beneficiaries [...] and that a published 'summons' in the media in those cases [wa]s neither useful nor necessary." In this regard, the Commission deemed it advisable and important to avoid unnecessary publicity mentioning the beneficiaries by their name, since many of the next of kin of the victims had referred, in their statements as witnesses before the Court, to feelings of insecurity and fear, and due to the fact that those responsible for the facts were at large. However, it stated that it deemed publicity important regarding the Judgment and compliance with it, "in the framework of the process of elucidation of past human rights violations." Finally, with respect to the three beneficiaries whom it had not yet been possible to contact,[2] and "in accordance with what has been done in other, similar situations," the Commission proposed that a trust fund be set up in each of their names for at least one year, with the respective amount of money for their compensation.

7. The February 6, 2002 communication by Mark Martel, in which he forwarded a copy of the brief that he had sent to the State, in which he pointed out that there had been delays in the payment of compensation.

8. The February 8, 2002 note by the Secretariat in which, under instructions by the President, it asked the State to send information on the measures adopted to comply with the orders of the Court in its Judgment on reparations (*supra* Having Seen 2).

9. The February 19, 2002 brief by the State, in which it reported that there had been "a certain delay in the timely payment of economic reparations," due to the difficult financial situation of the State and the difficulties to locate the beneficiaries. However, it stated that 60.6 per cent had been paid, while 21 per cent "[wa]s in the form [...] of nine banker's drafts against the Citibank of New York, pending only to be sent;" and that 15.4% was "in the stage of being deposited in the national commercial banking system, pursuant to the orders of the Court, and these payments c[ould] be made once the beneficiaries [we]re legally empowered to receive them," while 3 per cent was the amount for beneficiaries whose domicile had not yet been ascertained. The State specified that the bank deposit of the money for compensation due to the two minors identified and the alleged son of William Otilio González Rivera had not yet been made for lack of the pertinent legal

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[2] Augusto Angárita Ramírez, Doris Torres Gil and Marco Antonio Montes Letona.

documentation. In the latter case, it noted that this was specifically due to the lack of "documents supporting his legal existence," and that said funds were deposited in an account in the Bank of Guatemala (Central Bank). With respect to the transfer and burial of the remains of Pablo Corado Barrientos, the State reported that his next of kin "ha[d] not yet reached a decision on the matter." Regarding the measures of reparation ordered by the Court with respect to domestic law, the State pointed out that it had "forward[ed] copies of the judgments [rendered by the Court] to the President of the Supreme Court of Justice and to the Minister of the Interior, asking them to make their observations and suggesting that they adopt the pertinent measures."

10. The February 25, March 15, April 29, May 1 and 8, 2002 notes by the next of kin of Ana Elizabeth Paniagua, in which they made their observations regarding the compensation to be paid to them. The State sent its observations on said communications on March 12 and April 4, 2002.

11. The February 11, 2003 communication by the Secretariat in which, under instructions by the President, it asked the State to send a detailed report on compliance with the Judgment on reparations. The Secretariat also reiterated said request to the State on July 29, 2003.

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Guatemala has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since May 25, 1978 and it recognized the contentious jurisdiction of the Court on March 9, 1987.

3. In view of the definitive and unappealable nature of the judgments of the Court, as set forth in Article 67 of the American Convention, the State must promptly and completely comply with them within the term set for this purpose.

4. Article 68(1) of the American Convention provides that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The treaty obligations of the States Party are binding for all branches or bodies of the State.

5. The obligation to comply with the decisions of the Court is in accordance with a basic principle of law regarding the international responsibility of the State, backed by international case law, according to which the States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*). In addition, as this Court has stated and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they cannot avoid fulfilling their previously established international obligation due to domestic reasons.[3]

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[3] *Cf.*, *Bulacio Case.* Judgment of September 18, 2003. Series C No. 100, paras. 116-118; *Benavides Cevallos Case. Compliance with judgment.* Order of the Court of September 9, 2003, Considering three and six; and *Baena Ricardo et al. Case. Compliance with judgment.* Order of the Court of June 6, 2003, Considering four.

6. In its June 13, 2001 note, the Secretariat notified the State of the Judgment on reparations, for which reason the term to comply with it expired on December 13, 2001, except with respect to identification of the alleged son of William Otilio González Rivera, for which the Commission and the representatives had up to one year from the date of notification of the judgment,[4] that is, until June 13, 2002.

7. After analyzing the information supplied by the State, by the victims or their next of kin or their representatives and by the Commission, the Court deems it indispensable for the State to inform the Court about the following matters with respect to compliance:

a) the steps taken to investigate the facts in the instant case and to identify and punish those responsible for what happened to the victims *(Operative paragraphs six of the March 8, 1998 Judgment on the Merits and two of the May 25, 2001 Judgment on Reparations);*

b) the steps taken with respect to transfer of the mortal remains of Pablo Corado Barrientos and their subsequent burial at the place chosen by his next of kin *(Operative paragraph three of the May 25, 2001 Judgment on Reparations);*

c) whether to date any legislative, administrative or other measures have been adopted to ensure the reliability and public nature of the record of detainees *(Operative paragraph four of the May 25, 2001 Judgment on Reparations)*; and

d) whether the State had made all payments of compensation for non-pecuniary and pecuniary damage as well as for legal costs and expenses *(Operative paragraphs one and five of the May 25, 2001 Judgment on Reparations)*.

8. Providing sufficient information on compliance with the Judgment is a duty of the State that has been repeatedly established by this Court.[5]

9. The Court will consider the general status of compliance with its judgments on the merits (March 8, 1998) and on reparations (May 25, 2001) once it receives the aforementioned report by the State and the respective observations of the victims or, if applicable, of their next of kin and their representatives and of the Inter-American Commission.

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[4] Case of the"*White Van" (Paniagua Morales et al.). Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 135.

[5] *Cf., Neira Alegría et al. Case. Compliance with judgment*. Order of the Court of November 28, 2002, Considering nine; *El Amparo Case. Compliance with judgment*. Order of the Court of November 28, 2002, Considering eight; *Loayza Tamayo Case*. *Compliance with judgment*. Order of the Court of November 27, 2002, Considering eight; *Castillo Páez Case*. *Compliance with judgment*. Order of the Court of November 27, 2002, Considering nine; *Garrido and Baigorria Case. Compliance with judgment*. Order of the Court of November 27, 2002, Considering eight; *Blake Case*. *Compliance with judgment*. Order of the Court of November 27, 2002, Considering nine; *Caballero Delgado and Santana Case. Compliance with judgment.* Order of the Court of November 27, 2002, Considering six and seven; and *Baena Ricardo et al. Case. Compliance with judgment*. Order of the Court of June 21, 2002, Considering two; *Baena Ricardo et al. Case*. *Compliance with judgment.* Order of the Court of June 6, 2003, Considering ten and twelve; and *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.)*. *Compliance with judgment.* Order of the Court of November 28, 2003, Considering ten.

10. The Court will assess compliance with its judgments on the merits and on reparations once it receives the aforementioned report by the State and the respective observations of the victims or, if applicable, of their next of kin and their representatives and of the Inter-American Commission on said measures of reparation (*supra* Considering seven).

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its authority to monitor compliance with its decisions and pursuant to the provisions of Articles 67 and 68(1) of the American Convention on Human Rights, Article 25(1) of the Statute of the Court and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That the procedure to monitor compliance with the points stated in Considering seven of the instant Order will remain open.

AND DECIDES:

2. To exhort the State to adopt such measures as may be necessary to effectively and promptly comply with the reparations ordered in the March 8, 1998 Judgment on the merits and the May 25, 2001 Judgment on reparations, compliance with which is pending, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

3. To order the State to submit a detailed report, no later than April 1, 2004, stating all measures adopted to investigate what happened to the victims in the instant case; the steps taken with respect to transfer of the mortal remains of Pablo Corado Barrientos and their subsequent burial at the place chosen by his next of kin; the legislative, administrative or other measures adopted to ensure the reliability and public nature of the detainee records; and the measures adopted for payment of compensation for pecuniary and non-pecuniary damage as well as for legal costs and expenses, in accordance with operative paragraphs one and five of the Judgment on reparations, and as set forth in Considering seven of the instant Order.

4. To order the Inter-American Commission on Human Rights, as well as the victims or, if applicable, their next of kin and their representatives to submit their observations to the report by the State mentioned in the previous operative paragraph within two months of the date of receipt thereof.

5. To continue monitoring compliance with the March 8, 1998 Judgment on the merits and the May 25, 2001 Judgment on reparations in the *Paniagua Morales et al. Case*.

6. To notify the instant Order on compliance with Judgment to the State, the Inter-American Commission on Human Rights and the victims or, if applicable, to their next of kin and their representatives.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary