Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	La Cantuta v. Peru
Doc. Type:	Judgement (Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia-Ramirez; Vice President: Alirio Abreu-Burelli; Judges: Antonio A. Cancado Trindade; Cecilia Medina-Quiroga; Manuel E. Ventura-Robles; Fernando Vidal-Ramirez Judge Oliver Jackman informed the Court, that, for reasons beyond his will, he would not be able to attend the LXXIII Regular Session, wherefore he did not take part in the deliberation and passing of this Judgment. Judge Diego Garcia-Sayan, a Peruvian national, excused himself from hearing this case, pursuant to Article 19(2) of the Statute of the Court and Article 19 of its Rules of Procedure, since in his capacity as practicing Minister of Justice of Peru in 2001 he was a party to the instant case as Agent of the Peruvian State during its proceeding before the Inter-American Commission on Human Rights. Therefore, on March 31, 2006 the Secretariat informed the State that, pursuant to the provisions of Article 10 of the Statute of the Court and Article 18 of its Rules of Procedure, it was entitled to appoint a judge ad hoc who would take part in the consideration of the case, to which purpose the State appointed Fernando Vidal-Ramirez.
Dated:	29 November 2006
Citation:	La Cantuta v. Peru, Judgement (IACtHR, 29 Nov. 2006)
Represented by:	APPLICANTS: APRODEH, CEAPAZ and CEJIL

In the case of La Cantuta,

The Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56, and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I. INTRODUCTION TO THE CASE

1. On February 14, 2006, pursuant to Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application before the Court against the State of Perú (hereinafter the "the State" or "the Peruvian State"), originated in Petition No. 11,045 and received by the Secretariat of the Commission on July 30, 1992. In the application the

Commission requested the Court to declare that the State had violated the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Judicial Guarantees), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the prejudice of Hugo Muñoz-Sánchez, Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, and Juan Gabriel Mariños-Figueroa. Furthermore, the Commission requested the Court to declare that the State is responsible for violating Article 5 (Right to Humane Treatment), Article 8 (Right to Judicial Guarantees), and Article 25 (Right to Judicial Protection) of the American Convention in relation to Article 1(1) thereof, to the prejudice of the alleged victims' next of kin. The Commission further requested the Court to declare that the State has violated Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Adopt Domestic Measures) of the Convention, to the prejudice of the alleged victims.

2. The application is based on the alleged "violation of the human rights of Professor Hugo Muñoz-Sánchez and of students Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, and Juan Gabriel Mariños-Figueroa [...] as well as of the rights of their next of kin," on the grounds of the alleged kidnapping of the alleged victims from the Universidad Nacional de Educación "Enrique Guzmán y Valle" (Enrique Guzmán y Valle National University), located in La Cantuta, Lima, in the predawn hours of July 18, 1992, an operation carried out by members of the Peruvian Army, "who [allegedly] kidnapped the [alleged] victims, some of whom disappeared and were allegedly summarily executed;" as well as on the alleged impunity regarding those events as a result of the failure of the State to conduct an effective investigation into the facts. The Commission alleges that "this case shows the abuses committed by the Military, as well as the systematic practice of committing violations of human rights, among them, forced disappearances and extra-legal executions, by State agents on instructions from military and police higher officers, as the Inter-American Commission and the Comisión de la Verdad y la Reconciliación del Perú (Truth and Reconciliation Commission of Perú) have stated since the early '90s."

3. Furthermore, the Commission submitted to the consideration of the Court the matter of the alleged damage caused by the State to the alleged victims' next of kin and, pursuant to Article 63(1) of the Convention, requested the Court to order the State to adopt the reparation measures requested in the application. Lastly, the Commission requested the Court to order the State to pay the costs and expenses arising from the domestic legal proceedings and from the proceedings before the Inter-American System of Human Rights.

II. COMPETENCE

4. The Court has jurisdiction to hear the instant case pursuant to Articles 62(3) and 63(1) of the American Convention, as Perú has been a State Party to the Convention since July 28, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981.

III. PROCEEDING BEFORE THE COMMISSION

5. On July 30, 1992 Gisela Ortiz-Perea, Rosario Muñoz-Sánchez, Raida Cóndor, José Oyague and Bitalia Barrueta de Pablo filed a petition before the Inter-American Commission on the grounds of the alleged detention occurred on July 18, 1992 and subsequent disappearance of Hugo Muñoz-Sánchez, Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, and Juan Gabriel Mariños-Figueroa. On August 4, 1992 the Commission ordered the commencement of criminal proceedings under No. 11,045 and forwarded the complaint to the State.

6. On February 4, 1993 the human rights organization Asociación Pro Derechos Humanos (hereinafter "APRODEH") filed a petition before the Inter-American Commission for the alleged detention and disappearance of the same persons (supra para. 5).

7. On October 22, 1993 the organization Centro de Estudios y Acción para la Paz (Center for the Study and Action for Peace) (hereinafter "CEAPAZ") appeared before the Commission as "co-petitioner" and tendered additional information concerning the facts.

8. On March 11, 1999, at its 102nd Regular Session, the Commission issued the Report on Admissibility No. 42/99. On the 15th day of the same month and year the Commission served notice of the above-mentioned Report upon the petitioners and the State.

9. On February 22, 2001, at its 110th Regular Session, the Commission and the State issued a joint press release regarding the outcome of a meeting which was attended by the then Minister of Justice of Perú, Diego García-Sayán, on behalf of the State, and the then Permanent Representative of Perú before the Organization of American States (hereinafter "OAS"), Ambassador Manuel Rodríguez-Cuadros. On behalf of the Commission there appeared its President at the time, Dean Claudio Grossman; its First Vice-President, Dr. Juan Méndez; its Second Vice-President, Ms. Marta Altolaguirre; Commissioners Robert Goldman and Peter Laurie, and its Executive Secretary, Dr. Jorge E. Taiana. In subparagraph b) of the above-mentioned joint press release the instant case was included among others in which the State would acknowledge its liability and adopt measures to restore the violated rights and/or repair the damage caused.

10. On October 24, 2005, at its 123rd Regular Session, the Commission issued Report on the Merits No. 95/05 pursuant to Article 50 of the Convention, wherein it concluded, inter alia, that the State had violated the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Judicial Guarantees), and 25 (Right to Judicial Protection) of the American Convention in relation to Articles 1(1) and 2 thereof. The Commission recommended the State to adopt a number of measures aimed at repairing the abovementioned violations.

11. On November 14, 2005 the Commission forwarded the Report on the Merits to the State, granting it a term of two months to notify the Commission of the measures adopted in compliance with its recommendations.

12. On November 28, 2005 the Commission, pursuant to Article 43(3) of its Rules of Procedure, informed the petitioners of the adoption of the Report on the Merits and of service thereof upon the State and requested them to submit a brief stating their position regarding the possible submission of the case to the jurisdiction of the Inter-American Court. On December 30, 2005, among other considerations, the petitioners stated that "if the State of Perú failed to compl[y] with the recommendations made thereto by the Inter-American Commission within the term set to that purpose in the Report [on the Merits] issued by the Commission [...they]wanted the case [to be] submitted to the contentious jurisdiction of the [...] Court." On January 13, 2006 the State requested an extension of the term set to inform the Commission of the measures adopted in compliance with its recommendations, which was granted until January 29, 2006. On January 30 of that same year the Peruvian State filed its report on compliance.

13. On January 30, 2006 upon the possible submission of the case to the Inter-American Court, the Commission requested the petitioners to appoint a common intervener who, pursuant to Article 23(2) of the Rules of Procedure of the Court "shall be the only person authorized to present pleadings, motions, and evidence during the proceedings, including the public hearings." On February 3, 7, and 10, 2006 CEJIL and APRODEH forwarded communications wherein information regarding the beneficiaries and their powers of attorney were included, and a common intervener was designated respectively.

14. On February 10, 2006, the Inter-American Commission decided to submit the instant case to the contentious jurisdiction of the Court, "in view of the failure [of the State] to satisfactorily implement" the recommendations contained in Report No. 95/05."

IV. PROCEEDING BEFORE THE COURT

15. On February 14, 2006, the Inter-American Commission filed an application before the Court (supra para. 1), attaching documentary evidence thereto and offering to submit testimonial and expert evidence as well. The Commission appointed Clare K. Roberts, Commissioner and Santiago A. Canton, Executive Secretary, as delegates; and Víctor Madrigal-Borloz and Elizabeth Abi-Mershed, Dominique Milá, and Lilly Ching as legal counsels.

16. On March 17, 2006 the Secretariat of the Court (hereinafter "the Secretariat"), once the application had been examined by the President of the Court (hereinafter "the President"), served notice of said application and appendixes thereto upon the State, which was also notified of the term within which it was to answer the application and appoint its agents in the proceedings.

17. On that same date, pursuant to the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat served the application upon the organizations appointed as representatives of the alleged victims' next of kin, APRODEH, CEAPAZ, and the Centro por la Justicia y el Derecho Internacional (Center for Justice and International Law) (hereinafter "the representatives"), and informed them that a term of two months had been set for them to file their brief containing the requests, arguments, and evidence (hereinafter "brief of requests and arguments").

18. On March 31, 2006 the Secretariat served notice upon the State that, pursuant to the provisions of Article 10 of the Statute of the Court and Article 18 of its Rules of Procedure, it was entitled to appoint a judge ad hoc to take part in the consideration of the case within thirty days of the date of such notice.

19. On April 21, 2006 the State appointed Iván Arturo Bazán-Chacón as Agent.

20. On April 28, 2006 the State appointed Fernando Vidal-Ramírez as judge ad hoc.

21. On May 17 and 23, 2006 the representatives filed their brief of requests and arguments, together with appendixes thereto, wherein they offered to submit testimonial and expert witness evidence.

22. On July 21, 2006 the State filed its answer to the application (hereinafter the "answer to the application"), attaching documentary evidence thereto. In said brief the Peruvian State made an acquiescence to the claims and a partial acknowledgement of international liability for certain violations alleged by the Commission (infra paras. 37 to 44).

23. On August 17, 2006 the President issued an Order, whereby it was ordered that affidavits be admitted as testimonies of Fedor Muñoz-Sánchez, Rodolfo Robles-Espinoza, and Víctor Cubas-Villanueva, who had been proposed as witnesses by the Commission and the representatives, and those of Jaime Oyague-Velazco, José Ariol Teodoro-León, José Esteban Oyague-Velazco, Dina Flormelania Pablo-Mateo, Carmen Amaro-Cóndor, Bertila Bravo-Trujillo, and Rosario Carpio-Cardoso-Figueroa, proposed as witnesses by the representatives, as well as the expert opinions of Eloy Andrés Espinoza-Saldaña-Barrera, proposed by the Commission, and of Kai Ambos and Samuel Abad-Yupanqui, proposed by the representatives, all testimonies which were to be forwarded to the Court by September 8 of that same year. Pursuant to operative paragraph 3 of said Order, the parties were granted a non-renewable extension of seven days, running from the moment such testimonies and expert opinions were received, to submit any comments that they might deem appropriate concerning said testimonies. Furthermore, in view of the specific circumstances of the case, the President summoned the Inter-American Commission, the representatives, and the State to a public hearing to be held at the seat of the Court on September 29, 2006 at 9:00 a.m., to hear the final oral arguments on the merits and reparations, costs and expenses in the instant case, as well as the testimonies of Gisela Ortiz-Perea and Raida Cóndor-Sáez, proposed as witnesses by the Commission and by the representatives, and of Antonia Pérez-Velásquez, proposed as witness by the representatives. Furthermore, in such Order, the President informed the parties that they would have a non-renewable term extending until October 29, 2006 to submit their final written arguments regarding the merits of the case and the reparations and costs and expenses.

24. On August 30, 2006 the Secretariat requested the State to forward, as soon as possible, several documents to which it had made reference in its answer to the application, but which had neither been offered nor attached as evidence in the appendixes thereto. On September 27 of that same year the Secretariat reiterated said request to the State, which forwarded part of the documentation requested on November 2, 2006.

25. On September 8, 2006 the representatives submitted the affidavits rendered by Fedor Muñoz-Sánchez, Carmen Rosa Amaro-Cóndor, Dina Flormelania Pablo-Mateo, Víctor Andrés Ortiz-Torres, Víctor Cubas-Villanueva, José Ariol Teodoro-León, José Esteban Oyague-Velazco, Rosario Carpio-Cardoso-Figueroa, and Edmundo Cruz (supra para. 23).

26. On September 11, 2006 the affidavit of Rodolfo Robles-Espinoza was directly received at the Secretariat. On that same day the Secretariat informed the Commission and the State that a term of seven days had been set for them to file their comments on the affidavits submitted by the representatives (supra para. 25).

27. On September 11, 2006 the representatives informed that Bertila Bravo-Trujillo and Jaime Oyague had not been able to execute the affidavits and that Kai Ambos would not be able to give the expert opinion he had been requested.

28. On September 14 and 21, 2006 after an extension of the term set for filing expert evidence had been granted, the Commission and the representatives submitted the expert opinions of Eloy Espinosa-Saldaña and Samuel Abad-Yupanqui.

29. On September 18, 2006 the Commission informed that it had no comments to submit regarding the affidavits filed by the representatives (supra para. 25). For its part, on the following day the State submitted its comments regarding the affidavits, which had been forwarded to the parties on the 11th day of the same month and year (supra para. 26).

30. On September 26, 2006 the Court issued an Order whereby it decided to commission its President, Judge Sergio García-Ramírez, its Vicepresident, Judge Alirio Abreu-Burelli, judges Antônio A. Cançado Trindade and Manuel E. Ventura-Robles, and judge ad hoc Fernando Vidal-Ramírez to attend the public hearing which had been summoned for September 29, 2006 and which was to be held at the seat of the Court (supra para. 23).

31. On September 26, 2006 the State filed its comments on the expert opinions of Eloy Andrés Espinoza-Saldaña-Barrera and Samuel Abad-Yupanqui, submitted by means of affidavits (supra para. 28).

32. On September 29, 2006, during its LXXII Regular Session, the Court held the public hearing which had been summoned (supra para. 23), and at which there appeared: a) for the Inter-American Commission: Paolo Carozza, Delegate; Santiago Canton, Executive Secretary, Delegate; Víctor H. Madrigal-Borloz, counsel; and Norma Colledani and Lilly Ching, advisors; b) for the representatives: Gloria Cano, counsel from APRODEH; and Ana Aliverti, María Clara Galvis, Ariela Peralta, and Viviana Krsticevic, counsels from CEJIL; and c) for the State: Iván Arturo Bazán-Chacón, Agent, and Alberto Gutiérrez-La Madrid, Ambassador of Perú in Costa Rica. The Court heard the testimonies of the alleged victims' next of kin who had been summoned, as well as the parties' final oral arguments.

33. On October 24, 2006 the Secretariat, on instructions from the President and pursuant to Article 45(2) of the Rules of Procedure, requested the Inter-American Court, the representatives,

and the State to file, not later than October 31, 2006, the following information and documentation as evidence to facilitate the adjudication of the instant case:

- a statement aimed at clarifying whether the compensation ordered in favor of the victims' next of kin in Judgment of May 18, 1994 rendered by the Consejo Supremo de Justicia Militar (Supreme Council of Military Justice) regarding the facts in the instant case had been awarded either in relation to pecuniary damage or moral damage, or both, and whether it had been awarded either for the damage caused directly to the allegedly executed or disappeared victims or for the damage caused to their next of kin. Furthermore, they were requested to make it clear whether the next of kin of the alleged ten victims therein stated had actually received such compensation;
- who among those who had been accused or convicted in the criminal military proceedings and in the criminal ordinary proceedings commenced regarding the facts of the instant case, were kept in custody or are currently imprisoned, and in the latter case, whether they have been or were in remand custody or convicted in connection with said proceedings;
- a copy of the criminal codes, criminal military codes, and criminal procedural codes, both currently in effect and in effect at the moment they were applied to the investigations and the criminal proceedings were commenced in relation to the facts of the instant case;
- information on the current state and outcome of the extradition proceedings, whether pending or closed, in relation to the investigations and criminal proceedings commenced regarding the facts of the instant case, as well as a copy of all the actions and steps taken by the Peruvian authorities, or by the authorities of any other country, the records of which they may have, and
- a report on the current state of the investigations and proceedings which have been commenced and are pending in relation to the facts of the instant case.

Furthermore, the Commission and the representatives were requested to file relevant documents showing the parentage, and if appropriate, the death, of those who were stated as the alleged victims' next of kin in the application and in the brief of requests and arguments, regarding whom no documents showing their existence or parentage have been submitted. Furthermore, they were requested to inform the reasons why Zorka Muñoz-Rodríguez was not included on the list of the alleged victims' next of kin and, if appropriate, to forward the relevant documents showing her possible parentage or death.

34. On October 27, 2006 the organization Instituto de Defensa Legal del Perú (Peruvian Legal Defense Institute) filed a brief as amicus curiae. On November 24 of the same year the State filed its objections to said document.

35. On October 29, 2006 the State and the Commission submitted their final written arguments. On the following day, the representatives filed their objection to said document.

36. On November 1, 3, 10, 13, 20, and 24, 2006 the representatives, the Commission, and the State submitted information and documentation in reply to the request for evidence to facilitate the adjudication of the instant case (supra para. 33 and infra para. 66).

V. PARTIAL ACKNOWLEDGEMENT OF LIABILITY

37. In the instant case, the State acknowledged its international responsibility not only before the Commission but before this Court as well, on account of which it proceeds to define its terms and extent.

38. In subparagraph b) of the press release issued by the Commission on February 22nd 2001, in the framework of the 110th regular session period, together with Perú (supra para. 9),"it compromised to admit responsibility and adopt measures to restore the affected rights and/or make amends for the damage inflicted in several cases, case 11045 (La Cantuta) among them."

39. During the processing of the instant case before the Inter American Court, the State acquiesced in the "alleged facts but disagrees with regard to the legal consequences attributed to some of the aforementioned events;" it also "declared to the Court that it acquiesces partially in some of the claims of the Commission and of the representatives of the alleged victims."

40. In chapter V of its answer to the petition, titled "Admission of facts by the State," which it repeats in chapter III of its final written arguments, Perú has declared:

The acts admitted by the State include:

a) identification and previous existence of the alleged victims who are Hugo Muñoz-Sanchez; Juan Mariños-Figueroa; Bertila Lozano-Torres; Roberto Teodoro-Espinoza; Marcelino Rosales-Cárdenas; Felipe Flores-Chipana; Luis Enrique Ortiz-Perea; Armando Amaro-Cóndor; Heráclides Pablo-Meza and Dora Oyague-Fierro (para. 50 of the application.)
b) the military presence at and control of the university campus of La Cantuta the day of the events (paras. 51 to 53 of the application.)
c) the abduction, including the illegal detention, mistreatment of ten people: Hugo Muñoz-Sanchez; Juan Mariños-Figueroa; Bertila Lozano-Torres; Roberto Teodoro-Espinoza; Marcelino Rosales-Cárdenas; Felipe Flores-Chipana; Luis Enrique Ortiz-Perea; Armando Amaro-Cóndor; Heráclides Pablo-Meza and Dora Oyague-Fierro; their forced disappearance, the infringement of the right to recognition as a person before the law (paras. 53 to 57 of the application.)
d) the extra-legal execution of Armando Richard Amaro-Cóndor, Roberto Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, Luis Enrique Ortiz-Perea and Bertila Lozano-Torres, whose bodies were subsequently found (paras. 58 to 68 of the application.)
e) the persistence of the forced disappearance of Dora Oyague-Fierro, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, Hugo Muñoz-Sanchez (para. 69 of the application.)
f) the violation of the right to a fair trial and legal protection. These facts were revealed in the initial acts of the investigation (paras. 90 to 105 of the application,) the subsequent intervention of military courts (paras. 106, 111 and 112 of the application,) of the Congress of the Republic (para. 109 of the application,) order of the Supreme Court of Justice (paras. 108, 109 and 110 of the application,) passing of Amnesty Law No. 26,479 by the Congress (para. 113 of the application,) and Law No. 26,492 (para. 116 of the application) and the enactment of said amnesty laws by the Executive Power, even though it is not specifically stated in the application.
g) the existence of the so named "Grupo Colina" (Colina Group) (paras. 83 to 89 of the application.)

h) the enactment of the amnesty laws and the effects of the decision of the Inter-American Court in the case of Barrios Altos vs. Perú (paras. 113, 116, 117 and 118 of the application.)
i) the new investigations (paras. 119, 120, 121 to 126 of the application.)

41. Based on this acknowledgement of facts the State declared that:

In the light of the investigations started in 1993, then interrupted and resumed by the Attorney General´s Office of Perú, - the body empowered by the Political Constitution of the State and the Organizational Law of the Attorney General´s Office to carry out that activity-, [i]t is evident, in both criminal actions pending before the courts of the Judicial Power, that during 14 years. Articles 4, 5, 3, 7, 8 and 25 of the American Convention, in connection with Article 1(1) thereof, have been violated by the acts and omissions of the Peruvian State,

42. Moreover, the State immediately made several statements regarding the scope of the aforementioned acknowledgement, which was titled "contradiction of the State and partial acquiescence in the legal consequences of the admitted facts and some qualifications or legal considerations on them" in the following terms:

The Peruvian State, immediately after the end of the administration of former President Alberto Fujimori, adopted specific measures to restore a smooth relationship with the Inter-American system of protection, reinforce the rule of law and avoid impunity for the crimes committed against human rights and to the detriment of public property.[…]
[T]hrough a Joint Communication signed before the Inter-American Commission of Human Rights and the Peruvian State on February 22, 2001, the State announced that it would acknowledge its international responsibility for some cases, including the case of La Cantuta, and it would adopt other measures in those cases that had concluded with Reports produced under Article 51 of the American Convention.[…]
The State does not deny the occurrence of events nor the fact that they took place on account of acts or omissions committed by government agents, whether authorities or public officers, and therefore, the State is also involved. Nevertheless, the State explains that the reaction of the State took place in a backdrop where impunity prevailed up to the end of year 2000, when the State changed its conduct as from the beginning of the democratic transition and the restoration of the rule of law in the country. […]
The State admits that no guilty sentence has been rendered against the persons who are at present accused or under investigation, but it also admits that the obligation to investigate and punish is a best efforts obligation rather than an obligation to ensure results., held by the Honorable Inter-American Court in the cases of Velasquez-Rodriguez, Godinez-Cruz, Caballero- Delgado y Santana and Baldeón-García. The State´s conduct of processing two criminal cases and starting a preliminary investigation should not be considered simple formalities bound to fail from the very beginning, but a firm and determined process to get rid of impunity, which some people tried to institutionalize in Perú in the last decade. […]
The State admits that the progress of the criminal cases instituted before the Special Criminal Panel and in the Investigative Division of the Supreme Court of Justice of the Republic is only partial. Furthermore, it acknowledges that the preliminary investigation carried out by the Attorney General´s Office into the existence of masterminds of the investigated crimes has not

led yet to a formal complaint before the Judicial Power so as to commence a new criminal proceeding. […]
The State of Perú does not oppose to the characterization made by the Commission, of the period during which the events took place, which as described as one where a generalized and systematic practice of extra-legal executions and forced disappearances existed, pursuant to Item VII(E) of the application. That is to say, […] the events are contextualized in what the Commission considers a systematic and generalized practice (associated or copulative characteristics) of violations of human rights.[…]
It is clear that in previous cases the Inter-American Court reached the conclusion that a systematic practice of extra-legal executions and forced disappearances existed in Perú in cases occurring at the same time that the events of the case of La Cantuta,
[…] the judgment of the National Criminal Panel that has recently been delivered in the case of the forced disappearance of Ernesto Castillo-Páez, judgment of March 20, 2006,[…] the National Court follows [the case law of the Inter-American Court pursuant to which] between years 1989 and 1993, the practice of forced disappearance was part of the anti-subversive strategy applied by the State of Perú. Such strategy has been considered a systematic and generalized practice of human rights violation by the Honorable Supreme Court. The events of the instant case took place during said period.
Even though this assertion comes from a domestic judicial authority, it is not a final judgment pronounced by the Supreme Court of Justice of the Republic, however, it shows the will of the State to acknowledge the existence of a practice by the State, notwithstanding the possibility to prove whether it was a generalized or systematic practice or, as asserted in the application, that it really was generalized and systematic..
In connection with the aforementioned, the analysis and contribution made through the final report of the CVR (Truth and Reconciliation Commission) was revealing. It is worth noting that the concept of a generalized practice of violations of human rights involves a high number of acts and victims.
It is true that the concurrence of indirect and circumstantial evidence shall be enough for the Commission, which does not require the same level of evidence than that required by a domestic criminal court, but if a domestic criminal court, specialized in human rights and with a different or more rigorous level of evidence, has arrived to the same conclusion when deciding over the freedom of people or on how to protect such fundamental juridical rights as physical freedom, humane treatment and even life, it is reasonable to think that if the national criminal court concluded that the State carried out the practice of forced disappearances, the State itself is admitting its international liability for having caused such situation or for failing to adopt measures to prevent the commission of said international wrongful act.
The Constitutional Court of Perú, in the case of Santiago Enrique Martín-Rivas, arrives to the conclusion that at the time of the events ”those circumstances are related to the existence of a systematic plan to promote impunity in matters involving the violation of human rights and crimes against humanity, particularly the acts committed by the Grupo Colina. (Colina Group.) […].
Therefore, both the specialized judicial body of the Peruvian judiciary and the highest body of constitutional justice admit that at the time when the events of the instant case took place, crimes against humanity were committed, and the State intended to conceal the human rights violations, with a systematic plan.

Besides, it must be pointed out, that the State is not only a party to the American Convention, but also to the Inter-American Convention on Forced Disappearance of Persons, whereby, pursuant to Article IV, the State commits itself to punishing any act constituting forced disappearance.

43. Moreover, during the public hearing held by the Court in the instant case (supra para. 32), the State agent expressed "his grief to the next of kin of the alleged victims" and read an "official statement on behalf of the President of the Republic" in the following terms:

The President of the Republic of Perú greets the Inter American Court of Human Rights, which has met today to try the case of La Cantuta. The State of Perú deeply regrets the fate of that group of Peruvians, nine students and a professor, and on stating its grief for the pain inflicted to their next of kin, it also wishes to ratify its commitment to comply with its international obligations.

44. Moreover, in the final oral and written arguments the State:

reiterated […] that such acts and omissions constitute international wrongful acts that generate the international liability of the State. They are crimes according to domestic law, and international crimes that the State must punish;
reiterated its admission of the facts and, as regards the unsettled issue, it shares the concern of the victims' next of kin. . The State is determined to do justice. However, even though it admits the facts, the State disagrees with the Inter-American Commission of Human Rights (IACHR) regarding some of the Commission´s claims pursuant to which the Commission expects that the Peruvian State be held internationally responsible for the violation of the right to fair trial and judicial protection on account of its conduct as from the end of year 2000 to the present time: and it also expects that the Court will declare that the Peruvian State has not adopted yet sufficient measures to annul the self-amnesty laws-
Moreover, the existence of the CVR and its Final Report are based on the undeniable fact that Perú underwent a domestic armed conflict and that, in said backdrop, serious violations of human rights took place, which were attributed to the Peruvian State, among other participants in the conflict. Forced disappearances, extra-legal executions and tortures took place (General Conclusion 55) as part of said violations. La Cantuta, currently pending before a supra-national court, is one of those regrettable cases where bodily injuries were inflicted to the victims.
Since the controversy over the alleged acts has been settled, the State requests the Honorable Court to declare that the case limited to the aspects or consequences resulting from those acts and specified in several claims of the [Commission] and of the representatives of the alleged victims […].

45. In the final oral and written arguments, the Commission stated, inter alia, that:

a) the State´s admission of the acts allows to conclude that the controversy regarding the arbitrary detention, humiliating, cruel or inhuman treatment and the subsequent forced disappearance or extra-legal execution of the professor and nine students, victims in the instant case, has finished. Likewise, the Commission considers that the dispute regarding the failure to conduct a complete, impartial and effective investigation, together with the acts aimed at concealing the truth and sheltering the persons responsible for such wrongful actions up to the

end of the year 2000 with the transition between the governments of Alberto Fujimori and Valentín Paniagua, has ended. The Commission also states its satisfaction for the State´s acquiescence of international responsibility regarding the breach of Articles 3, 4, 5, 7, 8 and 25 of the American Convention in relation to article 1(1) thereof, on account of the facts specified in the application.[…] The Commission appreciates the significance of said acknowledgement and considers it is a positive step toward the vindication of the victims' memory and dignity and the mitigation of the damages inflicted to their next of kin, as well as it contributes to the efforts to avoid the repetition of similar situations;

b) it agrees with the State that the report issued by the Comisión de la Verdad y Reconciliación (Truth and Reconciliation Commission) is a fundamental tool for disclosing the true facts and the violations involved in the instant case and

c) important issues regarding the conclusions reached by the Commission on the grounds of the acts acknowledged, are still unsettled:

i. even though it accepts the excessive duration of the investigations until 2001, the State holds that as from said year, investigations have been diligently initiated and carried out. The Commission notes that the acknowledgement is made only in connection with violations committed during the government of Alberto Fujimori and does not include the responsibility of the State for the breach of the right to fair trial and judicial protection, and consequently, impunity continues in connection with this case up to the present time.

ii. The need for the adoption of the necessary measures to formalize and provide legal certainty to the lack of effectiveness and applicability of the amnesty laws, by suppressing them of domestic law, and

iii. The extent of the damage inflicted to the victims´ next of kin and the need for a complete and adequate redress.

46. In their brief of requests and arguments, as well as in their oral and written closing arguments, the representatives declared that:

a) through several acts the State has admitted the participation of high political and military authorities in the events subject matter of the complaint. During the international proceedings conducted before the States Parties to the UN and the OAS, and particularly before the governments of Japan and Chile when applying for the extradition of former President Alberto Fujimori, Perú has specifically referred to the intellectual liability of former President Alberto Fujimori for the crimes of Barrio Alto and La Cantuta.

b) Under democracy, the State has admitted, to a great extent, its responsibility for the events subject matter of the instant case; nevertheless there are important issues that are still disputed; most of them related to the impunity still existing.

c) the representatives of the victims expressed their gratitude to the State of Perú for the significance the acknowledgement of international responsibility has "for their principals and because it contributes to the preservation of the historical memory for the events denounced in the instant case brought before the Inter American system."

47. Article 53(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 as well as to the claims of the representatives of the alleged victims, their next

of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and costs.

48. Article 55 of the Rules 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.

49. By exercising its inherent powers of international judicial protection of human rights, the Court may determine whether the acknowledgement of international responsibility by a respondent State provides sufficient ground, under the terms of the American Convention, to proceed with the merits and the determination of the reparations and costs. To such effect, the Court shall analyze each particular case.[FN1]

[FN1] Cf. Case of Vargas Areco. Judgment of September 26, 2006. Series C No. 155, para. 43; Case of Goiburú et al. Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 45; and Case of Servellón García et al. Judgment of September 21, 2006. Series C No. 152, para 53.

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50. In prior cases decided by the Court, where there have existed an acquiescence and acknowledgement of international responsibility, the Court has held that:

[…] Article 53[2] of the Rules of Procedure refers to the case where a respondent State communicates to the Court its admission of the facts and acquiescence to the claims of the petitioner and so, it accepts its international responsibility for the violation of the Convention, under the terms stated in the application; this situation would lead to an early termination of the proceedings on the merits, as provided in Chapter V of the Rules of Procedure. The Court points out that pursuant to the provisions of the Rules of Procedure, effective as from June 1, 2001, the application includes the allegations on the issues of fact and of law and the petitions referred to the merits of the case and the appropriate reparations and costs. In this sense, when a State acquiesces to an application, it must clearly indicate whether it is only referred to the merits of the case or if it also refers to the reparations and costs. If the acquiescence only refers to the merits of the case, the Court shall have to evaluate whether to continue with the procedural stage for deciding over reparations and costs.
[…] In the light of the evolution of the system of protection of human rights, nowadays, the alleged victims or their next of kin can file their brief of petitions, arguments and evidence separately and independently from those filed by the Commission, and they can even file claims consistent or not with those of the Commission, consequently, in the event an acknowledgement is submitted, it must clearly state if the claims of the alleged victims or their next of kin are also admitted. [FN1]

[FN1] Cf. Case of Goiburú et al., supra note 1, para. 47. Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, para.66; and Case of Molina-Theissen. Judgment of May 4, 2004. Series C No. 106, paras. 41-44.

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i) Acknowledgement of the State regarding the facts

51. The Court points out that the State admitted the facts stated by the Commission in the application (supra para. 40.) In such broad terms, and considering that the application as the factual frame of the proceeding, [FN2] the Court deems that the controversy over all the facts described therein has ended.

[FN2] Cf. Case of Goiburú et al., supra note 1, para. 48; Case of the Pueblo Bello Massacre. Judgment of January 31, 2006. Series C No. 140, para. 55; and Case of the "Mapiripán Massacre", supra note 2 para. 59. Also Cf. Case of the Moiwana Community. Judgment of July 15, 2005. Series C No. 124 para. 91; and Case of De la Cruz-Flores. Judgment of November 18, 2004. Series C No. 115, para. 122.

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ii) Acknowledgement of the State regarding the issues of law

52. The Court finds that the dispute regarding the international liability of the State for the violation of the rights enshrined in Article 4 (Right to Life,) 5 (Right to Humane Treatment,) and 7 (Right to Personal Liberty) of the American Convention, in relation with Article 1(1) thereof, to the detriment of Hugo Muñoz- Sanchez; Juan Mariños-Figueroa; Bertila Lozano-Torres; Roberto Teodoro-Espinoza; Marcelino Rosales-Cardenas; Felipe Flores-Chipana; Luis Enrique Ortiz-Perea; Armando Amaro-Condor; Heráclides Pablo-Meza and Dora Oyague-Fierro (supra para. 41.) Even though the State acknowledged the alleged violation of Article 3 of the Convention, the Court will analyze it in the pertinent section (infra paras. 117 to 121.)

53. Furthermore, part of the controversy on the international responsibility of the State for the violation of the rights enshrined in Article 8 (Right to Fair Trial) and 25 (Judicial Protection) of the American Convention, with relation to Article 1(1) thereof, has also been settled. Nevertheless, the State alleged that it could not be attributed any responsibility for other aspects related to the "alleged lack of diligence of the State [...] for not having conducted a serious, impartial and effective investigation within a reasonable time" in order to decide the case and punish the perpetrators of the wrongful acts (supra paras. 41, 42 and 44.) The Court shall have to decide on these arguments in due time.

54. On the other hand, the State has not admitted any responsibility for the alleged violation of Article 2 of the Convention.

iii) Acknowledgement of the State regarding the claims for reparation

55. In the instant case, the State did not admit the claims for reparations made by the Commission or the representatives.

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56. The Court considers that the acknowledgement of international responsibility made by the State constitutes an important step towards the development of this process and for the enforcement of the principles that are consecrated by the American Convention. [FN3]

[FN3] Cf. Case of Vargas-Areco, supra note 1, para. 65; Case of Goiburú et al., supra note 1, para. 52; and Case of Servellón García et al., supra note 1, para. 77.

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57. Taking into account the powers vested in the Court for the best protection of human rights, and bearing in mind the context in which the events of the instant case have taken place, the Court considers that a judgment adjudicating on the issues of fact and on all the elements of the merits of the case, as well as on the corresponding consequences thereof, constitutes a way of contributing to the preservation of the historical memory, to the redress of the damage inflicted upon the next of kin of the victims and, moreover, it also contributes to avoid the repetition of similar events. [FN4] Therefore, without prejudice of the scope and extent of the acknowledgement made by the State, the Court deems it convenient to include the following section to analyze the facts subject matter of this case, including both the facts acknowledged by the State and the proven facts. Besides, the Court deems it necessary to clarify certain matters regarding how the violations have taken place in the context and under the circumstances of this particular case, and regarding certain consequences related to the obligations established in the American Convention. The pertinent chapters shall also be included in this Judgment.

[FN4] Cf. Case Vargas-Areco, supra note 1, para. 66; Case of Goiburú et al., supra note 1, para. 53; and Case Servellon-Garcia et al., supra note 1, para. 78.

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58. Thus, in the abovementioned chapters, the Court will also analyze those items of the merits of the case and the contingent reparations, regarding which there still exists a dispute on the international responsibility of the State, to wit:

a) the issues of fact and the alleged violation of the right to humane treatment to the detriment of the next of kin of the alleged victims, enshrined in Article 5 of the Convention;
b) the alleged violation of Articles 8 and 25 of the American Convention, to the detriment of the alleged victims and their next of kin, with regard to the arguments denied by the State (supra para. 53.);
c) the alleged failure to comply with Article 2 of the Convention (supra para. 54), and
d) the issues of fact related to pecuniary and non pecuniary damage that would have been inflicted on the alleged victims and their next of kin, as well as the determination of reparations and immunities.

VI. EVIDENCE

59. In accordance with Articles 44 and 45 of the Rules of Procedure and the Court´s case law regarding the evidence and its assessment, [FN5] the Court shall proceed to examine and assess the documentary evidence submitted by the Commission, the representatives and the State in various procedural stages or as evidence to facilitate adjudication of the case as was requested pursuant to instructions of the President, as well as the testimony of witnesses and expert witness opinions rendered through affidavits or before the Court. With that purpose, the Court will follow the rules of reasonable credit and weight analysis, within the corresponding legal frame. [FN6]

[FN5] Cf. Case of Almonacid Arellano et al. Judgment of September 26, 2006. Series C No. 154, paras. 66-69; Case Servellón García et al., supra note 1, paras. 32-35; and Case of Ximenes-Lopes. Judgment of July 4, 2006. Series C No. 149, paras. 42-45.
[FN6] Cf. Case of Goiburú et al., supra note 1, para. 55.

A) DOCUMENTARY EVIDENCE

60. The Commission and the representatives submitted the statements of witnesses and the reports of expert witnesses, pursuant to the Order of the President, issued on of August 17, 2006 (supra para. 23.) Subsequently, the Court summarizes the said statements:

Statements of witnesses proposed by the representatives

a) Carmen Rosa Amaro-Cóndor, sister of Armando Richard Amaro-Cóndor

Her brother was the first member of the family to attend university; he contributed to the household, and was planning to graduate and continue further studies His main goals were to study, work and help his younger siblings and parents. The witness loved and respected him, and considered him her friend.
She felt great sorrow and grief when her brother disappeared as no one knew anything on his whereabouts. Then, when she learnt of the discovery of graves through the television, she had mixed feelings, as even though there was not much hope of finding him alive, “one is not willing to accept death.” “All [her] siblings started wailing and banging their heads, [her] father moved restlessly from one place to the other and [her] mother knelt and asked God the reason for deserving such grief.”
In order to identify her brother’s body, her mother made a special point on the way he was dressed and the fact that a set of keys was missing. A set of keys that opened the doors of their home was found in the graves, so they knew it belonged to their brother. She said that “[when you hear about clandestine graves,] the image of complete bodies comes to your mind. But when you see only parts of a body you start to think […]. The memory of [your beloved] comes back to your mind, and now it has turned into this and you do not even know what part belonged to him. The human remains are valuable for the family, even though it is not possible […] to bring

him back to life. At least you feel at ease that his body is complete. But it wasn´t. They made him disappear completely; they burned his body with lime, with gasoline, that shows their complete inhumanity." After the discovery of the graves, they "were given the bodies […] in milk boxes, as if [their] family was worthless."
Her family was threatened. One day a mortuary wreath with her mother's name arrived at APRODEH. Besides, they warned her not to go on speaking, or she would "die in the same way" her brother had.
Her family has not been the same since her brother's disappearance, "it has […] broken"; it used to be "merry, cheerful [and happy,] but this happiness has gone with Armando, but he[…] left a life example behind […] for this never to happen again." It has been very hard for us to endure the pain of being told that our brother was a terrorist and that "he had been killed for said reason." It was unbearable to see her mother's condition. "Sometimes […] they saw her in the balcony, at dawn, waiting for him to return." She did not feel like smiling, and had lost any will to start any personal project. Sometimes, she felt she could not endure such grief, she even considered suicide due the big injustice they were suffering. Nevertheless, she understood that "grief turns […] into strength."
Not only did she lose a beloved, but a part of her own life was gone with him […] Impossible to think about a personal project when the main issue was [her brother] and the claim for justice. Personal projects were gradually pushed to the background […]. She consider[ed] the possibility of committing suicide for she could stand the grief no longer.
On the other hand, with the compensation awarded by the Judgment of the Military court, her parents bought the house where they currently live in.
She feels justice has not been done, as she deems justice "as a whole and not partially." "There will be no justice until all those responsible for the killings are punished. Therefore she requested the Court to overturn the judgment of the military court so that all those who were benefited with amnesty can be punished. She also requested that it be refuted that her brother was a terrorist; that the State assumes liability for all damages and ask for forgiveness.

a) Dina Flormelania Pablo-Mateo, aunt of Heráclides Pablo-Meza

She lived with her nephew, her husband and children for about seven years. Heráclides was a good student and hard-working young person, who was eager to get a professional degree.
She learnt of her nephew's disappearance through the newspaper. She inquired about his whereabouts but nobody gave her an explanation, they even "denied their attack to the university."
When she learnt about the discovery of the common grave, she thought it was a prison or a house so she believed her nephew was alive. Then, she went to the site and she saw burnt remains. She felt great grief. She could identify him on seeing "his hair, his nails [and] his clothes."
She and her family have been seriously affected by the loss of her nephew. In your heart you cannot forget what happened. For several months she had to hide the truth from her brother, Heraclito's father because "I was afraid to tell him […] as he […] has a heart condition."
When he knew about it, he reacted with great sadness.
She spent up his money in expenditures seeking for justice. As a result, she had to close down his market-stall.
She had bodyguards during three or four months because she feared something could happen to her, as she had to "continue moving and searching."

"There is no justice. They always conceal justice [.].Until my death, I will always keep on searching for the truth."
She requested the Inter American Court to order the State to "tell them where the remains are,[…] where the heads are, […] where they keep them.'

c) Victor Andres Ortiz-Torres, father of Luis Enrique Ortiz-Perea

His son enrolled in the Universidad de La Cantuta (La Cantuta University) with the purpose of getting his degree and then traveling through Mexico in order to "excel over his studies." As student, his son "complained against the excesses of the military within university."
When he knew about his son's disappearance he thought that "he would find him sometime, in some place, battered by the treatment that the military always give people." Later, he felt "he had lost him […] and that it would be difficult to find him, as the conduct of the military officers was already known."
His family felt unable to speak. It seemed that all the authorities "had received the order to remain silent."
They have incurred several expenses during the years of their search. His daughter Gisela also spent lots of money and she is jobless as she has devoted her life to the search of justice.
"The military [..] go beyond their authority; they decide over the life and death of people with the excuse that they are terrorists." In fact, in the case of La Cantuta "the military have succeeded in spreading the idea [at domestic level] that all the people that have died there were terrorists and their families as well."
His family has been threatened. His daughter Gisela was sent a funeral wreath to APRODEH saying she was going to die; and his two younger daughters "were approached by two policemen who told them to make no comment"; furthermore, in the corner of [his] home there were policemen to keep watch on them."
He is very concerned about his daughter Gisela's safety, who apart from having abandoned her studies, "has been deeply affected by all the events, as she now is very quick-tempered and she was not like this before." Moreover, he feels very sad because he is not going to see his son again.
He received a monetary compensation from the State for his son's disappearance in 1995. In spite of the fourteen years that have passed by since the events, he feels "justice has not been done yet."
Finally, he requested the Court to order the State to "stop treating them as terrorists."

d) José Ariol Teodoro- Leon, father of Robert Edgar Teodoro-Espinoza

His son had been raised by him, his grandmother and his foster mother. When he knew about his son's disappearance he "[lost heart and thought] the worst." He and his wife took him clothes because they thought he might be feeling cold.
He learnt about the discovery of the graves through the magazine "Si." He and his wife took turns to go to the excavations every day. They identified a piece of his son's trousers and sweater.
He felt "pain [,] anguish [and] grief." He and his family will go on "suffering until their death."
"He does not want to work any longer. What's the use of it? […]He is going to die."

He requested the Court to order the State to return them the remains of his son, to finish "the trial of La Cantuta all at once;" to order "an exemplary punishment" and reparations.

e) José Oyague-Velazco, father of Dora Oyague-Fierro

His daughter was studying initial teaching and wanted to "build a school and manage it."
He knew about her disappearance "because she had to return home on Friday and she did not arrive, so he went to the university to fetch her and the army did not allow [him] to enter." He felt "nervous and had the premonition that something bad was about to happen [. Afterwards,] on seeing her name [in the newspaper he started] crying because he felt that something had already happened to her."
He and his brother filed a complaint with the prosecutor´s office. However, "they have never received a reply."
When he learnt that some graves had been discovered, he felt "fury, helplessness, injustice, rage, for the abuse committed by the military." In one of the graves he found his daughter's stockings. It was then that he thought that everything had been a premeditated and treacherous action and that someone had ordered it."
His family was threatened. They called him to his home and told him to "shut up or he would face the same fate," and they also called him "terrorist" (terruco.) They left anonymous threats at his home saying "it would be better for him to keep silent; otherwise he would regret it."
The loss of his daughter "broke any future work or family life project,[…] She was the only girl." Besides, they "expected to have other sources of income."
["His daughter's disappearance caused] a collective sadness, to the whole family, the household, her aunts and uncles, even to their neighbors, as they would not see her come back any more."
Justice has been done "partially" since the masterminds are free. Nevertheless, the "macabre truth has been undisclosed"
["His sorrow] would only be alleviated if the perpetrators and masterminds are given an exemplary punishment." He requested the Court to order that scientific examinations be carried out on the bones found, so that he could identify and be given some of the remains of his daughter. Finally, he requested the Court to order the State to grant him "adequate moral and monetary compensations [and] that justice be done."

f) Rosario Carpio Cardoso-Figueroa, brother of Juan José Mariños-Figueroa

When he knew about his brother's detention he "consulted a friend who served in the police force, and who accompanied him to different places, [but] with no results." His friend told him that the procedure of abducting students was typical of the army; the police did not abduct and keep them under custody. Their method was to kill them[. T]ime proved his friend was right."
His parents, who lived in the hills, did not know of his brother's disappearance until three months later. For them and all his siblings "it was the saddest and most dramatic news in all their lives."
After his brother's disappearance he spent nearly two years abroad, in Argentina. He left "because he felt a strange atmosphere, he lived in fear of being abducted at any time, he was afraid because he also studied in La Cantuta, his brother was missing, his sister was said to have bombs [.] Then he heard that his brother was […] dead […]. At that time [he felt] a terrible grief. During those years, he had never cried as he did that day." His brother's disappearance "changed

his life,[his family's life, his] siblings and he himself stopped studying and the family disintegrated as such."
He requested the Court to do justice and to give a monetary compensation to his brother's father and mother and free medical care to all the members of the family.

Testimonies of witnesses proposed by the Inter American Court and the representatives

g) Fedor Muñoz-Sanchez, brother of Hugo Muñoz-Sanchez

His brother worked as a professor at La Cantuta University and lived in the faculty residence with Antonia Perez, his wife, and his children, four-year old Liliana and two-year old Hugo. Two days before his brother was abducted, he had told him about strong rumors that a search would be carried out at La Cantuta. He knew about his brother's disappearance through his brother's wife. His brother was planning to retire after 25 years of service, and had already worked twenty years,
He had been making his best efforts to find his brother since the very moment of his abduction until the discovery of the graves. The authorities denied any operation at La Cantuta or answered they did not to know anything about it. Then, it was rumoured that he was detained in Puno or elsewhere. After that, Henry Pease, a Congressman, denounced the existence of clandestine graves. "At that moment he felt great longing as he had the hope of finding him alive."
Upon his brother´s abduction, he and his family felt helpless and indignant; he feels his "soul wounded.". His sister-in-law hid the truth from his nephews. When a law was passed ordering the members of the "Grupo Colina" (Colina Group) to be judged by a military court, he felt indignation and impotence, as within the following 72 hours the military court had determined that the group acted on their own account that and the State bore no responsibility for the events. He felt the same rage and indignation when the amnesty law was passed.
Alberto Fujimori did all he could for those held intellectually responsible to remain unknown. Since the change in the government, the "members of the Colina Group and Montesinos are being held on trial at the Military Base." Nevertheless, fourteen years after the events took place, full justice has not yet been done, as this will be possible only when perpetrators and masterminds be "judged and convicted for the crimes against humanity they committed."
He wants to know where the remains of his brother are lying, and he expects the masterminds to be investigated, as "the remains of [his] brother have not been found yet, with the exception of a part of his humerus bone, which was sent to London for DNA testing, and neither the bone nor the results of the study have ever returned. He has not been identified[.]His brother's tombstone bears his name and an epitaph in his memory, but his remains are not there."
Furthermore, he expects that the apologies for the killing be given by the Office of the Ombudsman and that an obelisk to be erected in memory of his brother and the students, as La Cantuta is considered an emblematic case.

h) Victor Cubas-Villanueva, incumbent of the 18th Provincial Public Prosecutor's Office at the time of the events

He was the prosecutor who learnt about the investigation on the clandestine graves on July 8, 1993. He went to the site of the graves with forensic experts. He carried out the proceeding in public. One of the graves of the first burial, which was a secondary inhumation of someone

found in Cieneguillas, had already been opened and on removing some earth, pieces of cardboard, with fragments of burned bones were found. Apart from the bones, hair, small fragments of burned bones, pieces of fabric, earth, cinder, a compact shapeless mass and some keys. The fragments of bones and other objects produced a strong smell because, according to the experts´statements, they had been burned when they were already decayed. There were small objects in the second grave. In the burial of Huachipa, which proved to be the first inhumation, and presumably, the place where the victims had been executed, remains of unburned bones and other objects were found.

The experts were able to reconstruct a complete bone and concluded that the physical characteristics of the victim corresponded with those of the students of La Cantuta. From bones and material found in the graves of Cieneguilla it is possible to conclude that the remains found belonged to the students Bertila Lozano-Torres, Juan Gabriel Mariños-Figueroa and Armando Richard Amaro-Condor; "remains of objects belonging to Robert Teodoro-Espinoza and Heráclides Pablo-Meza were also found." Some human remains that had not been destroyed by burning were found in the second graves discovered in Huachipa: namely, half of the skeleton belonging to Dora Oyague-Fierro, and the complete skeleton of Luis Enrique Ortiz-Perea."

The experts inferred that the execution of the alleged victims took place the same day of the abduction, at dawn. This has been confirmed after the statement of those indictees that availed themselves of the "Colaboración Eficaz" Program (Effective Co-operation).

He prepared press releases "because the case belonged to the public domain and as a way of protecting his investigation and [his] work, considering that by that time, the political power had influence on the judicial power.."

After confirming the possibility of carrying out DNA testing on some of the remains, the possibility of doing them in the United States and Japan was taken into account, although finally they decided on Great Britain.

Doctor Escalante, expert in genetics, stated that the tests on eight bones would cost fifteen thousand dollars. In August 1993 the same doctor informed that, "he would not be able to conclude the necessary steps." Afterwards, as the cost of the tests was higher, only one bone could be analyzed; the outcome was consistent with the genetic code of Felipe Flores-Chipana.

While being in charge of the investigation conducted by the prosecution office, he felt threatened by "hooded people in vans [who encircled his home."]

i) Edmundo Cruz-Vilches, journalist of the weekly magazine "SI" at the time of the events

He knew about the disappearance of the students of La Cantuta through his journalistic activity. He obtained information about the Grupo Colina (Colina Group) and one of its most relevant operations, the disappearance of the professor and nine students from the La Cantuta University, between December 1992 and October 1993. The magazine "SI" received, through a member of the Congress, "a sample of human bone remains stating it belonged to a missing person of La Cantuta, and a sketch describing the place were they could supposedly be buried." These elements led to the discovery of the graves of Cieneguilla. After said discovery, an investigation on the case of La Cantuta was started by the prosecution office. Afterwards, a member of Grupo Colina (Colina Group) got in touch with him and with another journalist of "SI" magazine, named José Arrieta-Matos. Through the information provided by that person, they could get to the graves of Ramiro Priale, where the alleged victims had been first buried.

He had to face several obstacles in the course of the investigation. In fact, "the Congress of the Republic approved, by the vote of a broad majority, a resolution whereby they requested the Home Affairs Office to provide police protection to the three journalists of the magazine "SI" who had made the discovery."
During the press investigation on the Grupo Colina (Colina Group), they were "threatened through the telephone, they were followed and their telephones were bugged. In the case of La Cantuta they were accused of serving as instruments of Sendero Luminoso (Shinning Path) [and] members of the Intelligence Service [requested prosecutor Cubas] to include [the witness] in the investigation as accused" but the prosecutor rejected the petition.
This is an emblematic case as "the professor and the nine students were first arbitrarily pointed out as terrorists and considered the authors of the car bomb in Tarata Street, [and] they were abducted and disappeared under said presumption. [Besides,] they were tortured" before being executed […] They were buried three times […] and finally, the obstinate and systematic way in which the highest authorities of the State […] tried to conceal and deny [every fact related to the events] and they still continue to do so."

j) Retired General Rodolfo Robles- Espinoza, military who denounced the Grupo Colina (Colina Group) and the Intelligence Services in Perú

At the time the events took place, he was Commander General of the Third Military Region in Perú and had the rank of Division General.
He knew about the existence of the Grupo Colina (Colina Group) "as a result of [the] events of [La Cantuta since] some officials and auxiliary personnel who were working or had worked with him before and who belonged to the Army Intelligence Service informed[…] him of the existence of this group or death squad [and] of the different 'special intelligence operations' attributed to them."
The aforementioned group had been created "in the context of the war against Sendero Luminoso (Shining Path) under the initial argument of national pacification, arguing about the need to create an intelligence group for the analysis of the documentation seized" from that organization. Vladimiro Montesinos promoted the creation of the Grupo Colina (Colina Group) and he imposed it on the Commander General of the Army in 1991,[…] counting on the firm support of Perú Defense Minister […] and the consent of President Alberto Fujimori."
Officially, the Grupo Colina (Colina Group), is an "Operative Intelligence Detachment, pursuant to the organizational schedule and, within the budgetary structure of the Army it is considered a standing organization, formed by approximately fifty officials […] trained for special intelligence missions, including secret operations[. P]articularly, they were employed as group for extra-legal executions."
The Grupo Colina (Colina Group) was related to the armed forces through the DINTE (Dirección de Inteligencia del Ejército) (Army Intelligence Board), which is organized in Sub-Divisions to perform all the duties it is in charge of, and it has an operative or executive unit, the Servicio de Inteligencia del Ejército (Army Intelligence Service) (SIE). "The aforementioned Operative Intelligence Detachment was formally created within the SIE (and its members named themselves informally Grupo Colina (Colina Group)) and it was in charge of special intelligence tasks[…]."
Regarding the relation between the Grupo Colina (Colina Group) and the intelligence services of the State, he said that the Servicio de Inteligencia Nacional (SIN) (National Intelligence Service)

was the leading entity and it commanded (with legal support) all the Intelligence Services of the Armed Forces and the Perú National Police (PNP) as well as the respective intelligence bodies of the Joint Chiefs of Staff, which were organized under a vertical system where all of them reported to […] Vladimiro Montesinos [who was the real chief of the SIN]."

"The president was permanently informed of the operations by the chief of the national intelligence and by the Army Commander General of Operations of the Grupo Colina (Colina Group), before, during and after the operations." "The operations were ordered by Vladimiro Montesinos and General Hermoza-Rios,[…],but they always had the consent of the President for the most important and transcendental operations." The former President "played a leading and significant role in concealing and providing them impunity, for example, by ordering the members of the Congress of the official party to pass the "Ley Cantuta" (Cantuta Law) [and] the "Ley de Amnistia," (Amnesty Law.)

"The Grupo Colina (Colina Group) was [sent] to kill[…].Its actions implied a message of terror […] In the major operations [, as in La Cantuta,] they were backed by regular troops that cleared their operational field, as a result of the planning by the Estado Mayor de Unidades de Combate (Major Staff of Combat Units)."

"During the time Montesinos and Fujimori were in the government, the judicial power did not keep the independence and autonomy prescribed by the Political constitution." This is the reason for the acquittal of the instigators of this massacre by the military criminal court. Furthermore, the judgment pronounced by said court "was a show to make domestic and international public opinion believe that justice had been done." Nevertheless, those that were convicted knew that they would be granted an amnesty upon Fujimori´s reelection."

About March 1993 he learnt about the events of La Cantuta and received information about the Grupo Colina (Colina Group). Therefore, he went to see General Picon and denounced the crimes. General Picon told him "that he had already received instructions from General Hermoza to state in his judgment that no military personnel were involved in the killing and the Investigation Report of the General Inspection Board of the Army would be issued following the same guidelines. " The military jurisdiction "was used as an instrument to conceal and warrant the impunity for the forced disappearances and extra-legal executions carried out under the anti-subversive strategy."

Besides, the Peruvian Congress passed the Ley de Amnistia (Amnesty Law) (№ 26,479) whereby military and policemen were released from liability, as well as the civilians who had violated human rights or taken part in those violations between the years 1980 and 1995.

He first reported the events of the case of La Cantuta "based on the information received from high rank officials who belonged to the Army Intelligence System, and were absolutely credible sources of information […] then corroborated in full detail and crossed with information provided by other officers of lower rank and Auxiliary Personnel of Intelligence who had had direct knowledge of the events. Afterwards, while in exile in Argentina [he analyzed] all the information that kept arriving and that he got to know from open sources, applying the reasoning method used in the 'cycle of production of intelligence'."

As a result of the complaints he filed, he destroyed [his] life project[. His] military career was aborted after serving for 37 years; as well as the possibility of being promoted to Commander General of the Army." Two of his sons were discharged from the army through a "disciplinary measure," which is an unjust and disgraceful punishment still in use. Being Army Officers [the three of them], the fact that they denounced […] that group of assassins in uniform that committed crimes against humanity" is still considered as disloyal conduct in Perú.

Expert witnesses proposed by the Commission

k) Eloy Andres Espinosa-Saldaña-Barrera

He referred to Peruvian constitutional law and the possibilities existing within the domestic legal system of guaranteeing the effective deprival of legal effects of Law № 26,479, known as the Amnesty Law, and Law № 26,492, referred to the interpretation of the Amnesty Law, as a result of the suspension of its effects due to its contradiction with the American Convention.
In this sense, the witness stated, inter alia, that Perú is "compelled to comply with the rulings of the American Convention," since it has ratified the American Convention. Such obligation is provided in the regulations of its domestic legislation, which provide that the judgments of the Inter American Court are to be executed immediately and directly.
He also stated that if "the resolution is of a general scope, it will not suffice with a diffused control over a particular case." The unconstitutional nature of said law "is evident and, besides, it shall, at least, have effects on the legal decisions whereby the accused are acquitted or provisionally released." This argument is founded on the emerging principle of the Human Rights law."

Expert witness proposed by the representatives

l) Samuel Abad Yupanqui, expert in Peruvian constitutional law

After referring to the context existing in Perú at the time of the events, he referred to Peruvian constitutional law, specifically to matters related to the inexistence, invalidity and inefficiency of laws in Peruvian legal order, especially to laws No. 26,479 and 26,492, as well as to the effects and scope of the rulings of the Constitutional Court, both in amparo and constitutional proceedings related to said laws. Besides, he referred to the situation of the Peruvian judicial system and its capacity to give adequate judicial response to serious violations of human rights.
He stated, inter alia, that the interpretation judgment delivered by the Inter American Court in the case of Barrios Altos, regarding the amnesty laws "definitely opened […]the way towards justice […] in all the remaining cases." Therefore, "the fact that the amnesty laws have not been formally abolished does not prevent the judges from investigating and punishing those held responsible, since in Perú all judges have the constitutional power to give prevalence to the constitution over the laws, and consequently they are authorized not to apply amnesty laws."

B) TESTIMONY OF WITNESSES

61. During the public hearing (supra para. 23) the Court heard the testimonies of the witnesses for the Inter-American Commission and the representatives. Below, the Court summarizes the relevant parts of said testimonies.

a) Gisela Ortiz-Pérez, sister of Luis Enrique Ortiz-Pérez

When her brother disappeared, she was twenty years old and she was also a student at La Cantuta University.

From the very beginning the next of kin have been in search of truth and justice. As from the date of the events, they have made formal complaints, intended to sensitize Peruvian society and the international community, to "build up memory" as "it is a way of taking her brother back to life."

While participating in the several actions aimed at searching missing relatives, she went to the mass graves and once there she reminded that "[they], with [their] hands, disinter[red] the remains those criminals had left. [They] wer[e] in those mass graves of Cieneguilla, disinterring the burnt remains of [their] next of kin […], in year 1993 […] They scratch[ed] the ground trying to uncover the truth hidden there."

She stated that "the body of [her] brother appeared there; and that was the only corpse the criminals left, a corpse dried by the lime that had covered it [. I]n [her]opinion, the most painful thing [she] had to endure up to now was to discover –a year and a half later- that [her] brother had been thrown into that mass grave."

Her brother's body was the only one found there. It had five shots on the head. The next of kin "did not know that those criminals were so cruel to hide the body, to deny [them] the right to bury the corpse." She is grateful "to life and […] God [for] finding [her] brother," since in Perú "thousands of victims" have not such opportunity.

The damage was caused not only by the disappearance and death of her brother, but also by all the after-effects caused to her family and her personal life. "She [had] to abandon [her] studies at the university. Really […] it was very hard to go to the university without feeling emotionally bad because [her] brother was not there, [his] university mates were not there either. It took [h]er over ten years to make up her mind to resume her studies. [S]he felt that […] any personal progress entailed a betrayal of [her] brother, since he was not there any more and he could not finished any of the things he had been in search of."

Besides, "[her] younger sisters […] are still suffering from the same after-effects [than her]: anxiety, depression, the same emotional instability, they are distrustful persons[. She] pity [her] parents, who are so sad for her brother's death […] they [will] always talk about a time before and after said death. Then, […][they] clearly recognize how [their] life was before July 18, 1992 and what it has become […] after such event […]."

She had to abandon her studies at the University as she devoted herself to seek justice. It is hard for her to continue with an ordinary life and has no personal project; she cannot take the risk of having a child under the present circumstances.

As regards the legal proceedings, no judgment has been rendered against the persons liable for her brother´s death. Contrariwise, the masterminds behind the crimes "were successful in obtaining a tailor-made judgment issued by the military courts, whereby their complaint was annulled and dismissed for lack of sufficient evidence."

Afterwards, in 2001, the prosecutor resumed an investigation that lasted until year 2005. As from that time, the proceedings are at the stage of the oral trial. The next of kin participate in such proceeding. Several of the accused persons have been released upon expiration of the legal term within which the judgment should have been rendered. Besides, the masterminds have not been tried. Moreover, the next of kin are civil complainants in the proceedings against Alberto Fujimori pending before the Supreme Court of Justice. "The State does not understand that for [the next of kin] justice is as necessary as to eat, sleep or survive, because […] since the death of [their] beloved ones, [they] cannot say they are alive; [they survive] when they wake up each morning and do not know what will happen […] Actually, for [them] amnesty is a permanent

threat, because it entails a State indifferent to the victims´claims. […] The State has not taken enough measures, it has done nothing to punish those liable in the case of Cantuta."
Although the State has acknowledged its responsibility in the instant case, before the Inter-American Commission, the next of kin decided to waive the amicable solution proceeding since the State was not willing to comply with its commitment.
She has received no compensation, reparation or apology from the State. However, her parents, legal heirs of her brother, received compensation from the State, in compliance with the judgment pronounced by the CSJM (Supreme Council of Military Justice).
Integral reparation must be rooted in the public acknowledgement and apology from the State. Furthermore, the State must see for the mental and physical health of the victims, award education grants and create memory spaces, since "each one of the victims in [Perú has] the right to public acknowledgement […]." The civil community encouraged the construction of the "Ojo que llora" ("the Crying Eye") in a place donated by the Jesús María Municipality, in Lima. However, the State "cannot be small-minded and believe that said memorial […] is everything the victims deserve." Moreover, the State must admit that the event involving the ten alleged victims is the official story and it must stop saying that they were subversives or terrorists. Contrariwise, the State "used terrorist methods and ways to kill university students."
The witness does not agree with the analysis made by the Comisión de la Verdad y Reconciliación (CVR) (Truth and Reconciliation Commission) in the case of La Cantuta regarding the "general context on how was life at the University […], the particular coexistence conditions of students" as "it does not reflect […] reality." Besides, since year 2003, when the CVR submitted its report, and up to the present time, its "recommendations have neither been implemented nor taken into account by the State." The witness requested that the State publicly acknowledges that it has violated the rights of the alleged victims and their next of kin.
Her brother "is murdered from behind each day impunity continues and each day [t]he murderers […] are allowed to go on unpunished." The next of kin are treated "as second-class citizens" with no rights and they are tired and scared since they do not know how more time they will have to "pledge [their] life to this fight, which should be the fight of the Peruvian State and not only [theirs.]"
Finally, she requested the Court that "each one of the persons liable for the violations of human rights [be] punished;" that the official story of the case of La Cantuta be written; that the victims be awarded an integral reparation; and that the next of kin be dignified as victims of the State.

b) Raida Cóndor-Sáez, mother of Richard Armando Amaro-Cóndor

A friend of her son Armando told her that he had been arrested. She looked for him in the DINCOTE, the Police Station and hospitals, but did not find him. Then, she went to the University where she learnt what had really happened.
She submitted the corresponding complaints together with other next of kin. Only APRODEH "gave them a hand," since everybody thought their sons were terrorists, and consequently they were marginalized, could not find a job and people considered them "bad."
The only thing belonging to her son that she found in the mass graves were his keys. "At that moment, [she] felt completely discouraged, she want[ed] to die too; but then she thought: 'I cannot die; if I die, who will speak for him, who shall claim justice for my son?"
The investigation conducted by Prosecutor Cubas was sent to the military courts, but there, the next of kin "were never […] accepted."

Upon the end of Fujimori´s government, the next of kin took some measures before the Prosecutor´s Office in order that the case be reopened. In the current proceedings, where she gave testimony, "the officers of the highest rank in the forces, who ordered that the students of La Cantuta were killed, are not [being tried.]"
She received threats "many times": she received calls and flowers with the warning that she would "die, as [her] son had died."
Her family "is not the same. One of [her] sons is in a bad way." Sometimes her sons complain because she is not with them, but she explains to them that "it is necessary to go on." Before his son was arrested, she took in washing and worked at the market. She quit her job and devoted herself to the search of justice.
She received a pecuniary compensation and used it to buy a house and pay some debts she had incurred in the different steps and actions she had taken. However, "that is not the price of [her] son."
In the memorial "El Ojo que llora" (the "Crying Eye"), donated by the Jesús María Municipality, she wrote the name of her son and "she did not know that the State had built it."

c) Antonia Pérez-Velásquez, wife of Hugo Muñoz-Pérez

When his husband was arrested, she resorted to the University authorities, but they did not know what had happened. The personnel of the military base of the University told her that they had conducted no procedure. So, she went to police stations, military barracks and to the DINCOTE, but her search was unsuccessful. "It was as if he had vanished off the face of the earth."
In the mass media, they said that it was "practically […] impossible to give any news, any report on the subject since […] as they were afraid of the government´s reaction." Some next of kin or friends that were members of any of the armed forces, advised her to do nothing and to keep silent because she and her children were in hazard, since the disappearance of her husband had been "something decided by the government, by top governmental officers."
The disappearance of her husband "had strongly affected her, first because she suddenly becam[e] a single mother with two kids under four years old, and unexpectedly, in order that [she and her] children could be safe, she had to leave a nice, comfortable house at the university, where she lived a relatively peaceful life, and move to a small house. She asked lodging to a relative […]. Suddenly, they were living on the terrace roof of that house, they ha[d] to improvise two rooms with little pieces of cardboard, plywood (triplay) and matting […] They start[ed] to live in such precarious conditions."
Her husband was so "devoted to their children" that her eldest daughter was the one most affected by his disappearance. She lied to her daughter about what had happened with her father: she told her that he was on a business trip, but her daughter did not believe her. When she took a long time to arrive home, her daughter thought she would not come back either.
The disappearance of her husband also "affected her from the job standpoint […] since she was not the teacher devoted and dedicated to [her] students any more. She had to request a leave as she frequently had to be out of her job and practically, and due to reasons of professional ethics, she had to quit, waiving [her] rights or [her] benefits [… She had] to resign in order to be able to go on with the proceedings […] and actions." This had affected the economy of her family.
She found nothing belonging to her husband in the mass graves discovered. However, the authorities took blood samples from her youngest son to conduct the DNA test, the results of which she does not know.

At the time of the events analyzed in the instant case, “it was not unusual that any citizen […] was arrested and took under custody in order to conduct the corresponding investigation, alleging he/she was a terrorist. [When] people heard the word terrorism, everybody tried to be far from such person.” In fact, her friends and some relatives “have turned their back on her,” since they think her husband was a terrorist. “People lived[…] with anguish [since] at any time [one] could leave [the] home and there was not certainty of [being able] to come back.” The witness deemed that the people was aware of the existence of a systematic practice and State terrorism.
Her sister-in-law, who accompanied her when she had to resolve matters related to the proceedings and during her long walks, was frequently followed by a car. Besides, her sons feared that she might declare before the Inter-American Court.
The next of kin of the dead or missing persons had not access to the proceedings followed before the military courts. Afterwards, with the fall of Fujimori´s government, she had hopes that justice would be done, but nothing happened. In the current proceeding, where she gave testimony before the Prosecutor, only a few persons have been accused while others are free. The proceeding is long and wearisome. She participated in a hearing that “was extremely hard to endure since the person who was giving testimony explained, with great detail, how […had killed [her] husband.” As of said time she has not returned since she "was appalled and deeply shocked.” Her brother-in-law and her other relatives keep her posted of the progress of proceedings.
She has never received any apologies for what happened to her husband. And though they really need it, neither she nor her children have received any psychological support. She has been unable to overcome her husband’s death.
From her point of view as teacher, a full redress must include education and health. Furthermore, she thinks that “people [can] not allow any violation of their rights. […] These are values that must be taught to young people."
She requested the Court to do justice; that all persons involved, not only the perpetrators, but also the masterminds, be punished; that the University do not “sink into oblivion.”

B) ASSESSMENT OF DOCUMENTARY EVIDENCE

62. As in other cases, [FN7] the Court recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural state, which have neither been contested nor challenged, and whose authenticity has not been objected.

[FN7] Cf. Case of Goiburú et al., supra note 1, para. 55; Case of Ximenes-Lopes, supra note 6, para. 48; and Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, para. 106.

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63. As regards the documents submitted as evidence, clarification and explanations given to facilitate the adjudication of the case (supra paras. 33 and 36), the Court incorporates them to the body of evidence of this case, under section 45(2) of the Rules of Procedure.

64. The State challenged, generally, the affidavits of the witnesses offered by the Commission and the representatives for being pointless, as the State “has not contested the

information related to the efforts made by the next of kin of the alleged victims in the search for justice." In this regard, the Court deems that said depositions can contribute to determine the facts of the instant case as long as they are consistent with the purpose defined in the Resolution of the President dated August 17, 2006 (supra para. 23), and consequently the Court assess them applying the rules of reasonable credit and weight analysis and taking into account the remarks made by the State. Furthermore, the Court points out that since said witnesses are alleged victims or their next of kin, their statements cannot be assessed separately for they have a direct interest in the outcome of the case, and therefore, must be assessed as a whole with the rest of the body of evidence.

65. As to the press documents submitted by the parties, the Court considers that they may be assessed insofar as they refer to public and notorious facts or statements given by State officials or when they confirm aspects related to the case in point. [FN8]

[FN8] Cf. Case of Servellón-García et al., supra note 1, para. 50; Case of Ximenes-Lopes, supra note 6, para. 55; and Case of the Ituango Massacres, supra note 8, para. 122.

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66. Regarding the documents and information requested to the parties (supra paras. 33 and 36) and which they have not submitted, the Court points out that the parties must lodge with the Court the evidence the latter may request them. In particular, the State did not inform, save regarding to only one person, who were the persons indicted or convicted in the criminal cases tried by military courts, who have been, or currently are, imprisoned and, if such was the case, whether they have been under pre-trial custody or as convicted in said proceedings. This prevented the Court from determining if such sentences had been effectively complied with. The Commission, the representatives and the State must submit any evidence requested, so that the Court may have the greater number of elements of judgment to have a thorough knowledge of the facts and ground its decisions.

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67. The Inter-American Commission included in the application a list with the 10 alleged victims of the events of the instant case, to wit: Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana, as well as 55 next of kin of said persons. [FN9] The Court notes that no proof of the kinship ties of 46 of said alleged next of kin included in the list has been filed with the application. [FN10] On the other hand, the representatives filed documentation regarding 38 of such next of kin of alleged victims as evidence requested by the Court to facilitate the adjudication of the case (supra paras. 33 and 36).

[FN9] Antonia Pérez-Velásquez, Liliana Margarita Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanacio, Vladimir Ilich Muñoz-Sarria; Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar

Sara Fierro-Huamán, Rita Ondina Oyague-Sulca, Luz Beatriz Taboada-Fierro, Gustavo Taboada-Fierro, Ronald Daniel Taboada-Fierro, Carmen Oyague-Velazco, Demesia Cárdenas-Gutiérrez, Saturnina Julia Rosales-Cárdenas, Celestino Eugencio Rosales-Cárdenas, Juana Torres de Lozano, Augusto Lozano-Lozano, Augusto Lozano-Torres, Miguel Lozano-Torres, Jimmy Anthony Lozano-Torres, Marilú Lozano-Torres, Magna Rosa Perea de Ortiz, Víctor Andrés Ortiz-Torres, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Hancco, María Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Celina Pablo-Meza, Cristina Pablo-Meza, Marcelino Marcos Pablo-Meza, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Carmen Juana Mariños-Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños-Figueroa de Padilla, Wil Eduardo Mariños-Figueroa, Rosario Carpio Cardoso-Figueroa.

[FN10] Only the evidence of the following persons has been submitted: Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Román Mariños- Eusebio, Isabel Figueroa-Aguilar, Hilario Amaro-Hancco, Alejandrina Raida Cóndor-Saez, Augusto Lozano-Lozano, Juana Torres-Córdova and Demesia Cárdenas-Gutiérrez.

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68. In turn, the Court points out that in a document of 1996 issued by the Permanent Representation of Perú before the OAS, filed as an appendix to the application, there is a list of the heirs that would have received, up to that date, a pecuniary compensation ordered by the Consejo Supremo de Justicia Militar (Supreme Council of Military Justice) (infra paras. 80(55) and 80(56)) in its judgment of March 3, 1994. Said list includes the names of Zorka Milushka Muñoz-Rodríguez, as daughter of the alleged victim Sánchez-Muñoz, and Celso Flores-Quispe and Carmen Chipana, as parents of Felipe Flores-Chipana. [FN11] However, neither the Commission, in the application, nor the representatives, in their brief of requests and arguments, included said persons in the list of the next of kin of the alleged victims.

[FN11] However, the Court points out that in the birth certificate of Felipe Flores-Chipana, the name of his father is included as Silvestre Flores-Quispe.

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69. In the brief of requests and arguments, the representatives included, among the next of kin of the alleged victims, four persons that have not been named in the application. [FN12] At that time, no proof of kinship was submitted. Besides, said persons were included by the Commission in the closing arguments and the representatives filed certain documentation related to said persons as evidence requested by the Court to facilitate adjudication of the case.

[FN12] Jaime Oyague-Velazco, uncle of Dora Oyague-Fierro; Andrea Dolores Rivera-Salazar, cousin of Luis Enrique Ortiz-Perea; Susana Amaro-Cóndor, sister of Armando Richard Amaro-Cóndor, and Bertila Bravo-Trujillo, partner of the father of Robert Edgar Teodoro-Espinoza.

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70. In the closing arguments, the Commission included, in the list of the next of kin of the alleged victims, the names of two persons that had not been included in the application, [FN13] as they had already been named in the affidavits made by two next of kin.

[FN13] Nicolasa León-Espinoza, grand-mother of Robert Edgar Teodoro-Espinoza, and Valeria Noemí Vajarro (or Najarro), cousin of Armando Richard Amaro-Cóndor.
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71. Finally, according to one of the appendixes to the closing arguments of the State, there is an official document where the name of Carol Denisse Muñoz-Atanasio is included as the legal heir of Hugo Muñoz-Sánchez in connection with the civil compensation ordered in the judgment of the CSJM of March 3, 1994 (supra para. 68 and infra para. 80(55) and 80(56)(d)).

72. The case law of this Court regarding the determination of the alleged victims has been broadened and adapted to the circumstances of each particular case. The alleged victims must be included in the application and in the Report of the Commission drawn under the provisions of Article 50 of the Convention. Thus, pursuant to Article 33(1) of the Rules of Procedure, it is the duty of the Commission, and not of this Court, to accurately identify the alleged victims in a case tried by the Court. [FN14] However, in certain cases where such identification has not been made, the Court has considered as victims certain persons not included as such in the application, provided the right to defense of the parties and alleged victims has been respected and the alleged victims are related to the facts described in the applications and the evidence filed with the Court. [FN15]

[FN14] Cf. Case of Goiburú et al., supra note 1, para. 29; and Case of the Ituango Massacres, supra note 8, para. 98.
[FN15] Cf. Case of Goiburú et al., supra note 1, para. 29, and Case of the Ituango Massacres, supra note 8, para. 91; and Case of Acevedo-Jaramillo et al. Judgment of February 7, 2006. Series C No. 144, para. 227.
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73. This Court shall apply the following criteria to define who will be considered alleged victims and their next of kin in the instant case: a) the procedural stage when they were identified; b) the acquiescence of liability by the State; c) the evidence submitted; and d) the particular characteristics of the instant case.

74. In this case, the Court has deemed it necessary to make a thorough and deep examination of the evidence submitted by the Commission and the representatives, as well as to request additional documents as evidence to facilitate adjudication of the case, in order to gather the elements necessary for the accurate identification of the alleged victims. Upon said examination, the Court has found the different situations described in the above paragraphs (supra paras. 67 to 71).

75. Regarding to Luz Beatriz, Gustavo and Ronald Daniel, all of them Taboada-Fierro, and Saturnina Julia and Celestino Eugencio, both with the surname Rosales-Cárdenas, whose kinship with the alleged victims has not been proved (supra para. 67), this Court finds that said persons were included as next of kin of the alleged victims both in the applications and in the written closing arguments of the Commission. Besides, it is worth pointing out that the State has not objected to the determination of the next of kin of the alleged victims proposed by the Commission. Consequently, said persons will be considered alleged victims in the instant case.

76. As regards Zorka Milushka Muñoz-Rodríguez (supra para. 68), through a note of the Secretariat dated October 24, 2006 (supra para. 33), the Commission and the representatives were requested to inform the reasons why she was not included in the lists of the application and of the brief of requests and arguments and, if applicable, to send the documents proving her kinship or her death. On October 31, 2006, the Commission "acknowledge[d] that, due to an involuntary mistake, the list contained in the application did not include" said person, and the representatives stated that they had not included her since the other next of kin had lost any contact with her. Finally, the Commission and the representatives included her name when submitting their closing arguments in writing and, furthermore, the representatives filed her birth certificate as evidence to facilitate adjudication of the case. The Court states that although the Commission did not include her in the list of next of kin attached to the application, it submitted, together with the corresponding appendixes, the document abovementioned where she is declared heir. Same circumstances apply to the parents of Felipe Flores-Chipana (supra para. 68). As stated above, (supra para. 72), it is the Commission, and not the Court, that must accurately identify the alleged victims in a case submitted to the Court. However, the Court shall consider them as alleged victims since their existence was informed to the Court, at least indirectly, through the appendixes to the application.

77. Regarding the four persons listed by the representatives in their brief of requests and arguments (supra para. 69), the Court finds that such persons are mentioned in the affidavits made by the next of kin. Besides, and as evidence to facilitate the adjudication of the case, the representatives submitted the birth certificate of two of said persons. The state has not objected such request, which was included again in the written closing arguments of the Commission and the representatives. Then, the Court shall analyze their condition as as alleged victims in the corresponding paragraphs.

78. As regards Carol Denisse Muñoz-Atanasio, who seems to be the daughter and heir of Hugo Muñoz-Sánchez (supra para. 71), the Court does not know the reasons why said person has not been included as next of kin of the alleged victim neither by the Inter-American Commission nor by the representatives. In spite of this, she shall be considered alleged victim since her existence was made known to the Court by the State, at least indirectly, in the appendixes attached to its closing arguments.

79. Finally, according to the affidavits executed by the next of kin of the alleged victims, and pursuant to the written closing arguments of the Commission (supra para. 70), there are other two next of kin, to wit, Nicolasa León-Espinoza, the alleged grandmother of Robert Edgar Teodoro-Espinoza, and Valeria Noemí Vajarro, the alleged niece of Armando Richard Amaro-

Cóndor. In connection with this, the Court finds that in the affidavits submitted, said persons are mentioned, without any other information regarding their possible kinship, and that in the written closing arguments the Commission did not give any ground for including them as next of kin of the said alleged victims, but it only mentioned them. Therefore, the Court shall not consider them alleged victims.

VII. PROVEN FACTS

80. Upon examining the evidentiary elements filed in the instant case, the statements of the parties, as well as the admission of the facts and acknowledgement of international liability made by the State (supra paras. 51 and 58), the Court finds the following facts to be proven: [FN16]

[FN16] Paragraphs 80(1) to 80(66) of this Judgment refer to undisputed facts that this Court deems to be proven based on the admission of facts and acknowledgement of liability made by the State, in the order and as described in the application. Proof of some of said facts has been completed with other evidentiary elements, which have been indicated in the corresponding footnotes. Furthermore, different paragraphs refer to facts taken from the Final Report of the Truth and Reconciliation Commission, in which case the corresponding footnotes have also been included. Besides, paragraphs 80(67) to 80(92), which deal with the pending criminal proceedings, refer to facts that this Court deems to be proven on the grounds of the State´s acquiescence of liability and the evidentiary elements gathered in the records of the domestic criminal proceedings, the majority part of which have been submitted by the Commission as appendixes to the application, as well as evidence to facilitate the adjudication of the case presented by the State. Finally, paragraphs 80(93) to 80(110), dealing with the next of kin, refer to the facts that are deemed proven on the basis of the following evidence: official documents (birth, marriage and death certificates), affidavits made by the next of kin and documents submitted as evidence to facilitate the adjudication of the case.

Systematic and Generalized Practices of Illegal and Arbitrary Detentions, Torture, Extra-legal Executions and Forced Disappearances during the time the events of the instant case took place.

80(1) Arbitrary executions were a systematic practice carried out in the backdrop of the contra-subversive strategy of State agents, especially during the hardest times of the conflict (1983-1984 and 1989-1992).

80(2) The Truth and Reconciliation Commission of Perú (hereinafter, “CVR”, for its acronym in Spanish) concluded that during the period 1989-1992 said practice of arbitrary executions spread to a great part of the national territory, they were more selective and were carried out in combination with other forms of elimination of persons who were suspected of participating, co-operating or sympathizing with subversive organizations, such as the forced disappearance of persons. [FN17]

[FN17] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Patrones en la Perpetración de los Crímenes y Violaciones a los Derechos Humanos (Patterns of Crimes and Violations of Human Rights), p. 115.

80(3) The arbitrary execution procedure used by government officials generally consisted of the identification of the victim, and his/her detention, either at home, in a public place, at road control posts, during raids or when the victim contacted a public agency. Generally, detentions were violently carried out by so many hooded, armed persons that they could break any resistance. Victims detained at home or at a road control post had been previously identified and trailed during some time. Afterwards, the victim was transferred to a public, police or military premises, where he/she was interrogated and tortured. The information thus obtained was processed "for military purposes" and they decided if the person was released, arbitrarily executed or if he/she would be kept as a "missing" person without leaving any trace. [FN18]

[FN18] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Patrones en la Perpetración de los Crímenes y Violaciones a los Derechos Humanos (Patterns of Crimes and Violations of Human Rights), p- 114.

80(4) Regarding the forced disappearances implemented during the time the events of the instant case took place, the CVR concluded that said practice "was a mechanism to fight subversion that was systematically used by Government agents from 1988 to 1993 [… and that] was extended to great part of the national territory," The CVR further found that "between years 1988 and 1993, the rate of fatal victims of this practice was about 65-75% of the cases" and that "members of the Armed Forces are attributed the major rate (over 60%) of victims of forced disappearance caused by government agents." [FN19]

[FN19] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Patrones en la Perpetración de los Crímenes y Violaciones a los Derechos Humanos (Patterns of Crimes and Violations of Human Rights), pp. 79 to 81.

80(5) The modus operandi of forced disappearances was similar to that of arbitrary executions. The CVR explained in detail the stages of this complex practice: "selection of the victim, detention, deposit of the victim in a detention center, contingent transfer to other detention center, interrogation, torture, processing of the data obtained, decision to eliminate the victim, physical elimination, concealment of victim´s remains and use of State resources." The common denominator in the whole process was "the denial of the detention itself and denial of any information on what had happened to the arrested person. That is, the victim entered an already established circuit of clandestine detention, which only very lucky people could survive." [FN20]

[FN20] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Patrones en la Perpetración de los Crímenes y Violaciones a los Derechos Humanos (Patterns of Crimes and Violations of Human Rights), p. 84.

80(6) Government agents used several procedures for arresting the victims, including the sudden bursting into the home of the victim, and the CVR described it as follows:

Generally, groups of 10 or more persons took part in [t]hese violent actions. Detention agents frequently had their faces covered with balaclavas and were wearing black turtlenecks, trousers and dark boots. [...] These abductions were frequently carried out late in the night, while the alleged victim was asleep. In this kind of procedure they used flashlights, long and short firearms, and official vehicles such as those trucks used for the transportation of troops, among others. [FN21]

[FN21] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, 1.2. "Desaparición forzada de personas por agentes del Estado" (Forced Dissappearance of persons by Government agents), 1(2)(6)(2)(1) "Incursión violenta en el domicilio" (Violent burst into residences) p. 86.

80(7) The complex organization and logistics of the forced disappearance technique required the use of resources of the State, for example: motor vehicles, fuel, premises where to transfer and hide the detainee or to avoid or obstruct his/her being tracked down. The CVR expressly referred to the case of La Cantuta as an example of the use of State resources in the practice of forced disappearance. [FN22]

[FN22] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Patrones en la Perpetración de los Crímenes y Violaciones a los Derechos Humanos (Patterns of Crimes and Violations of Human Rights), pp. 99 to 100.

80(8) As regards the techniques used to destroy any evidence of the crimes committed during the forced disappearance procedure, the CVR pointed out in its report that said techniques included, inter alia, the mutilation or cremation of victim's mortal remains.

Military presence and control at the Universidad Nacional de Educación "Enrique Guzmán y Valle" - La Cantuta

80(9) The Universidad Nacional de Educación "Enrique Guzmán y Valle" - La Cantuta (hereinafter "La Cantuta University") is a higher education public institution, where people from the interior region of the country and with low resources attended.

80(10) As from the month of May 1991, the University was under the custody of a military post located inside the campus. On May 22, 1991, the Army established a military post at La Cantuta University, which reported to División de las Fuerzas Especiales (Special Forces Division) (DIFE, for its acronym in Spanish), called Base de Acción Militar, placed the university under curfew and established a military control for the entry and exit of students. The Government had authorized the entry of the security forces to the universities, declaring its legality through Decree-Law No. 726 of November 8, 1991. Pursuant to the Final Report of the CVR:

At the beginning of 1991, the local TV released a video of a political-cultural ceremony held at "La Cantuta" University that allowed speculating about the level of control that “Sendero Luminoso” (Shinning Path) had in the University. On May 21, 1991, former President Alberto Fujimori visited the university causing the violent reaction of students that forced him to leave the campus, humiliated. The following day, military troops took control of the Universidad Mayor de San Marcos and of “La Cantuta” University, and 56 students were arrested. Among them there were three of the nine students that were subsequently subjected to extra-legal execution [, to wit, Marcelino Rosales-Cárdenas, Felipe Flores-Chipana and Armando Amaro Cóndor.] [FN23]

[FN23] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VII, 2(22) “Las ejecuciones extrajudiciales de universitarios de La Cantuta (1992)” (Extra-legal executions of La Cantuta University Students) p. 234.

80(11) Students at the University had been reporting several outrages by the military officials serving at the campus. On May 29, 1992, the representatives of the “Comité de Internos" (Commission of Boarders) of La Cantuta University informed the Chancellor of the University, Dr. Alfonso Ramos-Geldres, that on May 24, 1992, at 9.00 p.m., about 20 to 25 armed, hooded and drunken members of the military forces went to the boarding houses of students and threatened to break into the rooms if students did not open the doors. As students told them they would only open the doors if they were accompanied by a university authority, the military officials came back with Professor Juan Silva, Director of University Welfare. So, the students opened the doors and the military officials took some household articles, justifying said actions by saying they were military tools and subversive materials. On July 1992, several commissions of students sent a note to the Chancellor of the University complaining for other outrages committed during the celebration of the “Teacher´s Day” on July 7, 8 and 9, 1992. In said notes they stated that the military agents had suddenly irrupted during the abovementioned ceremony, holding firearms and threatening them; they also denounced that another similar operation had taken place at the university restaurant, same day, during dinner time.

Detention and execution or disappearance of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Mez, Juan Gabriel Mariños-Figueroa and Felipe Flores Chipana

80(12) On June 18, 1992, at dawn, members of the Peruvian army and agents of the Grupo Colina (Colina Group) (infra paras. 80(17) and 80(18), hooded, armed and wearing dark trousers and black "turtlenecks," entered the university campus, bursting into the residences of professors and students.

80(13) Once inside the residences, the troops forced all the students to leave their rooms and lie belly-down on the floor. One soldier -who was identified as Lt.Medina by the students, though he tried not to be recognized- then pulled up each student's head by the hair and separated those whose names were included in a list he was carrying in his hands. The students detained were Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Mez, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas and Juan Gabriel Mariños-Figueroa.

80(14) On the other hand, the petitioner states that in the faculty residences, troops violently entered the home of Professor Hugo Muñoz-Sánchez by climbing over the yard wall and destroying the service entrance. They then gagged Prof. Muñoz-Sánchez and covered his head with a black cloth and dragged him away, while some of the assailants searched Prof. Muñoz-Sánchez's bedroom and, at the same time, prevented his wife from leaving that room.

80(15) The soldiers left the University taking with them Professor Hugo Muñoz Sánchez and students Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas and Juan Gabriel Mariños-Figueroa. Petitioners did not know where the detainees were being taken.

80(16) Bertila Lozano-Torres and Luis Enrique Ortiz-Perea were "disappeared" until the discovery of their mortal remains in the clandestine graves in Cieneguilla and Huachipa, on July and November, 1993 (infra paras. 80(30) to 80(41)). Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza and Juan Gabriel Mariños-Figueroa are still "disappeared."

The "Colina Group"

80(17) On May 6, 1993, Lt. Gen. Rodolfo Robles-Espinoza, the army's third highest-ranking officer, published a handwritten document denouncing human rights violations by the Servicio de Inteligencia Nacional (National Intelligence Service) and the Commander General of the army, specifically referring to the killings of the La Cantuta University students. In said document, dated May 5, 1993, General Robles-Espinoza stated that:

The La Cantuta crime was carried out by a special intelligence detachment operating under direct orders from Presidential Advisor and virtual head of the SIN, Vladimiro Montesinos, the actions of which are coordinated with the Army Intelligence Service (SIE) and the General Staff's Intelligence Directorate (DINTE) but always are approved by and known to the Commander General of the Army. [FN24]

[FN24] During the proceedings of the instant case before the Commission, and with the purpose of undermining the statements made by General Rodolfo Robles-Espinoza, the State submitted copies of the testimonies given by the Brigade General of the Army, Willy Chirinos Chirinos, in cases 157-V-93 and 227-V-94, whereby he denied to have furnished the information upon which General Robles grounded his statements. With the same purpose, the State submitted a graphology expert report issued by the Direción de Criminalística de la Policía Nacional (Board of Criminalistics of the Peruvian Police), where the conclusion reached was that the document by means of which General Chirinos gave information to General Robles had not been personally drawn by the former. Besides, in order to prove the untruthfulness of the statements made by General Rodolfo Robles Espinoza, the State offered Brigade General Raúl Talledo-Valdivieso and FAP Co. José Alberto Balarzo-La Riva as witnesses. Their statements were taken at the hearing dated March 6, 2000, held by the commission within during its 106th term of sessions.

80(18) After the statements made by General Rodolfo Robles Espinoza, the existence of the Colina Group, whose members participated in the events of the instant case, became well-known to the public (supra paras. 80(10) and 80(12)). This was a group related to the Servicio de Inteligencia Nacional (National Intelligence Service) whose operations were known by the President of the Republic and the Commander General of the Army. It had a hierarchical structure and its personnel received, besides their compensations as officials and sub-officials of the Army, money to cover their operative expenses and personal pecuniary compensations under the form of bonuses. The Colina Group carried out a State policy consisting in the identification, control and elimination of those persons suspected of belonging to insurgent groups or who opposed to the government of former President Alberto Fujimori. It operated through the implementation of systematic indiscriminate extra-legal executions, selective killings, forced disappearances and tortures. [FN25]

[FN25] Pursuant to the Final Report of the CVR: “The so-called “Colina Group”, composed of members of the Army, is probably one of the groups specialized in forced disappearances and arbitrary excutions most widely known […] In 1991, top militay and political authorities ordered the officers of the intelligence operations division (AIO) belonging to the Servicio de Inteligencia del Ejército (SIE) (Army Intelligence Service) to create a squad reporting to the structure of the Dirección de Inteligencia del Ejército Perúano (DINTE), which was then known as «Colina Detachment». This group was in charge of operations especially designed to eliminate alleged subversives, sympathizers or collaborators of subversive organizations." Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume VI, Fourth Section, 1(3) "Arbitrary executions and massacres by State agents," p. 154.

Investigations and proceedings

80(19) Regarding the events in the instant case, petitions of habeas corpus were filed for the detained persons. Besides, two criminal investigations were originally initiated before the ordinary courts, and other two were commenced before the military courts. All these

investigations were conducted simultaneously up to the transfer of both cases to the military courts in the month of February 1994. Besides, within the so-called “Congreso Constituyente Democrático” (Democratic Constituent Congress), an investigation committee was created to carry out the investigation; this committee issued a report for the majority and other for the minority. Afterwards, with the fall of former President Alberto Fujimori, it was necessary to initiate new investigations before the ordinary criminal courts.

Habeas corpus petitions were filed by the next of kin.

80(20) Upon the occurrence of the above-referred events, the next of kin of the alleged victims filed the following habeas corpus petitions: [FN26]

i. on July 23, 1992, Jaime Oyague-Velazco filed an habeas corpus petition with the Criminal Judge on duty in Lima, on behalf of his niece, Dora Oyague-Fierro. The Ninth Criminal Court considered the petition was groundless and dismissed it through the ruling dated August 5, 1992, whereby the court stated, inter alia, that the aforesaid person “has in no way been detained or arrested by members of the military [and that, besides,] no police operation had been carried out, nor has any order been issued to conduct any operation" at La Cantuta University. [FN27] The intervening judge ordered that the list of the personnel of the “Base de Acción Cívica” (Civic Action Base), located at the University the date the abduction took place, be submitted to the Court, but she did not order any additional measures when the military authorities answered that "due to the state of emergency of the Department of Lima, and to security reasons, it was not possible to identify [said personnel…] in order not to put at risk their life and physical integrity.” [FN28] Said ruling was affirmed through judgments dated January 24, 1993 and April 20, 1993;

ii. on July 24, 1992 the Chancellor of La Cantuta University filed a petition for habeas corpus before the Eleventh Court of Criminal Investigation in Lima, on behalf of the professor and the nine students of La Cantuta University. This petition was dismissed on August 5, 1992, upon receiving the testimony of Luis Salazar-Monroe, Chief of the Second Military Region, whereby he denied to have ordered or to have learnt of any military operation carried out at La Cantuta University on the date of the events analyzed in the instant case. Said habeas corpus petition was dismissed because "the Court ha[d] no evidence of the detention of [said persons and] the liability of […] the military chiefs was not established.” [FN29] This decision was affirmed by the court of appellate jurisdiction through judgment delivered on September 8, 1992, [FN30] and

iii. on August 20, 1992 Mrs. Raida Cóndor de Amaro filed a habeas corpus petition on behalf of the 10 persons arrested at La Cantuta University, with the Fourteenth Criminal Court in Lima. The court that tried said case received the statement made by General Nicolás de Bari Hermoza-Ríos, who denied that said persons had been detained and invoked “national security reasons” for not disclosing the identity of the personnel assigned to said University. [FN31] This habeas corpus petition was declared groundless by judgment dated November 13, 1992, handed down by the Criminal Judge in Lima. The judgment was affirmed by the Sixth Criminal Panel of the High Court of Lima, through judgment pronounced on February 18, 1993, whereby the Panel of the High Court pointed out “serious procedural irregularities” and ordered twice the enlargement of investigation, although the proceedings were finally closed.

[FN26] Cf. Order that dismissed the petition of habeas corpus filed by Jaime Oyague-Velazco (record of appendixes to the petition, appendix 65); order that dismiss the petition of habeas corpus filed with the Eleventh Criminal Court by Andrés Adolfo Calderón-Mendoza, lawyer of the Head of the UNE, on July 24, 1992 (record of appendixes to the petition, appendix 12(n), page 132.)
[FN27] Cf. Ruling of August 5, 1992 (record of appendixes to the application, appendix 65, pp, 1968 to 1974).
[FN28] Cf. Ruling of February 24, 1993 (record of appendixes to the application, appendix 65, p. 1966).
[FN29] Cf. Ruling of August 5, 1992 (record of appendixes to the application, appendix 12(q), pp. 140 and 141)
[FN30] Cf. Ruling of September 8, 1992 (record of record of appendixes to the application, appendix 16(e), p. 488)
[FN31] Cf. Ruling of November 13, 1992 (record of appendixes to the application, appendix 12(p), pp. 135 to 139)

Initial complaints and commencement of investigation proceedings by the ordinary criminal courts

80(21) On July 21, 1992 Antonia Pérez-Velásquez de Muñoz reported the disappearance of her husband, Hugo Muñoz-Sánchez, to the Provincial Criminal Prosecutor´s Office of the Tenth Prosecutor´s Office. [FN32]

[FN32] Cf. Complaint filed by Antonia Pérez-Velásquez with the Fiscalía Especial de Defensoría del Pueblo y Derechos Humanos (Special Prosecutor´s Office of the People´s Ombudsman and Human Rights) on July 21, 1992 (record of appendixes to the application, appendix 12(h), p. 122).

80(22) On August 1, 1992, the Chancellor of La Cantuta University, Rafael Laynes-Bastante, filed a complaint with the Provincial Criminal Prosecutor´s Office on duty in Lima, and APRODEH filed complaints with the Attorney General´s Office on July 31, 1992 and August 12, 1992, and with the Special Prosecutor´s Office of the People´s Ombudsman and Human Rights. .

80(23) On August 6, 1992 the Attorney General´s Office ordered the Eighth Provincial Criminal Prosecutor´s Office in Lima to start the investigation of the events. However, on August 9, 1993, the incumbent of the Eighth Provincial Criminal Prosecutor´s Office in Lima declined jurisdiction over the investigation on the grounds that the War Panel of the CSJM “was hearing a case related to the same facts referred to in this complaint" (infra para. 80(42)). Upon sending the case on jurisdiction to the Superior Criminal Prosecutor´s Office, on August 23, 1993, it declined jurisdiction again. The APRODEH and the next of kin of the alleged victims filed a complaint appeal against said decisions and on September 16, 1993 the Fifth Superior Criminal Prosecutor´s Office remanded the case to the Eighth Prosecutor´s Office; APRODEH moved for the nullity of said decision, but on November 30, 1993, the Fifth Prosecutor´s Office dismissed

the motion and the decision whereby the prosecutor declined jurisdiction was then final and conclusive. [FN33]

[FN33] Cf. Resolution of November 30, issued by 5th Criminal Prosecutor´s Office (record of appendixes to the application, appendix 24(cc), p. 895).

80(24) On the other hand, on February 8, 1993, Jaime Oyague-Velazco reported the disappearance of his niece, Dora Oyague-Fierro, to the then President of Perú, Alberto Fujimori; to the Attorney General´s Office of the Nation, on February 9, 1993; to the President of the Committee on Human Rights of the Constituent Democratic Congress, on March 4, 1993 and to the Chairman of Congress, on April 12, 1993. [FN34] The precise outcome of said actions are unknown.

[FN34] Cf. Affidavit signed by José Esteban Oyague-Velazco on September 8, 2006 (record of affidavits, folio 3480).

The Investigation Commission created by the so-called "Constituent Democratic Congress" and related issues

80(25) On April 2, 1993, Congressman Henry Pease-García stated that he had received a document from a group of the Army self-called "León Dormido" (Sleeping Lion) whereby it pointed out that the nine students and the professor of La Cantuta University had been murdered during a military operation, and top officials of the Army and of the Intelligence Service were identified as perpetrators of the killing.

80(26) Due to the abovementioned statements, the "Constituent Democratic Congress" created an investigation committee composed of five Congressmen (hereinafter the "Investigation Committee,") which gathered information related to the investigations made by the Attorney General´s Office, the Judicial Power, and the military courts, as well as documentation from other public entities. The Investigation Committee heard the testimonies of the next of kin of the alleged victims, boarders and authorities of La Cantuta University and of General Nicolás de Bari Hermoza-Ríos, the then Commander General of the Army, among others.

80(27) On April 20, 1993 the then Commander General Hermoza-Ríos gave testimony before the Investigation Committee and denied any intervention or participation of the Army in the disappearance of the professor and the nine students of La Cantuta University and argued that the accusations were made by persons or groups that opposed to the pacification policy of the Government, with the purpose of damaging the prestige of the military institution. When leaving the Congress, General Hermoza-Ríos said to the press that the Congressmen of the opposition were acting "in collusion with the terrorists" and also accused them of participating in "the orchestration of a well-thought and planned campaign to impair the prestige and honor of the Peruvian Army."

80(28) The day following the date when General Hermoza-Ríos gave testimony, the Peruvian Army issued an official communication whereby it stated its adherence and support to the Commander General and denounced that the Congressmen of the opposition intended to incriminate the Army for violations of human rights in order to impair the prestige of the military institution. The release of said communication was made simultaneously with the movements of tanks to the building of the Armed Forces Joint Command in order to make clear the support to Commander General Hermoza Ríos.

80(29) On June 26, 1993, the Constituent Democratic Congress voted 39 - 13 against the report issued by the majority of the Investigation Committee, congressmen Roger Cáceres, Gloria Helfer and Carlos Cuaresma, whereby the high ranking officials of the Army were presumed criminally liable. The Congress approved the report drawn by the minority members, congressmen Gilberto Siura and Jaime Freundt-Thurne, which, inter alia, established that there was no evidence that the Peruvian Army, nor the National Intelligence Service, nor the then advisor of said intelligence service, had had any responsibility for the events under investigation.

Discovery of clandestine graves and advanced investigation conducted by the 16th Provincial Criminal Prosecutor´s Office.

80(30) On July 12, 1993, the Magazine “Sí” published a sketch of clandestine graves located in the Chavilca gorge, Cieneguilla, where some human remains were found. On even date, the Director of the abovementioned magazine gave to the 16th Provincial Criminal Prosecutor´s Office in Lima the sketch of said graves, discovered by him and his team of journalists on July 8, 1993.

80(31) As a consequence of said discovery, the Prosecutor in charge of the 16th Provincial Criminal Prosecutor´s Office, Víctor Cubas-Villanueva, conducted an investigation in Cieneguilla, where four clandestine graves containing bones, most of them charred, were found. The bones found belonged to two women and to three men; one of said persons was probably over 40 years. Empty cartridges, remnants of clothes, textile fibers, hairs and two sets of keys were also found.

80(32) On the other hand, on July 13, 1993 the Dirección Nacional contra el Terrorismo (National Board against Terrorism) (DINCOTE, for its acronym in Spanish) called to a press conference in order to inform on the outcome of a police operation conducted on July 10, 1993, during which several alleged members of Shinning Path were arrested and several documents were seized, among them, a handwritten note addressed to Congressman Cáceres, where the clandestine graves of Cieneguillas were referred to and described. The DINCOTE presented citizen Juan Mallea as the alleged author of the sketch of the Cieneguilla graves and, in order to prove said accusation, it caused that a graphology analysis be carried out by an expert through the Forensic Graphology Department of the Division of Criminalistics of the National Police Force, and therefore Expert Report No. 1667/03 was issued, whereby the expert pointed out that the handwritten texts of the original sketch and those on the photocopy sent by DINCOTE, were the handwriting of Juan Mallea. However, during the investigation conducted against Juan Mallea by the 14th Provincial Prosecutor´s Office in Lima, new independent expert analysis

were made, and all of them agree that none of the documents attributed to Juan Mallea had been written by him.

80(33) On August 20, 1993, an operation was carried out at the student residences, headed by the Prosecutor in charge of the investigation. It was possible to verify that the keys found in the Cieneguilla graves belonged to students Armando Richard Amaro-Cóndor and Juan Mariños-Figueroa.

80(34) Expert analysis finally concluded that the charred bone remains found in Cieneguilla belonged to a second burial, “which means that these remains had been in other graves and that after being digged up and burned, they were deposited and buried in the Chavilca area, and that the corpses were burned in state of decay.

80(35) Among the remains found in Cieneguilla graves, experts found part of a skull that had belonged to a young woman, below 25 years of age, and upon examining it, the forensic experts determined that it had a bullet-wound on the back of the head.

80(36) Besides the identification of the keys found, made by the Prosecutor of the 16th Provincial Criminal Prosecutor´s Office, the identification of the remains of clothing and other articles made by the next of kin allowed to confirm that said articles belonged to Armando Richard Amaro-Cóndor, Juan Gabriel Mariños-Figueroa, Robert Teodoro-Espinoza and Heráclides Pablo-Meza. However, up to this day, the bone remains of said persons have not been found. Besides, due to the examination made by Dental Technician Juan Migues Vázquez-Tello, it was established that some of the dental remains found belonged to Bertila Lozano-Torres. As regards the remains found in grave 2 of Cieneguilla, it was established that part of them belonged to an unidentified male human being of about 40 or 45 years old.

80(37) Pursuant to new evidences given by the Director of the Magazine “Sí”, published on November 2, 1995, the Prosecutor´s Office conducted some investigations in the plot of land belonging to the company "Servicio de Agua Potable y Alcantarillado de Lima" (Lima Water and Sewerage Services Company) (SEDAPAL), located at km.1.5 of Ramiro Prialé Highway, in Huachipa. The Prosecutor discovered three clandestine graves containing a complete clothed human skeleton and a half clothed skeleton, bone remains, hair, parts of scalp, a complete human upper jaw, empty cartridges, spent bullets and traces of quicklime.

80(38) Pursuant to the examination of a complete human skeleton found, it was established that it belonged to a male human being, of 22-24 years of age, 1.70 m. tall and of mestizo race. It was also established that the cause of death was: deep (1) and perforating (2) bullet wounds to the head made with an arm fire. The date the inhumation was carried out, a sister of Luis Enrique Ortiz-Perea, Mrs. Gisela Ortiz-Perea, recognized the clothes and gym shoes belonging to her brother; besides, the physical features she had previously described were consistent with those of the complete skeleton found.

80(39) Summing up, and pursuant to evidence gathered, the recognitions made by the next of kin and the expert reports issued up to that time, the bone remains found in the graves of Cieneguilla and Huachipa belonged to Luis Enrique Ortiz-Perea and Bertila Lozano-Torres.

80(40) Furthermore, there exist some clues pursuant to which the remains found in Cieneguilla could belong to Professor Hugo Muñoz-Sánchez, as they were found together with those of other students and since according to the expert reports issued by forensic physicians, said remains belonged to a person 40 to 45 years old, and the professor was the only victim of about 40 years old. However, up to this date, said remains have not been identified through the corresponding forensic examinations.

80(41) The prosecutor in charge of the investigation started the measures necessary so that DNA tests were carried out abroad, with the purpose of identifying the remains found. Upon determining that the tests would be carried out in England, the eight selected bones were forwarded to said country. However, due to budgetary reasons, the test was made on only one bone that, according to Prosecutor Cubas, was proved to be consistent with the genetic code of Felipe Flores-Chipana. [FN35] However, the outcome of said test has not been provided.

[FN35] Cf. Affidavit executed by Víctor Cubas-Villanueva on September 8, 2006 (record of affidavits, page 3457.)

Investigations under the military court system

80(42) On April 15, 1993, the Army General Command filed a claim with the Supreme Council of Military Justice ("SCMJ") against those who were to be held responsible for the events that had taken place at La Cantuta. University. Driven by this complaint, on the following day, the SCMJ War Chamber started inquiry proceedings "against the Peruvian Army members who should be held responsible for abuse of authority and crimes against life" perpetrated against Professor Muñoz-Sánchez and the nine students from La Cantuta University (Case No. 157-V-93).

80(43) On July 7, 1993, in Case No. 157-V-93, the SCMJ Investigation Board extended inquiry proceedings against Brigade General Juan Rivero-Lazo, Cavalry Colonel Federico Augusto Navarro-Pérez, Maj. Santiago Enrique Martín-Rivas, Maj. Carlos Pichilingue-Guevara and Lt. Aquilino Portella-Nuñez and José Adolfo Velarde-Astete, on the grounds of the alleged commission of abuse of authority and crimes against life, body and health. On December 13, 1993, inquiry proceedings were extended against Infantry Lt. José Adolfo Valarde-Astete "and those to be held responsible for" the offense of negligence, as set out in Section 238 of the Military Code of Justice. [FN36]

[FN36] Cf. filing of the criminal complaint by the Specialized Provincial Prosecutor with the Special Criminal Court (record of Appendixes to the Application, Appendix 40.h, page 1454).

"Conflict of Jurisdiction" between ordinary criminal courts and military courts

80(44) Following the findings at the clandestine graves of Cieneguilla and Huachipa (above, paras. 80(30) and 80(37)), on December 13, 1993, the SCMJ Investigation Board admitted the complaint filed by the SCMJ War Chamber Prosecutor, extended court-ordered investigations against several members of the army [FN37] in connection with the alleged commission of the offense of abduction, crimes against administration of justice, forced disappearance of persons, negligence, abuse of authority, crimes against life, body and health (murder) against the 10 alleged victims.

[FN37] Namely, Brigade General Juan Rivero-Lazo, Colonel Federico Navarro-Pérez, Colonel Lt. Manuel Guzmán-Calderón, Mayors Santiago Martín-Rivas and Carlos Eliseo Pichilingue-Guevara, Lts. Aquilino Portella-Núñez and José Adolfo Velarde-Astete.

80(45) In turn, on December 15, 1993, the relatives of the victims and APRODEH requested that the Provincial Criminal Prosecutor in Lima file a criminal complaint against Vladimiro Montesinos, Generals Nicolás de Bari Hermoza-Ríos, Luis Pérez-Documet, Julio Salazar-Monroe and Juan Rivero-Lazo, and against other high-level officers of the Peruvian Army.

80(46) Moreover, on December 16, 1993, Chief Attorney of the Sixteenth Provincial Criminal Prosecutor's Office in Lima, Victor Cubas-Villanueva, filed with the Sixteenth Criminal Court in Lima a criminal complaint against Colonel Federico Navarro-Pérez, Lieutenant Colonel Manuel Guzmán-Calderón, Maj. Santiago Martín-Rivas, Maj. Carlos Eliseo Pichilingue-Guevara, Lieutenant Aquilino Portella-Nuñez, Technicians Eduardo Sosa-Dávila and Juan Supo-Sánchez, and Noncommissioned Officers Juan Sosa-Saavedra, Julio Chuqui-Aguirre, Nelson Carvajal-García, and Hugo Coral-Sánchez, on the grounds of the alleged perpetration of the offenses of abduction, forced disappearance of persons and murder against the alleged victims.

80(47) On December 17, 1993, the Sixteenth Criminal Court in Lima started inquiry proceedings against the persons accused of the alleged perpetration of the reported offenses.

80(48) Yet on the same day, December 17 1993, by way of a submission of a "conflict of jurisdiction," the SCMJ Board Prosecutor challenged the jurisdiction of the Sixteenth Criminal Court in Lima so that the Court would refrain from hearing the case pending with the military court relating to the same issue of facts and against the same defendants.

80(49) In his legal opinion submitted on January 17, 1994, Prosecutor Víctor Cubas-Villanueva concluded that the facts should be investigated by an ordinary court. On January 18, 1994, Criminal Court Judge Carlos Magno-Chacón "remitted history information" to the National General Attorney´s Office as the court considered there was reasonable evidence pointing to the commission of the offense of prevarication and abuse of authority by the Prosecutor Víctor Cubas, owing to the "use of inconvenient language" that might be unbecoming of a prosecutor, and ordered the remission of the relevant file of record to the Supreme Court of the Republic for all relevant legal purposes. [FN38]

[FN38] Cf. Legal opinion of Government Attorney Víctor Cubas-Villanueva of January 17, 1994 (record of Appendixes to Application, Appendix 15.b, pp. 418-21), and resolution of January 18, 1994 passed by Criminal Court Judge Carlos Magno-Chacón (record of Appendixes to Application, Appendix 15(c), pp. 422-3).

80(50) On February 3, 1994, the Criminal Chamber of the Supreme Court, composed of five members, passed a divided decision on the type of the court that should hear and determine the syndicated action filed against military members for their responsibility in the case of La Cantuta, as three of Chamber members held in support of the military court, and two members in support of the ordinary court.

80(51) On February 8, 1994, congressman Julio Chu-Meriz presented a bill proposing that conflicts of jurisdiction could be solved by the affirmative vote of only three members of the Criminal Chamber of the Supreme Court. Said bill was submitted to consideration and approved on the same day by the affirmative vote of the members of the "Democratic Constituent Congress" On the following day, the then President of the Republic, Alberto Fujimori, enacted Law No. 26.291, whereby conflicts of jurisdiction must be solved by the simple majority of votes of the members of the Criminal Chamber, and that the said votes must be cast by secret ballot.

80(52) On February 11, 1994, by operation of the referenced law and by way of Supreme Court Judgment, the Supreme Court Criminal Chamber ordered that the investigation of the facts of the case of La Cantuta be delegated to the military court and carried by the Investigation Board of the Supreme Council of Military Justice.

80(53) On February 21, 1994, the Lima Bar Association filed a complaint challenging the constitutionality of Law 26,291, with the Chamber of Constitutional and Social Affairs of the Supreme Court of the Republic. On March 15, 1994, said jurisdictional body decided that the constitutional challenge was not admissible on the grounds of lack of jurisdiction of the Chamber to hear constitutional challenges to laws, as said jurisdiction is vested with the Constitutional Tribunal. The Bar Association filed an appeal against this decision, but said appeal was -on March 25, 1994, on the grounds that "the Judiciary lacks jurisdiction to hear and determine this kind of actions."

Continuation of investigations under the military court system

80(54) On February 21, 1994, the SCMJ War Chamber rendered judgment in case 157-V-93, holding that: [FN39]

a. Brigade General Juan Rivero-Lazo and Cavalry Colonel Federico Augusto Navarro-Pérez be acquitted of the offense of abduction, crime against administration of justice, forced disappearance of persons, abuse of authority and crime against life, body and health in the degree of murder, on the grounds of "insufficient evidence;"
b. Infantry Colonel Manuel Leoncino Guzmán-Calderón be acquitted of the offense of abduction, crime against administration of justice, forced disappearance of persons, abuse of

authority and crime against the life, body and health in the degree of murder and negligence, on the grounds of "insufficient evidence;"

c. Engineering Mayors Santiago Martín-Rivas and Carlos Eliseo Pichilingue-Guevara be acquitted of the crime of administration of justice, on the grounds of "insufficient evidence";

d. Infantry Captain José Adolfo Velarde-Astete be acquitted of the crime of abduction, crime against administration of justice, forced disappearance of persons, abuse of authority, crime against life, body and health in the degree of murder, on the grounds of "insufficient evidence";

e. Noncommissioned officers Pedro Guillermo Suppo-Sánchez, Julio Chuqui-Aguirre, Nelson Rogelio Carvajal-García and Jesus Antonio Sosa-Saavedra be acquitted of the crime of negligence, on the grounds of "insufficient evidence";

f. Brigade General Juan Rivero-Lazo be convicted of the crime of negligence, and sentenced to five years' imprisonment;

g. Cavalry Colonel Federico Augusto Navarro-Pérez be convicted of the crime of negligence, and sentenced to four years' imprisonment;

h. Infantry Captain José Adolfo Velarde-Astete be convicted of the crime of negligence, and sentenced to one year military reclusion;

i. Engineering Mayors Santiago Enrique Martín-Rivas and Carlos Eliseo Pichilingue-Guevara be convicted of the crimes of abuse of authority, abduction, forced disappearance of persons, crime against life, body and health in the degree of murder, and sentenced to twenty years' imprisonment;

j. Nelson Rogelio Carvajal-García, Julio Chuqui-Aguirre and Jesús Antonio Sosa-Saavedra be convicted of the crimes of abuse of authority, abduction, forced disappearance of persons, crime against administration of justice, crime against life, body and health in the degree of murder against the professor and the students of La Cantuta, and sentenced to fifteen years' imprisonment;

k. the sum of two million New Soles be paid in conjunction with the Army, as civil reparation in favor of the legal heirs of the aggrieved parties;

l. criminal proceedings against defendant Infantry Lieutenant Aquilino Portella-Núñez be held in abeyance —upon the defendant's default— until said accused appears in or is forcibly brought before the court, and that new search and arrest warrants be issued against him to that end;

m. the court order extending the scope of the order for commencement of proceedings to include noncommissioned officers Eduardo Sosa-Dávila and Hugo Coral-Sánchez on the grounds of the alleged commission of the crimes of disappearance of persons, abuse of authority and crime against life, body and health —murder— be reversed;

n. investigation proceedings initiated against those responsible for the commission of the crimes subject to this procedure be definitely closed and sent to archives since principal offenders have been identified.

[FN39] Cf. Judgment rendered by the War Chamber of the Supreme Council of Military Justice on February 21, 1994, as part of the Appendixes to the Note of State No. 7-5-M/299, dated June 16, 2000 (record of Appendixes to the Application, Appendix 31(d), pp. 1126-7).

80(55) The SCMJ reviewed the abovementioned decision and on May 3, 1994, it rendered judgment convicting the following members of the Peruvian Army, holding that:

- Brigade General Juan Rivero-Lazo be sentenced to five years' imprisonment for the crime of negligence committed against the State;
- Cavalry Colonel Federico Augusto Navarro-Pérez be sentenced to four years' imprisonment for the crime of negligence committed against the State;
- Infantry Captain José Adolfo Velarde-Astete be sentenced to one year imprisonment for the crime of negligence committed against the State;
- Peruvian Army Mayors Santiago Enrique Martín-Rivas and Carlos Eliseo Pichilingue-Guevara be sentenced to twenty years' imprisonment for the commission of the crimes of abuse of authority, abduction, forced disappearance of persons and crime against life, body and health in the degree of murder; and
- Technicians 3rd class Julio Chuqui-Aguirre, Nelson Rogelio Carbajal-García and Jesús Antonio Sosa-Saavedra be sentenced to fifteen years' imprisonment for the commission of the crimes of abuse of authority, abduction, forced disappearance of persons and crime against the life, body and health in the degree of murder.

In this decision, the Court also ordered payment of compensation as "civil reparation" in favor of the next of kin of the alleged victims, jointly by the convicted parties and the Peruvian Government.

80(56) On May 18, 1994, the SCMJ ordered "Peruvian Engineering Corps Majors Santiago Enrique Martín-Rivas and Carlos Eliseo Pichilingue-Guevara [… to pay] jointly with the State —Peruvian Army—, the sum of one million, five hundred thousand New Soles, as civil reparation in favor of the legal heirs of the aggrieved parties," namely, the ten alleged victims. The same amount and under the same terms and conditions was ordered to be paid by Peruvian Army Third-rank Technicians Julio Chuqui-Aguirre, Nelson Carbajal-García and Jesús Sosa-Saavedra-Sosa. [FN40] The legal heirs of the alleged victims that have received payment of civil reparation are: [FN41]

a. heirs of Luis Enrique Ortiz-Perea: Magna Rosa Perea-de-Ortiz (mother) and Víctor Andrés Ortiz-Torres (father);
b. heirs of Robert Edgar Espinoza: José Ariol Teodoro-León (father) and Edelmira Espinoza-Mory (mother);
c. heirs of Felipe Flores Chipana: Carmen Chipana-de-Flores (mother) and Celso Flores-Quispe (father);
d. heirs of Hugo Muñoz-Sánchez: Liliana Margarita Muñoz-Pérez (daughter), Hugo Alcibíades Muñoz Pérez (son), [FN42] Zorka Muñoz-Rodríguez (daughter), Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio and Mayte Yu Yin Muñoz-Atanasio;
e. heirs of Heráclides Pablo-Meza: Serafina Meza-Aranda (mother) and José Faustino Pablo Mateo (father);
f. heirs of Bertila Lozano-Torres: Juana Torres-de-Lozano (mother) and Augusto Lozano-Lozano (father);
g. heirs of Dora Oyague-Fierro: José Esteban Oyague-Velazco and Pilar Sara Fierro-Huaman;

h. heirs of Marcelino Rosales-Cárdenas: Desmesia Cárdenas-Gutiérrez;
i. heirs of Juan Gabriel Mariños-Figueroa: Román Mariños-Eusebio and Isabel Figueroa-Aguilar; and
j. heirs of Armando Richard Amaro-Cóndor: Hilario Amaro-Hancco and Alejandrina Raida Cóndor-Saez.

[FN40] Cf. Judgment of May 18, 1994, passed by the Supreme Council of Military Justice (record of Appendixes to the application, Appendix 17.d, pp. 621-3).
[FN41] Cf. Document dated February 1996 by the Permanent Representation of Perú before the OAS (record of Appendixes to the application, Appendix 18, pp. 671-2), and acknowledgement of receipt of payment of civil reparation (record of Appendixes to the State's written closing pleadings, pp. 3845-914).
[FN42] Cf. Testimony of Ms. Antonia Pérez-Velazquez before the Inter-American Court of Human Rights during the public hearing held on September 29, 2006.

80(57) Regarding the investigation of possible intellectual perpetrators of the referenced events within the military court system, on May 11, 1994, the SCMJ War Chamber started proceedings (case 227-V-94-A) against Army General Nicolás De-Bari-Hermoza-Ríos, Brigade Army General Luis Pérez Documet and Retired Army Captain Vladimiro Montesinos, on the grounds of crimes against life, body and heath —in the degree of murder—, abduction, forced disappearance of persons, abuse of authority, crime against administration of justice and negligence against the alleged victims. On August 15, 1994, the SCMJ War Chamber decided to dismiss the case —a decision which was confirmed on August 18, 1994, by the SCMJ Review Chamber, which ordered the "final filing" of the record as it considered there was insufficient evidence to sustain the "criminal offenses allegedly committed by the above defendants." [FN43]

[FN43] Cf. Discontinuance decision of August 18, 1994, rendered by the Review Chamber of the Supreme Council of Military Justice (record of Appendixes to application, Appendix 21.e, pp. 752-8).

Amnesty laws and the effects of the decisions of the Inter-American Court in the Case of Barrios Altos vs. Perú

80(58) On June 14, 1995, Congress voted Law No. 26.479, whereby an amnesty was granted to military and police officers and civilians involved in violations of human rights from May 1980 to the date of said law, which was enacted on the same day.

80(59) Under section 1 of Law 26.479, amnesty was to be granted to any military and police officer and civilians, whether subjected to report proceedings, inquiry, formal investigation, criminal proceedings or conviction of an ordinary offence, under either civil or military jurisdiction. Section 4 of said law ordered the immediate release of any and all individual deprived of their freedom, under arrest or detention, imprisoned or subjected to any other type of

custodial measure. Section 6 of said law ordered final disposition of all court proceedings, whether then pending or adjudicated, and barred new investigations of the issue under review within such proceedings.

80(60) By operation of such law and by way of Supreme Court Judgment of June 16, 1995, the SCMJ granted amnesty to Brigade General Juan Rivero-Lazo, Colonel Federico Augusto Navarro, Mayors Santiago Enrique Martín-Rivas and Carlos Eliseo Pichilingue-Guevara, Captain José Adolfo Velarde-Astete, Lieutenant Aquilino Portella-Núñez and Third-rank Technicians Julio Chuqui-Aguirre, Nelson Rogelio Carvajal-García and Jesús Antonio Sosa-Saavedra, who had been convicted in case 157-V-93 (supra paras. 80(54) and 80(55)). Furthermore, the Council ordered the "discontinuance of the sequence of trial proceedings" filed against (Ret.) Lieutenant Aquilino Portella-Núñez, in connection with the case brought against him on the grounds of the referenced offenses, commanding discharge and immediate release from prison of said persons. [FN44]

[FN44] Cf. Judgment dated October 16, 2001, of the Supreme Council of Military Justice declaring "null and void the Supreme Court Judgment of June 16, 1995, in full, whereby it was decided to grant Amnesty" to said persons (record of appendixes to application, Appendix 43(l), page 1687).

80(61) On June 28, 1995, Congress voted No. 26,492, which shed some light on section 1 of Law No. 26.479, stating that general amnesty was to be applied compulsorily by the Judiciary, that it comprised all events originating in the course of or as a result of the fight against terrorisms from May 1980 until June 14, 1995, notwithstanding that military and police officers or civilians involved had been subjected to report proceedings, inquiry, formal investigation, criminal proceedings or conviction, and that all pending or executory proceedings had to be definitely closed and filed.

80(62) On March 14, 2001, the Inter-American Court passed judgment in the Case Barrios Altos, declaring that amnesty laws Nos. 26,479 and 26,492 are incompatible with the American Convention and, therefore, they lack legal effects. Thereafter, the Inter-American Court passed Interpretation Judgment on the merits determining that —owing to the nature of the violation caused by amnesty laws Nos. 26,479 and 26,492— the decision made in said judgment would "have general effects."

80(63) On October 16, 2001, regarding case No. 157-V-93, "to which Amnesty Laws applied, […] in order to comply with the interpretation judgment rendered by the Inter-American Court […] on September 3 [2001] in re 'Barrios Altos'," the SCMJ Joint Chamber decided as follows:

[…] to declare NULL AND VOID the Supreme Court Judgment of June 16, 1995, in full, whereby it was decided to grant General Amnesty to Peruvian Brigade Army General Juan Rivero-Lazo, Peruvian Army Colonel Eliseo Pichilingue-Guevara, Peruvian Army Captain José Adolfo Velarde-Astete, Peruvian Army Lieutenant Aquilino Portella-Núñez, Peruvian Army Third-Rank Technicians Julio Chuqui-Aguirre, Nelson Rogelio Carbajal-García, Jesús Antonio

Sosa-Saavedra, and to order the halt of proceedings brought against Retired Peruvian Army Lieutenant Aquilino Portella-Núñez.
[…] to reverse these proceedings to the procedural stage prior to the application of amnesty, as legal effects arising from the amnesty benefit granted to these defendants have become ineffective, and therefore to remand this case to the Investigating Officer so that he can comply with the law and enforce the provisions of judgment rendered on May 3, 1994. [FN45] They were so remanded.

[FN45] Cf. Judgment of October 16, 2001, rendered by the Supreme Council of Military Justice, a copy of which has been added to the file held by the Commission (record of Appendixes to application, Appendix 43(l), pp. 1685-7).

80(64) This is how the convictions entered against some military members in the SCMJ's judgment of May 3, 1994, regained effects (supra paras. 80(54), 80(55) and 80(60). However, there is no record that these sentences have indeed been executed (supra para. 66).

80(65) Ms. Alejandrina Raida Cóndor-Sáez and Ms. Rosario Muñoz-Sánchez requested the SCMJ that the proceedings pending in the military court in connection with the case of La Cantuta be declared null and void "as they have been allegedly altered in order to bar possible civil proceedings [against Vladimiro Montesinos-Torres]." [FN46]

[FN46] Cf. Judgment of July 15, 2004, rendered by the Supreme Council of Military Justice (record of Appendixes to application, Appendix 43(k), p. 1682).

80(66) On June 15, 2004, the SCMJ rejected said petition for declaration of nullity, as it considered inter alia that "there are no legal mechanisms or legal recourses whatsoever or any procedural manner that could warrant that a declaration of nullity be entered against the Supreme Court Judgment when it has become res judicata; that there are three actions to seek declaration of nullity against a fraudulent res judicata […] no one of which applies to this case, nor does this Court have powers in these proceedings to enter a declaration of nullity against such Supreme Court Judgment, notwithstanding the right of petitioners to file the legal actions afforded by law with competent authorities." [FN47]

[FN47] Cf. Judgment of July 15, 2004, rendered by the Supreme Council of Military Justice (record of Appendixes to application, Appendix 43(k), pp. 1683-4).

New investigations in the civil criminal justice system

80(67) After the fall of the administration of former President Alberto Fujimori-Fujimori, investigations have been carried out and proceedings have been initiated before ordinary criminal courts in connection with the present case, as it shall be outlined below:

a) Complaint 001-2000

80(68) On October 25, 2000, the National Human Rights Coordinating Committee filed a complaint with the National Attorney General´s Office seeking punishment of crimes against humanity affecting both civilians and military members, including the events that had taken place in the case of La Cantuta. Among the accused were Vladimiro Montesinos-Torres and Nicolás de Bari Hermoza-Ríos. On November 17, 2000, their next of kin appeared in person at the Office of the Public Prosecutor and adhered to the complaint filed by the National Coordinating Committee. [FN48] This complaint was identified with number 001-2000.

[FN48] Cf. Request by the ad hoc State Attorney General's Office for the filing of a criminal application against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp. 1568-9).

80(69) On February 1, 2001, APRODEH extended the criminal complaint to include La Cantuta crimes, pointing out further the involvement of Luis Pérez-Documet, among others. Said complaint was consolidated with complaint 001-2000. [FN49]

[FN49] Cf. Request by the ad hoc State Attorney General's Office for the filing of a criminal application against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp. 1569).

80(70) On September 13, 2001, the National Attorney General´s Office ordered the deconsolidation of proceedings concerning the La Cantuta events, and requested that the Metropolitan Special Investigation Division of the Anti-Terrorism Directorate handed over the findings of the investigation on the events that had taken place on July 18, 1992. On October 28, 2002, the law enforcement authorities sent their findings to the Prosecutor's Office. [FN50] No further steps following such filing have been documented.

[FN50] Cf. Request by the ad hoc State Attorney General's Office to materialize a criminal application against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp 1569).

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b) case 15-2001 A.V.

80(71) In June, 2003, and January, 2004, the Supreme Court of Justice rendered decisions that convicted the justices who presided over and dismissed the case brought against the alleged intellectual perpetrators of the crimes that had taken place at La Cantuta of the crimes of personal cover-up and criminal association. [FN51]

[FN51] Cf. Request by the ad hoc State Attorney General's Office to materialize a criminal application against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp 1545).

80(72) As a result of the investigations carried out by the Supreme Prosecutor's Office in Administrative matters and the filing of the resultant complaint, on October 22, 2001, the Investigation Board of the Supreme Court ordered the commencement of preliminary fast-track proceedings against the Peruvian Army (Rd.) Brigade General Raúl Talledo-Valdiviezo, Peruvian Armed Forces Maj. General César Ramírez-Román, Peruvian National Police General Edgardo Huertas-Toribio, and Peruvian Armed Forces Maj. General Julio Paz-Marcial, on the grounds of abuse of authority and crime against their jurisdictional duty as "failure to report the commission of a crime" to the detriment of the State. Furthermore, the Supreme Prosecutor's Office initiated proceedings against other Generals members of the Supreme Council of Military Justice, on the grounds of the crimes of personal cover-up to the detriment of the State. This case, under No. 15-2001 A.V, was initiated against those "that had taken part in the excluding military court system in connection with the event in La Cantuta —Leonor La Rosa, Gustavo Cesti-Hurtado—, and the trafficking of weapons to the FARC (Revolutionary Armed Forces of Colombia)." [FN52]

[FN52] Cf. Request by the ad hoc State Attorney General's Office for a criminal application against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp 1621).

80(73) On February 26, 2002, based on the evidence gathered in the course of investigations, the Ad Hoc Prosecutor's Office requested of the Attorney´s General Office an extension of the terms of the complaint. [FN53]

[FN53] Cf. request by the ad hoc State Attorney General's Office to materialize a criminal complaint against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp 1621).

80(74) On June 11, 2002, following the communication sent by the Public Prosecutor's Office, the Investigation Board of the Supreme Court extended the terms of the order for commencement of proceedings to include other officers in the investigation owing to their presumed involvement in the crimes of criminal association and personal cover-up to the detriment of the State. [FN54]

[FN54] Namely, Divison General Guido Guevara-Guerra, Brigade General Raúl Talledo-Valdivieso, Mayor General Oscar Granthon-Stagnro, Rear Admiral Eduardo Reátegui Guzmán, Brigade General Luis Delgado-Arena, Brigade General Marco Rodríguez-Huerta, General Juan Fernando Vianderas-Ottone, Brigade General Luis Chacón-Tejada, Brigade General Miguel Montalbán-Avendaño, Brigade General Carlos Espinoza-Flores, General Héctor Cerpa-Bustamante, Mayor General Fernando Suyo-Hermosilla and General Eduardo Onofre-Tirado. Cf. request by the ad hoc State Attorney General's Office to materialize a criminal complaint against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet, on the grounds of the crimes perpetrated at La Cantuta (record of Appendixes to application, Appendix 42(d), pp 1621-2).

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c) case No. 03-2003

80(75) On January 21, 2003, the Provincial Specialized Prosecutor filed a criminal complaint against eighteen individuals [FN55] on the grounds of their alleged involvement in crimes against the life, body and health (aggravated murder), crime against freedom (aggravated abduction) and forced disappearance of persons, and eight individuals [FN56] as aiders and abettors of said crimes. [FN57]

[FN55] Namely, Aqulino Portella-Núñez, Héctor Gamarra-Mamani, José William Tena-Jacinto, Pablo Andrés Atuncar-Cama, Gabriel Orlando Vera-Navarrete, Jorge Enrique Ortiz-Mantas, Fernando Lecca-Esquén, Hércules Gómez-Casanova, Wilmer Yarleque-Ordinola, Ángel Felipe Sauñi-Pomoya, Rolando Javier Meneses-Montes-de-ca, Haydee Magda Terrazas-Arroyo, Luz Iris Chumpitaz-Mendoza, José Concepción Alarcón-Gonzáles, Hugo Francisco Coral-Goicochea, Carlos Luis Caballero-Zegarra-Ballon, Isaac Paquillauri-Hauytalla y Víctor Manuel Hinojosa-Sopla.
[FN56] Namely, Julio Rolando Salazar-Monroe, Víctor Raúl Silva-Mendoza, Carlos Indacochea-Ballon, Alberto Segundo Pinto-Cárdenas, Luis Cubas-Portal, Enrique Oswaldo-Oliveros, Julio Alberto Rodríguez-Córdova, and Carlos Miranda-Balarezo.
[FN57] Cf. Materialization of criminal complaint filed by the Provincial Specialized Prosecutor's Office (record of Appendixes to application, Appendix 38(k), pp 1398-412).

80(76) On January 24, 2003, the First Special Criminal Courtroom of the Superior Court of Justice in Lima ordered the commencement of preliminary investigation as ordinary proceedings documented in file No. 03-2003, against several Army members and former military men [FN58] on the grounds of their alleged involvement in crimes against the life, body and health (in the

degree of aggravated murder), crime against personal freedom (in the degree of aggravated abduction), and forced disappearance of persons, against professor Hugo Muñoz-Sánchez and nine students of the La Cantuta University, arrest warrants being issued against the accused. Furthermore, said Court also filed a complaint against other eight persons [FN59] on the grounds of their involvement as aiders and abettors in the same crimes, against whom qualified summons to appear and home detention warrants were issued. Moreover, the Court ordered that "precautionary attachment be levied" on property for an amount between one and three million New Soles on the unencumbered property of the accused. The arrest warrants were appealed by some of the accused, and later confirmed by the Court. [FN60] No-one of said army members or former military men was investigated in the military proceedings nor convicted in case No. 157-V-93, that was prosecuted before military courts (above paras. 80(54) and 80(55)), except Anilino Portella-Núñez, who was treated in said proceedings as a party on default and in respect of whom, by operation of the amnesty law, the SCMJ ordered the "discontinuance of proceedings" ("corte de secuela"). Later on, the same SCMJ entered a declaration of nullity against said ruling (above paras. 80(54) and 80(60)-80(63)). [FN61]

[FN58] Namely, Aquilino Portella-Núñez, Héctor Gamarra-Mamani, José William Tena-Jacinto, Pablo Andrés Atuncar-Cama, Gabriel Orlando Vera-Navarrete, Jorge Enrique Ortiz-Mantas, Fernando Lecca-Esquen, Hércules Gómez-Casanova, Wilmer Yarleque-Ordinola, Ángel Sauñi-Pomaya, Rolando Javier Meneses-de-Oca, Haydee Magda Terrazas-Arroyo, Luz Iris Cumpitaz-Mendoza, José Alarcón-González, Hugo Francisco Coral-Goycochea, Carlos Luis Caballero-Zegarra-Ballón, Isaac Paquillauri-Huaytalla, and Víctor Hinojosa-Sopla.

[FN59] Namely, Julio Rolando Salazar-Moroe, Víctor Raúl Silva-Mendoza, Carlos Indacochea-Ballón, Alberto Pinto-Cárdenas, Luis Cubas-Portal, Enrique Osvaldo Oliveros-Pérez, Carlos Miranda-Balarezo, and Julio Rodríguez-Córdova.

[FN60] Cf. Decision of January 24, 2003, rendered by the First Special Criminal Anticorruption Court submitted as Appendix to State Note No. 7-5-M/393, of November 4, 2003 (record of Appendixes to application, Appendix 40.i, pp. 1467-91, and Appendixs 43(cc), p. 1737).

[FN61] Cf. Official letter No. 03-2003-61-SPE-CSJL of the Special Criminal Chamber of the Supreme Court of Justice in Lima (file with evidence to facilitate adjudication of the case, pp. 4170-2), and submission made by the State on November 20, 2006, in response to the request for evidence to facilitate adjudication of the case (files for the merits of the case, reparation and costs, if any, p. 1090).

80(77) This investigation was declared a complex matter in June 2003. Pursuant to the "complex and mixed connection of this case" [FN62] with those pending in other courts against the alleged perpetrators of other crimes, the Ad Hoc Prosecutor's Office requested consolidation of proceedings. This consolidation was ordered on July 18, 2003, by the Second Specialized Criminal Court, and then ratified on February 20, 2004, by the Specialized Criminal Chamber "A" of the Superior Court in Lima. [FN63]

[FN62] Cf. Code of Criminal Procedure, Law No. 9024, Section 20 (file with evidence to facilitate adjudication of the case).

[FN63] By decision of the Superior Special Criminal Chamber, case No. 03-2003 was consolidated with cases No. 44-2002 (Pedro Yauri), No. 01-2003 (El Santa), to case No.32-2001 (Barrios Altos) (record of Appendixes to application, Appendix 42(d), p. 1571).----------

80(78) On July 13, 2005, the Provincial Prosecutor's Office Specialized in Crimes against Human Rights passed Resolution No. 70, in connection with file No. 28-2001, ordering extension of investigation to include Luis Pérez-Documet and Carlos Indacochea-Ballón. [FN64]

[FN64] Cf. Report No. 001-2006/MP/FPEDCDD.HH of the Provincial Prosecutor's Office Specialized in Crimes against Human Rights (record of Appendixes to written closing pleadings submitted by the State, page 3790).

80(79) On March 8, 2006, the First Special Criminal Chamber of the Superior Court in Lima ordered the deconsolidation of the case La Cantuta (case No. 03-2003). [FN65]

[FN65] Cf. Official letter No. 396-2006 of the ad hoc Prosecutor's Office on May 29, 2006, (record of Appendixes to answer to application, p. 3246).

80(80) As of the date hereof, the prosecutor's request for trial has been filed with the First Special Criminal Chamber of the Superior Court in Lima, seeking the issuance of a court order for the commencement of criminal proceedings, and oral trial is currently pending. [FN66] At least eight persons involved in this case have entered a "guilty plea." Furthermore, only Isaac Paquillauri-Huaytalla, who entered a plea for early termination of proceedings, was convicted by the Fifth Special Criminal Court and sentenced to four years' imprisonment on the grounds of his involvement in the crimes of aggravated murder, aggravated abduction against humanity and forced disappearance of persons; this sentence was ratified by the Special Criminal Chamber of the Superior Court in Lima, and so the accused was separated from the proceedings. [FN67]

[FN66] Cf. Request by the Ad hoc State Attorney General's Office to materialize a criminal complaint against Vladimiro Montesinos-Torres, Nicolás de-Bari-Hermoza-Ríos and Luis Pérez-Documet on the grounds of the crimes perpetrated at La Cantuta), and official letter No. 396-2006 of the ad hoc Prosecutor's Office of May 29, 2006 (record of Appendixes to answer to application, p. 3246).

[FN67] Cf. Official letter No. 03-2003-61-SPE-CSJL of the Special Criminal Chamber of the Supreme Court of Justice in Lima (file with evidence to facilitate adjudication of the case, pp. 4170-2).

80(81) At the time of rendering this Judgment, eleven defendants have been subjected to coercive pre-trial detention regarding to this case, and one defendant has been subjected to the coercive measure of "qualified summons to appear and home detention." [FN68]

[FN68] Cf. Official letter No. 03-2003-61-SPE-CSJL of November 3, 2006, issued by the First Special Criminal Chamber of the Superior Court of Justice in Lima (file with evidence to facilitate adjudication of the case, p. 4170).

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d) case No. 008-2004

80(82) On the other hand, on September 6, 2004, the "Ad Hoc State Prosecutor's Office established for cases Montesinos and Fujimori" filed a complaint with the Provincial Criminal Prosecutor's Office Specialized in Crimes against Human Rights (currently named "Fifth Provincial Prosecutor's Office Specialized in Offenses of Corruption and Crimes against Human Rights") against Vladimiro Montesinos-Torres, Nicolás Hermoza-Ríos and Luis Pérez- Documet for the commission of criminal association, aggravated murder and forced disappearance of persons, to the detriment of Hugo Muñoz-Sánchez and nine students of the University of La Cantuta. In this regard, the prosecutor's office requested the filing of a criminal complaint against Vladimiro Montesinos-Torres, Nicolás Hermoza-Ríos and Luis Pérez Documet. [FN69]

[FN69] Cf. Complaint filed by the Ad hoc Prosecutor, Ronald Gamarra, submitted as Appendix to State Note No. 7-5-M/432, dated December 14, 2004 (record of Appendixes to answer to application, Appendix 42.a, pp. 1543-626).

80(83) On September 9, 2004, the relatives of the alleged victims, by and through APRODEH, filed with the Provincial Criminal Prosecutor's Office Specialized in Human Rights a criminal compliant against Vladimiro Montesinos and other individuals on the grounds of the crimes of forced disappearance of persons and aggravated murder. [FN70]

[FN70] Cf. Report No. 69-2004-JUS/CNDH-SE of September 28, 2004 issued by the Executive Secretariat of the Peruvian Council of Human Rights (record of appendixes to the application, appendix 42(a), pp. 1533 to 1540).

80(84) Triggered by these complaints, on October 4, 2004, the above Prosecutor's Office took further steps in the investigation. [FN71]

[FN71] Cf. Official letter No. 008-2004-FPEDDHH-MP-FN of October 20, 2004, submitted as Appendix to State Note No. 7-5-M/432 of December 14, 2004 (record of Appendixes to application, Appendix 42).

80(85) At present, this investigation is pending before the Provincial Prosecutor's Office Specialized in Offenses of Corruption and Crimes against Human Rights [FN72], and the Ad Hoc Prosecutor's Office is taking part in scheduled actions. [FN73]

[FN72] Cf. Report No. 001-2006/MP/FPEDCDD.HH issued by the Provincial Prosecutor's Office Specialized in Crimes against Human Rights (record of Appendixes to the written closing pleading of the State, pp. 3790-1).
[FN73] Cf. Official letter No. 396-2000 dated May, 29, 2006, of the Ad hoc Prosecutor's Office (record of Appendixes to answer to application, p. 3245).
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e) case 19-2001-AV

80(86) On September 13, 2001, the Supreme Court Investigation Board started criminal proceedings against former President Alberto Fujimori-Fujimori or Kenya-Fujimori on the grounds of his alleged involvement in the events that occurred in Barrios Altos and La Cantuta. On May 12, 2004, the Supreme Prosecutor filed an accusation seeking 30 years' imprisonment on the grounds of the defendant's joint perpetration of the crime of aggravated murder against the victims of Barrios Altos, and of joint perpetration of aggravated murder and forced disappearance of persons against the alleged victims of La Cantuta, [FN74] "the State and the Society"; and as perpetrator of the crime of severe injuries to four individuals. Furthermore, the Supreme Prosecutor moved for the disqualification of the former President and payment of one billion New Soles as civil reparation in favor of the alleged victims of the referenced cases. [FN75]

[FN74] Cf. Official letter No. 423-2005-PROCURADURIA-JUS of July 8, 2005, submitted as Appendix to State Note No. 7-5-M/400 of August 16, 2005 (file of Appendixs to application, Appendix 43(cc)).
[FN75] Cf. Official letter No. 570-2006 of August 8, 2006, issued by the ad hoc Prosecutor's Office (Appendix 2 to the written closing pleadings of the State, pp. 3788-9), and official letter No. 396-2006 of the ad hoc Prosecutor's Office, dated May 29, 2006 (record of Appendixes to answer to application, p. 3246).

80(87) On June 30, 2004, the Special Criminal Chamber ordered the commencement of trial and declared the existence of "grounds to initiate oral proceedings" against the former President, who is the only accused in the case. Furthermore, defendant was declared on default. [FN76]

[FN76] Cf. Official letter re: AV-19-2001-SPE-CSJ of October 6, 2006, issued by the Special Criminal Chamber of the Supreme Court of Justice (file with evidence to facilitate adjudication of the case, p. 4173).

80(88) In case No. 19-2001, the Special Criminal Chamber of the Supreme Court of Justice requested Fujimori's extradition of (the Supreme Court of Justice) Transitory Criminal Chamber, who admitted the request of active extradition on December 16, 2005. In turn, the Supreme Court of Justice Investigation Board had submitted the same petition for extradition in connection with other eleven cases instituted against that person, which were admitted by the said Transitory Criminal Chamber.

80(89) On December 16, 19 and 20, 2005, the Commission in charge of reviewing the petitions for active extraditions agreed to grant the extradition of the referenced accused.

80(90) On December 23, 2005, the President of the Republic, the president of the Council of Ministers, the Minister of Justice and Minister of Foreign Affairs issued Supreme Resolution No. 270-2005-JUS, whereby it was "agreed to consent the petition for active extradition of the accused Alberto Fujimori Fujimori or Kenya Fujimori," and it was agreed "to proceed to this submission through diplomatic channels before the Republic of Chile." [FN77] The supporting grounds of this Resolution are norms laid out in Supreme Decree No. 044-93-JUS, Law No. 24.710, Organic Law of the Judiciary and the Extradition Treaty signed by Perú and Chile on November 5, 1932. [FN78]

[FN77] Cf. Supreme Resolution No. 270-2005-JUS of December 23, 2005, (file with evidence to facilitate adjudication of the case, presented by the State, pp. 4181-3).
[FN78] Cf. Extradition Treaty between Perú and Chile, dated November 5, 1931 (file with evidence to facilitate adjudication of the case, presented by the State, p. 4178).

80(91) On January 3, 2006, by means of diplomatic note No. (CEJ) 6/85 of the Embassy of Perú in Santiago de Chile, Perú submitted twelve petitions for extradition, including the one relating to the case of La Cantuta. Said petitions triggered extradition proceedings before the Chilean Supreme Court of Justice. [FN79]

[FN79] Cf. Official letter No. 570-2006 of August 6 2006, issued by the ad hoc Prosecutor's Office (record of Appendixes to the written closing pleadings submitted by the State, pp. 3788-9).

80(92) On May 18, 2006, in deciding an appeal, the Second Criminal Chamber of the Chilean Supreme Court decided to provisionally release Alberto Fujimori-Fujimori on bail, with a restraining order enjoining the accused from leaving Chile. [FN80] These proceedings are currently pending before the Special Criminal Chamber of the Chilean Supreme Court of Justice. [FN81]

[FN80] Cf. Official letter No. 570-2006 of August 8, 2006, issued by the ad hoc Prosecutor's Office (record of Appendixes to the written closing pleadings submitted by the State, pp.s 3788-9).
[FN81] Cf. Official letter No. 771-2006 of November 3, 2006, issued by the ad hoc Prosecutor's Office (file with evidence to facilitate adjudication of the case, submitted by the State, p. 4177).

Regarding the alleged victims and their families

80(93) Mr. Hugo Muñoz-Sánchez was born on September 24, 1943, in Huanta. He was a professor at the University of La Cantuta, and lived in the teaching-staff residences. His wife was Mrs. Antonia Pérez-Velásquez, and their sons and daughters were Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu Yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez and Vladimir Ilich Muñoz Sarria; his sister was Ms. Rosario Muñoz-Sánchez, and his brother was Mr. Fedor Muñoz-Sánchez. Mr. Hugo Muñoz-Sánchez devoted his earnings to the support and maintenance of his wife, his daughter Margarita Liliana Muñoz-Pérez and his son Hugo Alcibíades Muñoz-Pérez.

80(94) After the events, Mrs. Antonia Pérez-Velásquez quitted her job as a primary school teacher to devote her time to search for her husband.

80(95) Mr. Fedor Muñoz-Sánchez collected a pension allowance payable to Professor Hugo Muñoz-Sánchez, and handed it over to Mrs. Antonia Pérez-Velásquez.

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80(96) Dora Oyague-Fierro was born on November 4, 1970. She was a Kindergarten Education student at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residences. Her father was Mr. José Esteban Oyague-Velazco, her mother was Mrs. Pilar Sara Fierro-Huamán, her sisters were Rita Ondina Oyague-Sulca and Luz Beatriz Taboada-Fierro, her brothers were Gustavo Taboada-Fierro and Ronald Daniel Taboada-Fierro, her aunt was Ms. Carmen Oyague-Velazco and her uncle was Jaime Oyague-Velazco.

80(97) Before moving into the students' residences, Dora Oyague-Fierro lived with her father, Mr. José Esteban Oyague-Velazco, her aunt Carmen Oyague-Velazco and her uncle Jaime Oyague-Velazco. After the incidents, the two brothers and sister Oyague-Velazco, e.i. Dora Oyague-Fierro's father, uncle and aunt, took actions in search of justice.

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80(98) Luis Enrique Ortiz-Perea was born on October 25, 1970, in the city of Chachapoyas, read Physical and Sport Culture at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residences. His mother was Mrs. Magna Rosa Perea-de-Ortiz, his father was Mr. Víctor Andrés Ortiz-Torres, and his sisters were Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea and Haydee Ortiz-Chunga.

80(99) Andrea Gisela Ortiz-Perea dropped her studies in La Cantuta, as she devoted her time to search for her brother as from the same day of the events, and took several actions both at the national and international levels in search of justice; this is why she has received several threats. At present, she is a student from said university.

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80(100) Heráclides Pablo-Meza was born on June 28, 1968, in the Department of Ancash, read Mathematics and Natural Sciences at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residences. His father was Mr. José Faustino Pablo-Mateo, his mother was Mrs. Serafina Meza-Aranda, his sisters were Celina Pablo-Meza and Cristina Pablo-Meza, his brother was Marcelino Marcos Pablo-Meza, and his aunt was Ms. Dina Flormelania Pablo-Mateo. Heráclides Pablo-Meza paid for his studies.

80(101) Before living in the students' campus residences, Heráclides Pablo-Meza had lived with his aunt for seven years, Ms. Dina Flormelina Pablo-Mateo, who took a number of steps in search of him, and who had to close down her stall at the market as a result of the costs involved in the search.

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80(102) Armando Richard Amaro-Cóndor was born on December 2, 1966, in Lima, read Electromechanics at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residence. His mother was Mrs. Alejandrina Raida Cóndor-Saez, his father was Mr. Hilario Jaime Amaro-Ancco, his sisters were María Amaro-Cóndor, Susana Amaro Cóndor and Carmen Rosa Amaro-Cóndor, and his brothers were Carlos Alberto Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor and Francisco Manuel Amaro-Cóndor. Armando Richard Amaro-Cóndor paid for his studies.

80(103) Mrs. Alejandrina Raida Cóndor-Saez quitted her laundry job to devote her time to search for her son, and has taken a number of actions in search of justice.

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80(104) Bertila Lozano-Torres was born on March 1, 1970, in Cuñumbuque, read Humanities and Arts, Mathematics and Natural Sciences at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residences. Her mother was Mrs. Juana Torres-de-Lozano, her father was Mr. Augusto Lozano-Lozano, her brothers were Augusto Lozano-Torres, Miguel Lozano-Torres and Jimmy Anthony Lozano-Torres, and her sister was Marilú Lozano-Torres.

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80(105) Robert Edgar Teodoro-Espinoza read Mathematics and Natural Sciences at the University of La Cantuta, registered for school year C-91, and lived in the students' campus

residences. His father was Mr. José Ariol Teodoro-León and his mother was Mrs. Edelmira Espinoza-Mory. His stepmother was Ms. Bertila Bravo-Trujillo.

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80(106) Juan Gabriel Mariños-Figueroa was born on March 20, 1963, in the District of Magdalena del Mar, read Electromechanics at the University of La Cantuta, registered for school year C-91, and lived in the students' campus residences. His mother was Mrs. Isabel Figueroa Aguilar, his father was Mr. Román Mariños Eusebio, his sisters were Carmen Juana Mariños-Figueroa-de-Padilla, and his brother was Wil Eduardo Mariños-Figueroa, and his sister was Rosario Carpio-Cardoso-Figueroa. Juan Gabriel Mariños-Figueroa was a temporary worker in the construction and electricity industry, was a helper at a karate academy and a retail bookseller.

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80(107) Felipe Flores-Chipana was born on May 12, 1967, in Huaiquipa, read Electromechanics at the University of La Cantuta, and lived in the students' campus residences. His mother was Carmen Chipana and his father was Silvestre Flores-Quispe.

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80(108) Marcelino Rosales Cárdenas was born on October 30, 1963, in Lima, read Humanities and Arts at the University of La Cantuta, registered for the school year C-91, and lived in the students' campus residences. His mother was Mrs. Demesia Cárdenas-Gutiérrez, his sister was Saturnina Julia Rosales-Cárdenas and his brother was Celestino Eugencio Rosales-Cárdenas.

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80(109) The relatives of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana have sustained damages as a result of their illegal detention, forced disappearance and extra-legal execution. Furthermore, the events of the instant case have significantly disturbed the ties of the alleged victims' families.

Representation of the next of kin of the alleged victims before internal jurisdiction and the Inter-American system of protection of human rights.

80(110) The relatives of the alleged victims have filed several requests with national authorities, both to determine the whereabouts of their beloved ones and to further proceedings pending in criminal courts. They have been represented by a number of attorneys-at-law, and have been supported by APRODEH before local jurisdictional authorities, and by APRODEH, CEAPAZ and CEJIL before the Inter-American system for the protection of human rights.

VIII. INTERNATIONAL STATE RESPONSIBILITY WITHIN THE CONTEXT OF THIS CASE

81. The events under review in this case have a particularly adverse impact because of the historic context within which they have taken place —systematic practice of illegal and arbitrary detentions, torture, extra-legal executions and forced disappearances perpetrated by State security and intelligence forces, the characteristics and dynamics of which were outlined based on proven facts (above paras. 80(1)-80(8)). In other words, those severe facts fall within the systematic mechanism of repression to which certain sectors of the population were subjected as they had been labeled as subversive or somehow contrary or in opposition to the Government, which was known to or even ordered by the highest command of the armed forced, the intelligence services and the then governing Executive, by means of the State's ordinary security forces, the operation of the so-called "Grupo Colina" and a framework of impunity favoring these violations.

82. The particular severity of these incidents unveils the existence of a whole structure of organized power and encoded procedures ruling the practice of extra-legal execution and forced disappearance. By no means were these incidents isolated or sporadic instances, but they constituted a pattern of conduct prevailing over the time these events took place as a method for the elimination of members of, and individuals suspected of cooperating with, subversive organizations, used systematically and in a generalized fashion by state actors —mostly by members of the Armed Forces.

83. Owing to its decisive role in this case, regard must be had to the participation of the so-called Colina Group, which was entrusted by the very command of the armed forces with a governmental policy for the identification, control and elimination of those persons suspected of cooperating with insurgent groups, by means of systematic and indiscriminate extra-legal executions, selective murder, forced disappearance and torture. The group was organized directly as part of the hierarchical structure of the Peruvian Army, and its activities and operations were —according to several sources— known to the Presidency of the Peruvian Republic and the Army Command (above paras. 80(17)and 80(18)).

84. This situation has likewise been considered in other cases decided by this Tribunal, the events of which took place over the same time-span as the ones involved in this case. Thus, this Court has passed its decision regarding the systematic practice carried out under the orders of the military and police officers in charge, the existence and methods used by the Colina Group, and their responsibility for said events. [FN82] Regarding to the characteristics of the events in La Cantuta over the referenced period, [FN83] said context was also ratified by the Inter-American Commission, and by the Special Rapporteur of the United Nations on Extra-legal or Summary Executions, after his visit to Perú in 1993. [FN84]

[FN82] Cf. Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136, para. 54.1; Case of Huilca Tecse vs. Perú, Judgment of March 3, 2005, Series C, No. 21, para. 60(9), and Case of Gómez Paquiyauri brothers. Judgment July 8, 2004. Series C No. 110, para. 76.

[FN83] Cf. Report of the Inter-American Commission on Human Rights No. 101/01 in the Case 10.247 and others. Extra-legal Executions and forced disappearance of persons. Perú, October 11, 2001, paras. 163, 164, 170, 172 and 174.; and Report of the Inter-American Commission on Human Rights on the situation of Human Rights in Perú, OEA/Ser.L/V/II.83 Doc.31, March 12, 1993, paras. 8, 9 and 90.
[FN84] Cf. United Nations Human Rights Committed. The question of violations of human rights and fundamental liberties in any part of the world, particularly in colonial countries and territories and dependent areas. Extra-legal, summary or arbitrary executions. Addenda. Report of the Special Relator, Sr. B. W. Ndiaye, on his misión to Perú on May 24 through June 2, 2993, E/CN.4/1994/7/Add.2, November 15, 1993, para. 54.
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85. Furthermore, the foregoing Peruvian context and situations have been acknowledged by the convergent decisions adopted by the three powers of the State: the Executive, as it has acknowledged the State's international responsibility in this international procedure (above paras. 40-4), and before that, with the creation of the CVR and the "Ad Hoc State Prosecutor's Office for the Cases of Montesinos and Fujimori, and those that should be held responsible," [FN85] the Judiciary and the Legislature.

[FN85] Cf. Supreme resolution No. 241-2000-JUS, granting "additional powers of the Ad hoc Attorney Generals to file relevant legal actions against certain former public official on the grounds of alleged crimes of corruption and other offenses," and the resolution of Presidency of the Judicial Defense Council No. 016-2001-JUS/CDJE-P, dated July 31, 2001 (record of Appendixes to answer to application, pp. 3221, 3222, 3229 and 3930).
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86. In this regard, the creation of the CVR is of utmost importance. As it is pointed out in the final report of the CVR, after the "fall of the Fujimori Administration […] one of the first actions taken by the transitory government, in December 2001, was the creation of the Inter-Institutional Workgroup leading to the establishment of the Truth Commission with the participation of the Ministries of Justice, the Interior, Defense, Promotion of Women and Human Development, the People's Ombudsman, the Peruvian Episcopal Conference the Peruvian Evangelist Association, and the National Human Rights Coordinating Committee […] The Inter-institutional Workgroup suggested that the CVR should review crimes attributable to all the parties to the conflict, that is, «both the events attributable to State agents, events attributable to individuals who acted with State agents' consent, acquiescence or connivance, as well as those events that are attributable to subversive groups». […] No modification was made to the timeframe of the CVR's competence suggested by [that] group […], and it was so expressed in the final version of its mandate. In fact, the Supreme Decree approved by the Council of Ministries [in 2001] included the suggestion that the events that occurred between 1980 and 2000 should fall within the scope of the investigations […] No relevant change was made to the subject matter of the CVR's competence throughout both of the preparation stages either. In fact, all the crimes indicated by the Work Group […] were contemplated in the Supreme Decree." [FN86]

[FN86] The Truth Commission would focus its work on the following facts, provided always that they are attributable to terrorist organizations, to State agents or to paramilitary groups: a) Murder and abduction; b) forced disappearance; c) torture and other severe injuries; d) violation of collective rights of Andean Communities and Communities native to the country; e) Other crimes against and severe violations of the rights of persons. Cf. Final Report of the Truth and Reconciliation Commission, 2003, Section I, Chapter 4, "The Legal Dimension of the Events," p. 195.

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87. In connection with the abovementioned context, according to the CVR, as of the coup d'etat of April 5, 1992:

There was established a de facto regime that suspended the democratic institutional structure of the country by the overt intervention in the Judiciary, the Constitutional Tribunal, the Public Ministry and other constitutional bodies. Actions of governance were implemented by means of executive orders passed by the so-called «Government of National Reconstruction and Emergency» entrusted with both executive and legislative functions of the State for a short time, thus neutralizing in practice the political and judicial control over its actions. In the light of the most recent judicial investigation, it can be concluded further that during this time State resources were used to organize, train and engage operative groups under cover, whose main objective was the murder, disappearance and torture of persons, all of which was carried out under the halo of the National Intelligence Service. This is explained in the case of the self-called «Grupo Colina» [FN87]

[FN87] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Section I, Chapter 4, "The Legal Dimension of the Events," p. 242.

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88. In fact, it was in the final report of the CVR on which the Inter-American Commission extensively based the allegations of its application —allegations which were in turn acknowledged by the State in these proceedings (above paras. 40 to 46 and 80(1) to 80(8)). The CVR also identified the existence of a pattern, the modus operandi and encoded procedures proper to the structure of the organized power used for planning and executing those practices. Furthermore, the report points out to the resources and means of the State used in the complex organization and logistics associated with forced disappearances, the systematic denials of detentions and knowledge of the facts by the security forces, as well as the obstruction of investigation, if any, by way of concealment or destruction of evidence, including the mutilation and incineration of the remains of the victims (above paras. 80(1) to 80(8)).

89. In turn, the State Legislature has also taken part in this institutional acknowledgement. At the beginning, in April 1993, in spite of the times of distress in Perú, especially owing to the pressure of Army authorities, the so-called Democratic Constituent Congress created an Inquiry Committee, who was informed of the latest investigations findings as well as other testimonies provided by relatives of the alleged victims, by alumni and authorities of the La Cantuta University, and by General Hermoza-Ríos, who was the then Army Commander General. Even

though the opinion report prepared by the majority of the members of the said Committee was rejected on June 26, 1993, by the Constituent Congress, that report revealed the existence of the presumption of criminal liability of high-command army officers for the events in La Cantuta. The Congress approved the opinion report prepared by the minority, which concluded that neither the Peruvian army nor the National Intelligence Service nor the then advisor to said intelligence service were to be held responsible for the facts under investigation (above paras. 80.25, 80.26 and 80.29).

90. Later, on July 20, 2005, the Peruvian Congress passed Law No. 28592 —"A Bill creating the Comprehensive Plan for Reparations (PIR)"— the subject matter of which was to establish the Legal Framework [of said plan] for the victims of the acts of violence that took place over the period between May 1980 and November 2000, pursuant to the conclusions and recommendations stated in the report of the CVR. Notwithstanding the statements below (below paras. 211and 212), this type of laws reflect the will to remedy certain detrimental consequences of what the State acknowledges as severe violations of human rights perpetrated in a systematic and generalized fashion.

91. In turn, the Judiciary had rendered certain judgments and resolutions relating to investigations and proceedings initiated in connection with the events under review in this instant case, as well in some other cases, that clearly described the above context and determined the scope of participation and liability of the Colina Group and high-command officers of the then Government for the events committed. [FN88]

[FN88] For instance, the complaint filed on January 21, 2003, by the Provincial Specialized Prosecutor's Office in case No. 03-2003; judgment of Mary 20, 2006, of the National Criminal Chamber in file No. 111-04, in re Ernesto Castillo Páez; judgment of December 9, 2004, of the Peruvian Constitutional Tribunal, as per the Habeas Corpus action filed by Gabriel Orlando Vera-Navarrete, file No. 2798-04-HC/TC. Furthermore, resolution of September 6, 2004, of the "Ad hoc State Prosecutor's Office for the Cases Montesinos and Fujimori," pursuant to which a complaint was filed against Vladimiro Montesinos-Torres, Nicolás Hermoza-Ríos and Luis Pérez-Documet with the Provincial Criminal Prosecutor's Office Specialized in Crimes against Human Rights, stated as follows (record of Appendixes to application, Appendix 42(d):
More than one hundred scheduled, organized and systematic crimes were examined, which — from the scope of the Executive's incumbency— were perpetrated as part of a policy of terror. Severe offenses that undoubtedly conformed to and were part of an ordinary criminal plan, design or pattern. And this is so because, in fact, the perpetration of hideous and several criminal acts, such as the ones committed in La Cantuta, was the result of criminal concert that implied the creation ad development of the so-called Colina Group, fostered, supported and later protected by Vladimiro Montesinos-Torres and Alberto Fujimori-Fujimori.
[…] the criminal organization that over the last decade controlled the main institutions of the state-power apparatus […] established a clandestine repression system under which parallel or illegal procedures were implemented so as to face those considered to be associated with terrorist organizations or suspected of being members of the Communist Party of Perú (generally known as "Shining Path") and of the Tupac Amaru Revolutionary Movement (generally known as "MRTA").

[…] Because of their severity, scale, generalized systematic nature, the still unclear number of fatal victims of the events, together with the set of adversely affected legal rights and interests, such criminal events call for their classification as crimes against humanity (outrageous acts condemned by the civilized word, wrongdoings against the conscience that human beings have today of their own condition), and their perpetrators, as true enemies against human race or enemies common to all mankind.

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92. The events in La Cantuta and the systematic practice were favored by the generalized scenario of impunity of the then prevailing severe violations of human rights, fostered and tolerated by the absence of civil liberties and the inefficacy of legal institutions to cope with the said systematic violations of human rights. The CVR confirmed the "discontinuance of democratic institutions affecting the country by means of the overt intervention in the work of the Judiciary, the Constitutional Tribunal, the Public Ministry and other constitutional bodies," pursuant to which the actions of the so-called National Emergency and Reconstruction Government "indeed neutralized the political and judicial control over their acts." [FN89] The adoption of distinct legal mechanisms and factual situations worked together to hamper investigations and to foster or activate that state of impunity, for example, the delegation of investigations of such facts to military courts (below paras. 137-45); the removal of several judges and prosecutors of all levels, as ordered by the Executive; [FN90] and the enactment and enforcement of amnesty laws (below paras. 165-89). This has a close bearing with the duty to investigate cases of extra-legal executions, forced disappearance and other severe violations of human rights (below paras. 110-2).

[FN89] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Section I, Chapter 4, "The Legal Dimension of the Events," p. 242.

[FN90] Cf. Report of the Special Relator in charge of the issue of independence of judges and attorneys, Mr. Param Cumaraswamy. Addition to Report of the Mission in Perú E/CN.4/1998/39/Add.1, February 19, 1998, paras. 17-20).

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93. In this regard, the CVR's final report pointed out that the Judiciary failed to comply adequately with its mission to eradicate the impunity of State agents who used to commit severe human right violations —a failure which contributed to that situation; in addition, the courts refrained themselves from trying members of the armed forces accused of those offenses, systematically loosing each conflict of jurisdiction over the competence of military courts, where the issues remained unpunished. This situation "worsened after the 1992 coup d'etat," owing to a "clear interference with the Judiciary, by means of group dismissals of magistrates, provisional designations and the creation of competent bodies alien to the judicial system structure, apart from the inoperativeness of the Constitutional Tribunal." [FN91] Other generalized practice corroborated by the CVR was that the "jurisdictional bodies did not protect the rights of citizenship, as they disallowed writs habeas corpus," and that the Public Ministry failed to comply with its duty to investigate crimes adequately due to its lack of independence from the Executive. [FN92]

[FN91] Cf. Final Report of the Truth and Reconciliation Commission, 2003, General Conclusions, Section VIII, paras. 123-31, p. 336.
[FN92] Cf. Final Report of the Truth and Reconciliation Commission, 2003, General Conclusions, Section VIII, paras. 123-31, p. 337.

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94. It should be noted that, notwithstanding the following considerations (below paras. 155-7), the State expressed that "it understands that the duty to administer justice consists of investigating and punishing each person who has taken part in the criminal events in La Cantuta. To that extent, the State will abide by the decisions of the Court regarding to the investigation, identification and punishment of those liable for ordering the commission of international crimes, such as the ones under review in the instant case." Furthermore, the State pointed out that the acknowledged facts "amount to international illicit events [and, in turn,] to crimes under local legislation, and that these international crimes must be prosecuted by the State."

95. The facts of this case have been classified by the CVR, domestic judicial bodies and by the State's representative before this Court, as "international crimes" and "crimes against humanity" (above paras. 42, 44, 94 and 80(68)). The extra-legal execution and forced disappearance of alleged victims were perpetrated in the context of a generalized and systematic attack against sectors of the civil population. [FN93]

[FN93] Cf. Report of the Truth and Reconciliation Commission, "The Colina Military Post", "The Actions of the Congress of the Republic", "Year 2000: the reopening of proceedings under ordinary civil system", in the extra-legal executions of university students from La Cantuta (1992) CVRanswer to application (main file, volume II, page 519); written closing pleadings submitted by the State (main file, volume IV, page 892); complaint presented by the Ad hoc Prosecutor, Ronal Gamarra, as Appendix to Note of the State No. 7-5-M-432, December 14, 2004 (record of Appendixes to application, Appendix 42(d), page 1550), and report No. 001-2006/MP/FPEDCDD.HH of the Provincial Prosecutor's Office Specialized in crimes against human rights, October 10, 2006 (record of Appendixes to final written closing pleadings submitted by the State, Appendix 3, p. 3791).

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96. Suffice it to mention here that the Court considers it acknowledged and proven that the planning and execution of detention and subsequent cruel, inhumane and degrading treatment, extra-legal execution and forced disappearance of alleged victims, carried out in a coordinated and concealed way by the members of military forces and the Colina Group, could not have passed unnoticed to or have occurred without the orders of the superior ranks of the Executive Power and the then military forces and intelligence bodies, especially the chiefs of intelligence and the same President of the Republic himself. Hence, the conclusion to which this Court has recently arrived in the case of Goiburú et al. vs. Paraguay is of full application to this case:

State agents not only failed to comply with their duties to preserve and protect the rights of alleged victims, contemplated in Article 1(1) of the American Convention, but also used their

official tenures and resources granted by the State to commit said violations. As State, its institutions, mechanisms and powers had to function as a guarantee of protection against the criminal actions performed by its agents. However, state power was actually used as a means and resource to commit violations of the rights they should have respected and guaranteed […] [FN94]

[FN94] Cf. Case of Goiburú et al., above note 1, para. 66.

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97. The victims in the present case, as well as many other persons of that time, suffered from the application of practices and methods in complete disregard of human rights, meticulously planned, systematized and executed from the lines of the State, in many aspects similar to the ones used by the terrorist or subversive groups they meant to fight against under the justification of counter-terrorism or "counter-subversion."

98. The Court has considered it adequate to start this chapter by stating that the context within which the facts took place tints and conditions the international responsibility of the State in connection with its obligation to respect and guarantee the rights contemplated in the provisions of the Convention alleged to have been violated, both regarding to issues acknowledged by the State and those to be determined in the following chapters relating to the merits of this case and reparations.

IX. ARTICLES 3, 4, 5 AND 7 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHT TO LIFE, TO PERSONAL INTEGRITY, TO PERSONAL LIBERTY AND TO RECOGNITION OF JURIDICAL PERSONALITY)

Arguments of the Commission

99. In relation to Article 7 of the Convention, the Commission alleged that:

a) subparagraph 2 thereof was violated, inasmuch as the alleged victims were unlawfully deprived of their liberty, that is to say, outside the reasons and conditions established in domestic legislation, a person can be detained pursuant to an arrest warrant issued by a competent authority or in cases of crimes detected in the act. None of these conditions were met in the instant case;
b) subparagraph 3 thereof was violated, inasmuch as both the circumstances and the methods used by members of the military to deprive the victims of their freedom are inconsistent with the respect for the fundamental rights of the individual. This was made even more conspicuous by the absence of proportionality if the detention is analyzed together with other factors, such as the fact that the alleged victims were sleeping, in the early hours, defenseless and unarmed, which increased the arbitrariness of their disappearance and/or execution;
c) subparagraph 4 was violated, inasmuch as none of the alleged victims was informed of the motives for their detention or the rights available to them. They were simply led by State agents without further explanations or reasons, with violence;

d) subparagraph 5 was violated, inasmuch as the alleged victims were abusively stripped of the protection of the authority that had to rule on their freedom in as short a time as possible. It should be taken into account that, according to available evidence, the abduction of the alleged victims was effected under the premise that they were suspected of being members of the group Sendero Luminoso (Shinning Path), pursuant to information gathered by the State Intelligence Service;
e) subparagraph 6 was violated, inasmuch as the State did not allow the alleged victims to file a prompt and effective remedy by their own means in order to establish the legality of their arrest, and kept them under arrest in a place which was not an official detention center (nor was it authorized to be used for that purpose) without any institutional control such as records or minutes to ascertain the date, form and conditions of their detention, and
f) the refusal by security agencies to provide information on the whereabouts of the alleged victims and to acknowledge the irregular deprivation of freedom constitutes one of the elements of forced disappearance of persons, which led to the proven extra-legal execution of some of them.

100. Regarding Article 5 of the Convention, the Commission alleged that:

a) the violation of physical and mental integrity was effected through the circumstances in which the detention of the alleged victims occurred, as well as during their transportation and for as long as they were detained;
b) at the time of the events, the Army was following a systematic and generalized practice whereby those suspected of belonging to subversive groups were clandestinely detained without informing competent authorities and submitted to torture or mistreatment. Eventually, it was decided whether or not to release them, and they were arbitrarily executed or vanished;
c) there was lack of due diligence on the part of the State, since after the complaints were filed, it failed to conduct an investigation pursuant to the principles of due process to elucidate the facts and punish those physically and intellectually responsible for them, and
d) the mental and moral integrity of the alleged victims' next of kin was affected as a direct consequence of the purported illegal and arbitrary detention of the alleged victims; the lack of information on their whereabouts; their disappearance and, in some cases, death at the hands of state agents; and the failure to investigate the events.

101. Regarding Article 4 of the Convention, the Commission alleged that:

a) the State violated the right to life, inasmuch as the teacher and the nine students were alive at the time of their detention by members of the armed forces, and were later found dead and buried in clandestine graves, besides the fact that four of them are still missing;
b) it is valid to conclude that the disappearance and death of the alleged victims was not an isolated event but a disappearance and/or extra-legal execution perpetrated by members of the military within the framework of a pattern of extra-legal executions and forced disappearances that were taking place at the time, and
c) the State is responsible for the violation of the right to life for failing to properly investigate the events mentioned above.

102. Regarding to Article 3 of the Convention, the Commission alleged that:

a) the practice of forced disappearances, initially perpetrated against all the victims of the instant case and the situation of extreme vulnerability they had to face, necessarily affected their right to the recognition of juridical personality;
b) in accordance with the evidence on record, when the victims were detained by State agents or persons related to it and later vanished, they were also excluded from the legal and institutional system of the Peruvian State. In this sense, the forced disappearance of persons implies denying the existence of a human being with juridical personality;
c) the connection between the forced disappearance and the violation of this right "lies in the fact that the precise aim of this pernicious practice is to deprive the individual of the protection to which he is entitled; the aim of those who follow said practice is to act outside the rule of law, hiding all evidence of the crime and attempting to escape punishment, besides the obvious intent to remove the possibility of this person's filing a legal action concerning the exercise of his rights." The Commission quotes the UN International Convention for the Protection of all Persons from Enforced Disappearances, the Inter-American Convention on the subject, case law of the Colombian Constitutional Court, a Declaration of the UN General Assembly, and
d) it understands that "during the time of their disappearance, the perpetrators attempted to create a 'legal limbo' through the state's failure to admit that they were being held in its custody, the fact that victims were unable to exercise their rights and their next of kin's lack of knowledge of their situation or whereabouts. [...] To the [alleged] victims of the instant case, the consequence of the disappearance was the denial of all rights inherent to a human being."

Arguments of the representatives

103. Besides agreeing with the arguments of the Commission concerning the alleged violation of Articles 3, 4, 5 and 7 of the Convention, the representatives added that:

a) the forced disappearances and executions of the alleged victims of the instant case are to be framed within the series of mechanisms aimed at identifying, persecuting and eliminating people who were allegedly linked to Sendero Luminoso or the Revolutionary Movement Tupac Amaru;
b) the State violated not only subparagraphs 2 to 6 of Article 7 of the Convention, but also subparagraph 1 thereof, to the detriment of the alleged victims and their next of kin;
c) it can be inferred that the three allegedly disappeared victims were executed, just as the other alleged victims;
d) the State violated Articles 5(1) and 5(2) of the Convention by submitting the alleged victims to cruel, inhumane and degrading treatment during and after their detention. Furthermore, considering the circumstances in which the detentions took place, it is reasonable to infer that the alleged victims experienced deep feelings of anxiety, tension, fear and uncertainty and found themselves in a situation of extreme vulnerability before numerous anonymous persons who were armed and fully supported by the members of the military on duty at La Cantuta University. Likewise, it can be deduced that the treatment they received after they were deprived of their freedom was similar to that of the detention, and
e) the lack of proper and effective investigation into the facts with due diligence did not only arise from the negligence and omissions of judicial operators during the investigations but

also from the fact that certain mechanisms designed to cover up for both the direct perpetrators and the instigators of the facts of the instant case.

Arguments of the State:

104. The State acquiesced to the violation of Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) thereof, alleged by the Commission and the representatives (supra paras. 40 and 45)

Considerations of the Court

105. Article 3 of the Convention establishes that "[e]very person has the right to recognition as a person before the law."

106. Article 4(1) of the 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.

107. Article 5(1) and 5(2) of the Convention establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated regarding for the inherent dignity of the human person.

108. Article 7 of the Convention provides that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. […]

a) Clarifications on Articles 4, 5 and 7 of the Convention

109. Firstly, in relation to Article 7 of the Convention, the Commission and the representatives alleged that the norm was violated on the basis of a subparagraph-by- subparagraph analysis thereof. The Court observes that the deprivation of freedom of those people by members of the military and the Grupo Colina (Colina Group), was a step prior to achieving what they had actually been ordered to do: execute or vanish them. The circumstances of the deprivation of freedom clearly show that it was not a case of a crime detected in the act, inasmuch as it was acknowledged that the alleged victims were in their places of residence when the military forces burst in violently in the early hours and took them away pursuant to a list. The use of lists with the names of people to be detained was identified by the CVR (Truth and Reconciliation Commission of Perú) as part of the modus operandi of state agents to select victims of extra-legal executions and forced disappearances. [FN95] Contrary to the analysis made by the Commission and the representatives, it is not necessary to determine whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the Peruvian legislation in force at the time of the events and, least of all, whether the acts of the detention were unreasonable, unpredictable or disproportionate. The detention of those people was a clear instance of abuse of power, it was not ordered by a competent authority and its aim was not to bring those people before a judge or another official authorized by law to rule on the legality of the arrest but to execute them or force their disappearance. That is to say, the detention was of an obvious illegal and arbitrary nature, and it contradicted the provisions of Article 7(1) and 7(2) of the Convention.

[FN95] The CVR established that "the authors of the forced disappearance followed certain criteria when selecting victims, in particular, those based on the general profiles used to identify persons who might be members or supporters of subversive organizations [...] On other occasions, the information was processed and lists were prepared, which later served as guides to carry out the detentions. [...] Collective detentions also took place in universities into which the agent entered and asked students for their personal documents, detaining those who did not have them or directly those students whose names appeared on a list of alleged subversive people." Furthermore, the CVR established that "in more selective raids, intelligence was gathered to prepare lists of people suspected of being part of subversive organizations" (Cf. Final Report of the Comisión de la Verdad y Reconciliación (Truth and Reconciliation Commission of Perú), 2003, Volume VI, chapter 1.2. "Forced disappearance of persons by State agents", pp. 84, 85 and 89 and chapter 1.3 "Arbitrary executions", p. 157).

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110. Furthermore, this case occurred within a generalized situation of impunity for egregious human rights violations (supra paras. 81, 88, 92 and 93), which conditioned the protection of the rights concerned. In that sense, the Court has understood that the duty to investigate cases of violations of substantive law that must be safeguarded, protected or guaranteed derives from the general duty to uphold the human rights embodied in Article 1(1) of the Convention. [FN96] Thus, in cases of extra-legal executions, forced disappearances and other egregious human rights violations, the Court has held that the conduct of a prompt, serious, impartial and effective ex

officio investigation is a fundamental and conditioning element for the protection of certain rights that are otherwise affected or annulled by those situations, such as the right to life, personal liberty and personal integrity. This duty to investigate becomes particularly and particularly intense and significant in cases of crimes against humanity (infra paras. 157).

[FN96] Cf. Case of Goiburú et al., supra note 1, para. 88; Case of Montero-Aranguren et al. (Detention Center of Catia). Judgment of July 5, 2006. Series C No. 150, paras. 63-66, and Case of the Pueblo Bello Massacre, supra note 3, para. 142.

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111. In cases concerning deprivation of liberty, such as the instant case, the habeas corpus remedy constituted, among indispensable judicial guarantees, the most suitable means to ensure freedom, oversee the respect for life and personal integrity and avoid disappearances or lack of information about detention centers, as well as to protect the individual from torture or other forms of cruel, inhumane or degrading treatment. [FN97] However, within the context described above, the courts rejected the actions. In two of them, they simply accepted the justifications or silence of military authorities, who alleged a state of emergency or reasons of "national security" to withhold information (supra para. 80(20)). In this regard, the Court has held 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.

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…” [FN98]

[FN97] Cf. Case of the Serrano-Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 79; Case of the Gómez-Paquiyauri Brothers, supra note 83, para. 97, and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 122.
[FN98] Cf. Case of Myrna Mack-Chang. Judgment of November 25, 2003. Series C No. 101, paras. 180 and 181.

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112. In the instant case, even though they were filed and decided, the petitions for habeas corpus did not lead to serious and independent investigations, so that the protection due under

them proved illusory. In this sense, the representatives alleged that the State violated Article 7(6) of the Convention to the detriment of both the victims and their next of kin. The Court considers that, according to the text of the article, "the right to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention" belongs to the "person deprived of his liberty" and not to his next of kin, although both "the interested party or another person in his behalf is entitled to seek these remedies." Therefore, in accordance with its jurisprudence, [FN99] the State is responsible, in this respect, for violating Article 7(6) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 10 executed or missing victims.

[FN99] Cf. Case of Servellón-García et al., supra note 1, paras. 140 and 155; Case of López-Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 99, and Case of Blanco-Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 66.

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113. As regards the violation of Article 5 of the Convention, acknowledged by the State, it is clear that, in light of the circumstances in which they were detained and taken to an indefinite place before being executed or vanished, the alleged victims were placed in a situation of vulnerability and lack of protection which affected their physical, mental and moral integrity. Certainly, there is no evidence of the specific acts to which these people were submitted before being executed or vanished. Nevertheless, the modus operandi pertaining to the facts of the instant case within the context of that kind of systematic practice (supra paras. 80(1) to 80(8)) together with the failure to investigate (supra paras. 110 to 112 and infra paras. 135 to 157) allow the inference that those people experienced deep feelings of fear, anxiety and defenselessness. In the least serious situation, they were submitted to cruel, inhumane or degrading treatment when they witnessed acts perpetrated against other people, their concealment or execution, all of which made them anticipate their deadly fate. Thus, it is coherent to describe the acts against the personal integrity of the 10 executed or missing victims in terms of Articles 5(1) and 5(2) of the Convention.

114. Regarding the violation of the right to life, also acknowledged by the State, the facts of the instant case resulted from an operation executed in coordination with the Grupo Colina, also in charge of covering up said operation. Intelligence services and the very incumbent President of the Republic at the time knew about and ordered said operation (supra paras. 96 and 97). This is consistent with the systematic practice of perpetrating illegal and arbitrary detentions, torture, extra-legal executions and forced disappearances verified at the time of the facts (supra paras. 80(12) and 80(18)). It is necessary to indicate that full identification of the mortal remains of Bertila Lozano-Torres and Luis Enrique Ortiz-Perea allows a description of the acts perpetrated to their detriment as extra-legal executions. On the other hand, it can be inferred, from the discovery of human remains and the recognition of objects belonging to some of the detainees found in the clandestine graves, that Armando Amaro-Cóndor, Juan Gabriel Mariños-Figueroa, Robert Teodoro-Espinoza and Heráclides Pablo-Meza were also deprived of their lives. Notwithstanding the foregoing, the Court believes that, as long as the whereabouts of those persons are not determined, or their remains are duly located and identified, the proper legal treatment of the situation of those four people is that of forced disappearance, just as in the cases

of Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Felipe Flores-Chipana and Hugo Muñoz-Sánchez.

115. The Court recalls that the systematic practice of forced disappearances entails non-recognition of the duty to organize the State apparatus to guarantee the rights embodied in the Convention, which replicates the conditions of impunity that allow these events to occur again. [FN100] That is the reason why it is important for the State to adopt all the necessary measures to avoid said events, to investigate and punish those responsible and to inform the missing person's next of kin of his whereabouts and compensate them as appropriate. [FN101] Likewise, the Court has held that the international responsibility of the Sate is aggravated if the disappearance is part of a systematic pattern or a practice applied or tolerated by the State, for it constitutes a crime against humanity involving a flagrant disavowal of the essential principles on which the inter-American system is based. [FN102]

[FN100] Cf. Case of Goiburú et al., supra note 1, para. 89; Case of the Mapiripán Massacre, supra note 2, para. 238, and Case of the Gómez-Paquiyauri Brothers, supra note 83, para. 130.
[FN101] Cf. Case of Goiburú et al., supra note 1, para. 89; Case of the Ituango Massacress, supra note 8, paras. 399 to 401, and Case of the Pueblo Bello Massacre, supra note 3, paras. 265 to 273.
[FN102] Cf. Case of Goiburú et al., supra note 1, para. 88; Case of Gómez-Palomino, supra note 83, para. 92, and Case of the Serrano-Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 100 to 106.

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116. In light of the foregoing considerations, and under the terms of the acquiescence of the State, it is appropriate to find that the latter is responsible for the illegal and arbitrary detention, the extra-legal execution of Bertila Lozano-Torres and Luis Enrique Ortiz-Perea and the forced disappearance of Armando Richard Amaro-Cóndor, Robert Edgar Teodoro- Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, Dora Oyague-Fierro, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas and Hugo Muñoz-Sánchez, as well as for the cruel, inhumane or degrading acts perpetrated against them, which constitute a violation of Articles 4(1), 5(1), 5(2) and 7 of the Convention, in relation to Article 1(1) thereof, to the detriment of the above mentioned persons. The international responsibility of the State is aggravated by the context in which the events occurred, analyzed in the previous chapter, as well as by the non-compliance with the protection and investigation duties described in this chapter.

b) The right to recognition of the juridical personality of disappeared persons

117. Although the State has acquiesced to the violation of Article 3 of the American Convention, alleged by the Inter-American Commission and the representatives (supra para. 41), the Court is empowered, under Article 53(2) of the Rules of Procedure, to decide "on the validity of the acquiescence and its legal effects" (supra paras. 47 to 50 and 52).

118. The argument of the Commission focuses on the fact that, as a consequence of the forced disappearance of the alleged victims, these people were "were excluded from the legal and

institutional system of the Peruvian state," that is to say, the perpetrators of the disappearance "attempted to create a 'legal limbo' through the state's failure to admit that they were being held in its custody, the fact that victims were unable to exercise their rights and their next of kin's lack of knowledge of their situation or whereabouts."

119. Previously, in another case involving forced disappearance of people, the Court had the chance to rule on the merits in relation to the alleged violation of Article 3 of the above mentioned instrument. In the case of Bámaca Velásquez v. Guatemala, the Court considered that the State had not violated the victim's right to juridical personality, since

[n]aturally, the arbitrary deprivation of life suppresses the human being and, consequently, in these circumstances, it is not in order to invoke an alleged violation of the right to juridical personality or other rights embodied in the American Convention. The right to the recognition of juridical personality established in Article 3 of the American Convention has its own juridical content, as do the other rights protected by the Convention. [FN103]

[FN103] Cf. Case of Bámaca-Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 180. Cf., also, Case of Durand and Ugarte. Judgment August 16, 2000. Series C No. 68, para. 79.

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120. With regard to the juridical content of Article 3 of the American Convention, also enshrined in other international instruments [FN104], the Inter-American Court has defined it as the right of every person

to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights. The right to the recognition of juridical personality implies the capacity to be the holder of rights (capacity of exercise) and obligations; the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of such rights and obligations. [FN105]

[FN104] Cf., Among others, Universal Declaration of Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 16; American Declaration of the Rights and Duties of Man, Article XVII, and African Charter on Human and Peoples' Rights, Article 5.
[FN105] Cf. Case of Bámaca-Velásquez, supra note 104, para. 179, quoted in Case of the Girls Yean and Bosico. Judgment of September 8, 2005. Series C No. 130, para. 176, and Case of Sawhoyamaxa Indigenous Community. Judgment of March 29, 2006. Series C No. 146, para. 188.

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121. In view of the foregoing, and as empowered by Article 53(2) of the Rules of Procedure, the Court believes that in the instant case there are no facts leading to the conclusion that the State violated Article 3 of the Convention.

c) The right to personal integrity of the victims' next of kin

122. The State has acknowledged its international responsibility for the violation of Article 5 of the American Convention to the detriment of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana (supra paras. 51 and 52). However, it did not make the same acknowledgement in respect of their next of kin, which was alleged by the Commission and the representatives. Therefore, inasmuch as the dispute over this issue is still open (supra para. 58), in this section the Court will determine whether the State is responsible for the alleged violation of said next of kin's right to personal integrity.

123. In the instant case, the Court recalls its jurisprudence that in cases involving forced disappearance of people, it can be understood that the violation of the right to mental and moral integrity of the victim's next of kin is, precisely, a direct consequence of that event, which causes them severe suffering and is made worse by the continued refusal of state authorities to supply information on the victim's whereabouts or to conduct an effective investigation to elucidate the facts. [FN106]

[FN106] Cf. Case of Goiburú et al., supra note 1, para. 97; Case of the Ituango Massacress, supra note 8, para. 340, and Case of Gómez-Palomino, supra note 83, para. 61.

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124. According to its jurisprudence, [FN107] the Court shall now determine whether the suffering endured as a consequence of the specific circumstances of the violations perpetrated against the victims, the situations some of them had to live through within that context, and the subsequent acts or omissions of state authorities, violates the right to personal integrity of the victims' next of kin, in light of the facts of the instant case.

[FN107] Cf. Case of Goiburú et al., supra note 1, para. 96; Case of Gómez-Palomino, supra note 83, para. 60, and Case of the Mapiripán Massacre, supra note 2, paras. 144 and 146.

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125. During the detention and disappearance of the victims, their next of kin embarked on a search in different institutions, in which authorities denied the victims' detention. Additionally, the Court has verified the experiences the next of kin had to go through later on:

a. After the clandestine graves were discovered, some next of kin were present during the exhumations and even helped to make them. The authorities gave the remains of some of the victims to their next of kin "in milk cartons;"
b. After the disappearance of the victims, some of their next of kin dropped the activities they had been performing up to then. Indeed, after the disappearance of Juan Gabriel Mariños-Figueroa, his brother Rosario Carpio Cardoso-Figueroa was exiled for more than a year and a half and his sister Viviana Mariños was also exiled for 12 years;

c. several victims' next of kin have been threatened while searching for their beloved ones and due to the actions they have undertaken in their quest for justice;
d. after the disappearance of the victims, their next of kin have faced stigmatization, being branded as "terrorists";
e. for a while, military courts assumed the hearing of the case, which prevented the next of kin from taking part in the investigations. Likewise, the petitions for habeas corpus filed by the next of kin were ineffective (supra paras. 111 and 112). In other cases, the lack of effective remedies has been regarded by the Court as an additional source of suffering and anxiety for the victims and their next of kin. [FN108] The delay in the investigations, which were also incomplete and ineffective for the punishment of all those responsible for the facts has exacerbated next of kin's feelings of impotence, and
f. on the other hand, because the remains of eight out of the 10 mentioned victims are still missing, their next of kin have not had the possibility of duly honoring their beloved ones, even though they have received symbolic burial. In this respect, the Court recalls that continued deprivation of the truth regarding the fate of a disappeared person constitutes cruel, inhumane and degrading treatment against close next of kin. [FN109]

[FN108] Cf. Case of Goiburú et al., supra note 1, para. 101; Case of the Ituango Massacress, supra note 8, para. 385, and Case of the Pueblo Bello Massacre, supra note 3, para. 158.
[FN109] Cf. Case of Goiburú et al., supra note 1, para. 101; Case of 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 267, and Case of Trujillo-Oroza. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 114.
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126. The facts of the instant case allow the conclusion that the violation of next of kin's personal integrity, as a consequence of the forced disappearance and extra-legal execution of the victims, flows from the situations and circumstances some of them had to go through, during and after said disappearance, as well as from the general context in which the events occurred. Many of these situations and their effects, fully understood in the complexity of the forced disappearance, will persist for as long as some of the verified factors prevail. [FN110] The next of kin still present physical and mental sequels of the facts described above and the events have made an impact on their social and work relations and altered their families' dynamics.

[FN110] Cf. Case of Goiburú et al., supra note 1, para. 103.
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127. The Court considers it necessary to point out that victim Heráclides Pérez-Meza lived with his aunt, Ms. Dina Flormelania Pablo-Mateo for seven years after he moved to Lima to pursue university studies. Furthermore, victim Dora Oyague-Fierro lived with her father and paternal aunt and uncle, to wit, Ms. Carmen Oyague-Velazco and Mr. Jaime Oyague-Velazco, ever since she was a child. Besides, victim Robert Edgar Teodoro-Espinoza was raised by his father and by Ms. Bertila Bravo-Trujillo. In the three cases, once the victims had disappeared, said next of kin began looking for them and filed, in some cases, legal actions before the

authorities; that is to say, they faced the obstructive judicial apparatus, and suffered its direct effects (supra paras. 80(19) to 80(21) and 80(24)).

128. The Court also observes that both the Inter-American Commission and the representatives identified several brothers and sisters of the executed or disappeared persons as alleged victims of the violation of Article 5 of the Convention. However, in several of those cases, the evidence produced was insufficient to enable the Court to establish actual damage to said next of kin. Accordingly, the Court only considers victims those siblings in respect of whom sufficient evidence was furnished.

129. In view of the foregoing, the Court considers that the State violated the right to personal integrity embodied in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Antonia Pérez-Velásquez, Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez, Vladimir Ilich Muñoz-Sarria, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar Sara Fierro-Huamán, Carmen Oyague-Velazco, Jaime Oyague-Velazco, Demesia Cárdenas-Gutiérrez, Augusto Lozano-Lozano, Juana Torres de Lozano, Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Ancco, María Amaro-Cóndor, Susana Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro- Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, Bertila Bravo-Trujillo, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Rosario Carpio Cardoso- Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños- Figueroa de Padilla, Carmen Chipana de Flores and Celso Flores-Quispe.

X. ARTICLES 8(1) AND 25 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (JUDICIAL GUARANTEES AND JUDICIAL PROTECTION)

Arguments of the Commission

130. The Commission alleged that the State is responsible for violating Articles 8 and 25 of the Convention, to the detriment of Hugo Muñoz-Sanchez, Bertila Lozano-Torres, Dora Oyague-Fierro, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Felipe Flores-Chipana, Marcelino Rosales- Cárdenas and Juan Gabriel Mariños-Figueroa and his next of kin. In particular, the Commission alleged the following:

a) 14 years have elapsed since the events took place, and the State failed to comply with its duty to conduct an effective and proper investigation into the abduction, extra-legal execution and forced disappearance of the victims, thus violating Articles 8, 25 and 1(1) of the American Convention;
b) the duty to investigate and punish human rights violations must be seriously undertaken by States and it requires that both the material and intellectual perpetrators of the facts violating

human rights be punished. Certainly, failing to fulfill this duty does not only imply that there are no convicted persons in the case or that, despite all efforts, it is impossible to verify the facts;

c) in relation to the initial investigations ordered by ordinary courts, the victims' next of kin saw to it that the notitia criminis reached different authorities by filing several complaints, none of which was given the prompt treatment they deserved in light of the seriousness of the facts denounced;

d) the egregious clue to the disappearance and execution of the victims required that the prosecutors, police officials and other relevant authorities go to every effort to carry out an effective search and an efficient investigation in proportion to the seriousness and significance of the facts denounced, which did not happen;

e) regardless of the lack of competence per se of the military courts to try human rights violations, the grave irregularities committed deliberately and systematically in the instant case by the different State powers to support the intervention of military courts and eventually determine their competence, reveal a policy seeking to obstruct investigations in ordinary courts with the clear purpose of covering up for those responsible. This official policy of concealment and obstruction highlights the existence of a general context of impunity;

f) it is clear that, from the high spheres of the State - the Executive, the Congress of the Republic and the Supreme Court of Justice - the available constitutional and legal mechanisms were arranged, with abuse of power, so as to enable the alleged perpetrators and instigators to elude the administration of competent justice, obtain favorable decisions from military courts and then try to ensure, through amnesty laws, the impunity of physical perpetrators;

g) military courts do not guarantee the necessary independence and impartiality to try cases involving members of the Armed Forces. Thus, characteristics like hierarchical subordination and the fact that military judges are on active duty, make it impossible to regard military courts as a true judicial system, as was verified by the Court in the Case of Durand and Ugarte v. Perú and has been acknowledged within domestic jurisdiction by the Constitutional Court;

h) the fact that the military judges were prejudiced when trying the events of La Cantuta was later confirmed by the proceedings brought against them in ordinary courts;

i) the prosecution of those responsible by military courts prevented the alleged victims' next of kin from being heard by a competent court. The investigation of the case by criminal military courts also stopped the next of kin from having a fair trial and exercising an effective judicial remedy to duly try and punish those responsible. The same is true for intellectual perpetrators, who, despite not being favored by amnesty laws, were not held responsible for the facts pursuant to a resolution ordering dismissal without trial, rendered by a military court without taking into account the conclusive evidence showing their participation in the planning, organization and coordination of the crimes;

j) granting jurisdiction to criminal military courts to hear the crimes perpetrated by members of the Army, who were already being investigated by regular criminal courts, entailed lack of respect for the principle of exceptionality and the restrictive nature of military courts, which constitutes a violation of the principle of competent tribunal, and consequently, of the right to due process and a fair trial;

k) some of the investigations initiated by the State after Mr. Alberto Fujimori left power have been conducted very slowly, considering that six years have elapsed since the fall of that government and more than five years since the State pledged to take measures to restitute violated rights and/or make reparations for the damage caused in the La Cantuta case. The right to a fair trial is not exhausted by the conduct of internal proceedings, it must also ensure a

decision within a reasonable term, to last until an unappealable judgment is rendered, including the whole proceedings and the potential trial remedies that could be filed. In cases such as the instant case, authorities must act ex officio and launch the investigation, without leaving this burden to the initiative of the next of kin;

l) besides, these investigations have not included all those allegedly responsible for the events generating the international responsibility of the State. The State has resorted to the figure of res judicata to avoid punishing some of the alleged intellectual perpetrators. This constitutes an infringement of the American Convention, inasmuch as States cannot apply domestic laws or provisions to escape the duty to investigate and punish those responsible for violations of the Convention. The reopening of investigations within domestic jurisdiction would not affect in any way whatsoever the non bis in idem principle embodied in Article 8(4) of the American Convention, since the res judicata principle never applied, because the alleged perpetrators were tried by a court which, under Article 8 of the Convention, was not competent, independent and impartial and did not satisfy the requirements of competent tribunal. This is so because the requirement of a previous acquittal is not met when said judgment lacks legal effects for standing in open contradiction to international duties. Accordingly, the Peruvian State must conduct a new trial with all the guarantees of due process in order to rectify the structural deficiencies of previous military proceedings, and

m) the infringement of Articles 1, 8(1) and 25 of the Convention was effected when the State failed to conduct new investigations and domestic proceedings with enough diligence as to offset the concealment that prevailed for almost a decade, during Alberto Fujimori's administration. In this sense, the Commission insists again on the fact that the State is obliged to carry out a criminal investigation and apply criminal penalties to those responsible for the violations, also as a way to uphold the right of the victims' next of kin to know the truth.

Arguments of the representatives

131. In their brief of requests, arguments and evidence, the representatives concurred with the arguments of the Commission regarding Articles 8 and 25 of the Convention in relation to Article 1(1) thereof. They added the following arguments:

a) the instant case clarifies one of the distinctive features of Fujimori's regime: the control and manipulation of the legislative and judicial powers to hide the truth about egregious human rights violations and secure the impunity of those responsible;

b) through both de facto and legal mechanisms, Perú obstructed the investigations that were initiated to determine the legality of the victims' detentions and to investigate the facts and identify those responsible for them. As part of those impunity structures, self-amnesty laws were enacted, which precluded the investigation, persecution, capture, prosecution and punishment of those responsible for the facts denounced;

c) as the Court itself has held in the Case of the Pueblo Bello Massacre, in cases involving extra-legal executions, the State must conduct, ex officio and without delay, a serious, impartial and effective investigation to guarantee the infringed right;

d) although the victims' next of kin filed three petitions for habeas corpus immediately after the detention of the victims, the proceedings that were opened did not respect the judicial guarantees established in Article 8(1) of the Convention, nor were they effective under Articles 7(6) and 25(1) of said treaty, due to the non-observance of the due diligence duty by the

intervening authorities. The judges hearing in the respective habeas corpus proceedings distorted the surveillance role that should be played by the Judiciary in a State in which the rule of law prevails, and failed in duly grounding their decisions. Therefore, the State is responsible for failing to guarantee the victims' next of kin right to an effective recourse substantiated by independent and impartial bodies, and, consequently, for violating the rights enshrined in Articles 7(6), 8(1) and 25(1) of the Convention, to the detriment of the alleged victims and their next of kin;

e) criminal comparative law and international criminal law have developed several concepts regarding the different ways of participating in the commission of a crime, which shed light on how to interpret the compliance with the duty to investigate, prosecute and punish all forms of participation in the commission of crimes. The State has neither investigated nor submitted all persons involved in the commission, planning, instigation and concealment of the facts to domestic judicial authorities, nor those who ordered the crimes, facilitated them through cooperation or were accomplices. Those who, by virtue of a subordination relationship, knew or should have known that their subordinates were going to commit or had committed these crimes, and took no measures to stop them or punish them have not been tried either. The Court could ease the work of justice regarding the events at La Cantuta by further developing the degrees of criminal participation involved in the duty to investigate and punish all material and intellectual perpetrators in a case in which the state apparatus was used and arranged to commit egregious human rights violations;

f) the State has not met the required due diligence standard in the criminal investigations of the instant case. Besides an unjustified delay in the accurate elucidation of the facts, the production of crucial evidence has also been subject to delay and negligence, as is true for the DNA analysis of the bone remains that were found during the early 90's;

g) two reasons justify the lack of competence of the CSJM (Supreme Council of Military Justice) in the prosecution and punishment of perpetrators and instigators: firstly, the facts being tried were not "military crimes or offenses" but ordinary felonies, and secondly, in the specific case of Vladimiro Montesinos, he was not a member of the military in active duty. The undue exercise of jurisdiction by the military courts in the prosecution of the perpetrators of the facts denounced was possible pursuant to applicable domestic legislation which established a wide scope of subject-matter and personal jurisdiction. In this sense, the above mentioned norms infringed Article 8(1) of the American Convention in relation to Articles 1(1) and (2) thereof;

h) with the incorporation of amnesty laws to its legal system, and during the time when they were applied and had effects, the State violated the rights to a fair trial (Article 8(1)) and to judicial protection (Article 25), in relation to the duties of protection and guarantee (Article 1(1)) and the duty to adapt domestic legislation to conform to international standards (Article 2), to the detriment of the victims and their next of kin, and

i) the State has violated the rights embodied in Articles 8(1) and 25(1) of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the victims and their next of kin, inasmuch as it failed to provide effective judicial remedies substantiated by competent, independent and impartial judges within a reasonable term and to adapt domestic provisions to conform to the principles of Articles 8(1) and 25(1) of the Convention, and, particularly, in view of the fact that it approved, applied and kept in force up to the present a norm (the Military Code of Justice) which does not clearly and accurately specify who may be tried by military courts.

Arguments of the State

132. The State partially acquiesced to the alleged violation of Articles 8 and 25 of the Convention (supra paras. 45, 46 and 53) and remarked, inter alia, that:

a) it does neither deny the occurrence of the facts nor that they took place due to acts or omissions of State representatives (public authorities or officials), which incriminates the State. However, it explains the context in which the State responded to the impunity that prevailed until late 2000, when the State modified its behavior following the democratic transition and the reinstatement of the Rule of Law in the country;
b) immediately after the fall of former President Alberto Fujimori, the State adopted concrete measures to reestablish fluent relations with the inter-American protection system, strengthen the Rule of Law and avoid impunity for crimes against human rights and to the prejudice of public property;
c) these specific facts and the reinstitutionalization of the country have enabled both the Attorney General´s Office and the Judiciary to restart the investigations and conduct proceedings, pursuant to the evidence gathered, to reverse the impunity that has prevailed for numerous and egregious human rights violations;
d) the Transition Government created the Comisión de la Verdad (Truth Commission) in order to elucidate the processes, facts and responsibilities of terrorist violence and human rights violations perpetrated between May 1980 and November 2000, attributable both to terrorist organizations and State agents. This Commission issued a Final Report by late August 2003, which constitutes a step forward in the elucidation of the facts, the vindication of all victims of violence and the recovery of historical memory regarding the events that took place in Perú for two decades. It has also proved useful for the investigations of competent bodies into egregious human rights violations, including those perpetrated at La Cantuta;
e) at present, two criminal proceedings are dealing with the facts at La Cantuta pursuant to Peruvian domestic law, and there is an ongoing preliminary investigation into the intellectual perpetrators of the same facts. It should be emphasized that the criminal proceedings being held at the Supreme Court of Justice have involved a former President of the Republic, that is to say, the highest authority of the State, which is a signal that the work of national courts is serious and significant;
f) the State admits that those who are being prosecuted or investigated have not been convicted, but it also acknowledges that the duty to investigate and punish is a duty pertaining to means and not to outcome, as established in the jurisprudence of the Inter-American Court in the cases of Velásquez-Rodríguez, Godínez-Cruz, Caballero-Delgado and Santana and Baldeón-García. The State's decision to bring two criminal proceedings and launch a preliminary investigation should not be regarded merely as a formality doomed to failure but as a serious and firm process to reverse the impunity that authorities attempted to institutionalize in Perú during the past decade;
g) the Commission's request to conduct a complete, impartial, effective and prompt investigation into the facts and people involved in the undue interventions of different state bodies is not opposed by the State: it coincides with its efforts to investigate the facts and avoid impunity. The criminal case brought against the material perpetrators of the facts has reached the oral proceedings stage, that is, it is substantively advanced;
h) as regards the obstruction of investigations, the State politely requests the Court to assess the information submitted in relation to the fact that Perú, through competent and fully

independent bodies, has already adopted effective measures to punish those responsible for obstructing the investigations of the instant case at a domestic level;

i) in a State in which the rule of law prevails, the Executive Power cannot replace nor give orders or directives to the Attorney General´s Office or the Judiciary. These autonomous entities have oversight bodies belonging to a constitutional body, the National Council of the Magistracy, with functional jurisdiction over the matter, pursuant to the Constitution and the laws;

j) the slowness of the Peruvian Judiciary in the investigation and prosecution of all those responsible for these facts has been criticized, and said criticisms are partly justified, but since our countries' judicial systems respect the due process and the right to a fair trial, the accused parties are allowed to fully exercise their right to defend themselves. This is one of the reasons why the whole process offers and faces successive delays. It should also be explained to the Court that the logistic capacity of the State upon beginning to investigate and prosecute many former high-ranking State officials and other citizens for acts of corruption and human rights violations has led to a situation in which the judicial scenario offering the best security conditions is saturated and thus, for example, in the instant case and particularly in internal venue, judicial proceedings are scheduled to be conducted only once a week. On some occasions, due to incidents or arrangements, with the good or bad faith (which we shall not proceed to assess now) of the accused and the defense counsel, proceedings face unwanted delays;

k) regarding the punishment of instigators, the State clarifies that both the criminal proceedings at the Supreme Court involving former President Alberto Fujimori and the preliminary investigation of the instigators started by the Attorney General´s Office, involving two high-ranking members of the Peruvian Army and the main presidential advisor at the time of the events, seek to include all those that could be responsible for the facts at La Cantuta and are not circumscribed or restricted merely to the material perpetrators of the facts. In the preliminary investigation of the Attorney General´s Office, the acquittal granted by a military court has no legal effects, that is to say, it is not to be considered a res judicata case;

l) it will receive and abide by the Court's decision concerning the investigation, identification and punishment of those responsible for issuing orders to commit international crimes such as the ones constituting the subject of the instant case. Thus, the duty to investigate and punish will rely on clearer criteria than those currently available to the national legal system to comply with this constitutional duty arising from an international source;

m) there is an additional element in the quest for justice. The legal status of former president Alberto Fujimori must be elucidated by a third-party State, despite the efforts and will of Perú. Undoubtedly, this fact seriously hinders the full assumption of the duty to investigate the facts and punish all those responsible;

n) the Constitutional Court of Perú, in the judgments on cases against two people involved in the facts, has issued guiding criteria for the whole judicial apparatus, explaining that a decision rendered by a Military Court has no res judicata effect, inasmuch as said court has no competence to investigate and punish human rights violations. These are recent decisions of the Constitutional Court which allow justice operators to review the decisions they may have adopted so far and which may not conform to law, to the Political Constitution, the American Convention and the jurisprudence of the Court, and

o) regarding amnesty laws, State operators, based on the judgment in the Barrios Altos case, have begun to adopt measures, within their jurisdictions, intended to rid the national legal system

of said laws, which has made it possible that the instant case, among others, be made public in Perú, which proves that this obstacle no longer exists.

Considerations of the Court

133. Article 8(1) of the American Convention establishes that:

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.

134. Article 25 of the 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.

a) Initial Investigations in the Ordinary Courts; Referral of Investigations to Military Courts and Lack of Jurisdiction of Military Courts to Investigate and Prosecute Serious Human Rights Violations

135. After the complaints filed by the victims' next of kin, the APRODEH (Association for Human Rights) and the Chancellor of the University of La Cantuta, an investigation was undertaken in a regular court in August 1992, specifically by the Octava Fiscalía Provincial en lo Penal (Eighth Provincial Criminal Prosecutor's Office (supra para. 80(21) to 80(23)). In addition, after illegal common graves were found in Cieneguilla and Huachipa, the Décimo Sexta Fiscalía Provincial Penal de Lima (Sixteenth Provincial Criminal Prosecutor's Office of Lima) undertook parallel investigations in July 1993 (supra para. 80(30) and 80(31)). During the exhumation and identification activities performed by the Prosecutor's Office, there were several missteps concerning the identification of other human remains found. Moreover, nothing else was done to find the remains of the other victims.

136. In the first investigation undertaken in the common criminal court, the prosecutor who replaced the appointed prosecutor refrained from continuing to conduct the investigation because the Sala de Guerra of the CSJM (Warfare Division of the Supreme Military Justice Tribunal) "had taken jurisdiction over the same events as those in this complaint." Such replacements, carried out in the context of a restructuring of the Judicial Branch undertaken from April 1992, described by the Commission for Truth and Reconciliation as a "a blatant case of intrusion and control by the political power," [FN111] were part of a scheme aimed at preventing alleged

perpetrators and instigators from being tried by competent courts, in the context of impunity described above (supra para. 81).

[FN111] Cf. Final Report of the Truth and Reconciliation Commission, 2003, Volume III, Chapter 2.6, "Action of the judiciary during the internal armed conflict", p. 265. In this connection, the United Nations Special Rapporteur on the question of the independence of judges and lawyers has expressed his concern that, as a result of the restructuring of the Judiciary, the Executive Branch and high-ranking authorities of the Judiciary summarily removed from office judges and prosecutors in all court tiers and their place "[n]ew judges were appointed on a provisional basis, without prior assessment of their qualifications, by the same commission set up for the removal of the previous magistrates. As a result, by the end of 1993, more than 60 per cent of the judicial posts were occupied by magistrates who had been appointed provisionally)." (Cf. Report from the Special Rapporteur on the question of independence of judges and lawyers, Mr. Param Cumaraswamy. Addendum to the Report of the mission to Perú. E/CN.4/1998/39/Add.1, February 19, 1998, paragraphs 17–20).

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137. The military courts had started to conduct investigations on their own in April 1993, in parallel to those undertaken by the ordinary courts (supra para. 80(42) and 80(43)). As a result, the CSJM (Supreme Council of Military Justice) entered into a "jurisdiction battle" against the ordinary courts, and when the Sala Penal de la Corte Suprema de la República (Criminal Chamber of the Supreme Court of Perú) initially resolved it, the CSJM declared itself in disagreement with the decision to refer the prosecutions against the military officers identified as responsible to the ordinary courts (supra para. 80(48)). In view of the foregoing, the so-called "Congreso Constituyente Democrático" (Democratic Constitutional Congress) passed a law that modified the required majority to settle jurisdiction battles. Based on that overt legal manipulation orchestrated by the three branches of government in order to favor the referral of investigations to the military courts, [FN112] a few days later the Sala Penal of the Corte Suprema (Criminal Chamber of the Supreme Court) ordered that the case be referred to the CSJM (supra para. 80(50) and 80(51)).

[FN112] Cf. Final Report of the Comisión for Truth and Reconciliation, 2003, Volume VII, 2.22, "Extra-judicial executions of university students from La Cantuta (1992)", pp. 241 to 245.

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138. In other words, from February to 1994 until the year 2001, criminal courts were prevented from hearing the case. In May 1994, eight Army officers were convicted by the military courts, and in August that year, three persons accused of instigating the crimes were discharged (supra para. 80(55) and 80(57)).

139. The Court must therefore determine whether the referral of the investigations to the military courts and the criminal proceedings carried out by them conformed to the terms of the American Convention, in terms of the nature of the military judges and the crimes in the instant case.

140. Article 8(1) of the American Convention provides that every person has the right to a hearing by a competent, independent and impartial judge or tribunal. Thus, this Court has held that "all persons subject to trial of any kind before a State body must have the guarantee that such body is impartial and acts within the procedural scope prescribed to hear and decide the case submitted to it." [FN113]

[FN113] Cf. Case of Almonacid Arellano et al., supra note 6, para. 169, and Case of the Constitucional Court. Judgment of January 31, 2001. Series C No. 71, para. 77.

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141. In Perú, at the time of the events, the military courts were hierarchically subordinated to the Executive Power [FN114] and the military judges in active duty who performed judicial functions, [FN115] which inhibited, if not prevented, the military judges from making objective and impartial judgments. [FN116] By the same token, the Court has taken into account that "the military men who were members of these tribunals were, at the same time, members of the armed forces in active duty, a requirement to be part of military tribunals[, and were thus] unable to issue an independent and impartial judgment" [FN117]

[FN114] Section 23 of Decree-Law No. 23,201 of July 19, 1980, "updating and adjusting the Charter of the Military Courts to the new Political Constitution" provides that: "The President and members of the Tribunals shall be appointed by Supreme Resolution, approved by the Head of the appropriate Ministry." In addition, Article 31 of the Charter of the Military Coruts sets forth that: "[…] Permanent Judges shall be appointed by the Executive Power." Additionally, Section 32 provides that "Permanent Magistrates conducting Preliminary Proceedings shall sit in each Court District when necessary to meet the requirements of the service. Their number shall be fixed yearly by the Executivy Power upon the proposal of the Consejo Supremo de Justicia Militar (Supreme Military Justice Tribunal).."

[FN115] For instance, Section 6 of Decree-Law No. 23,201 of July 19, 1980, "updating and adjusting the Charter of the Military Courts to the new Political Constitution" as amended by Law No. 26,677 of October 22, 1996, which establishes that the Consejo Supremo de Justicia Militar (Supreme Military Justice Tribunal) is composed of General Officers and Admirals in active duty. Moreover, Section 12 of Decree-Law No. 23,201 sets forth that: "The Supreme Military Justice Tribunal shall: […] (15) Appoint to perform judicial duties the Officer in active duty who is legally apt for the Armed Forces and for the Police Forces in the event of absence or indisposition of the incumbent." In addition, Section 22 of Law No. 26,677 sets forth: "In each Court District there shall be a War Council composed [...] of a Colonel or Ship Captain, who shall preside over it; two Members with a rank of Lieutenant Colonel, Frigate Captain or Commander of the Peruvian Air Force in active duty." Perú's Constitutional Court, through judgment of June 9, 2004 (File No. 0023-2003-AT/TC. Ombudsman's office), declared sections 6, 22 and 31 of the Charter of the Military Courts unconstitutional.

[FN116] Section III of the Preliminary Chapter of Decree-Law No. 23,201 of July 19, 1980, i.e. "Charter of the Military Justice" sets forth that: "Military Justice is autonomous and in performing their duties its members do not report to any administrative authority, but to the

judicial bodies of the highest hierarchy..” Pursuant to Section 15 of Decree-Law No. 23,201, "War Councils and Higher Courts of Justice of the Police Armed Forces are Permanent Tribunals under the authority of the Supreme Military Justice Tribunal" […]..”
[FN117] Cf. Case of Durand and Ugarte, supra note 104, para. 125.
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142. The Court has established that in a democratic State, the jurisdiction of military criminal courts must be restrictive and exceptional, and they must only judge military men for the commission of crimes or offences that due to their nature may affect any interest of military nature. [FN118] In this regard, the Court has held that “when the military courts assume jurisdiction over a matter that should be heard by the ordinary courts, the right to the appropriate judge is violated, as is, a fortiori, due process, which, in turn, is intimately linked to the right of access to justice” [FN119] For these reasons and because of the nature of the crime and the legally protected interest wronged, the military criminal courts have no competent jurisdiction to investigate or prosecute and punish the authors of these events.

[FN118] Cf Case of Almonacid-Arellano et al., supra note 6, para. 131; Case of the Pueblo Bello Massacre, supra note 3, para. 189, and Case of Palamara-Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 167.
[FN119] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 131; Case of Palamara-Iribarne, supra note 119, para. 143 and Case of 19 Tradesmen, supra note 110, para. 167.
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143. The Criminal Chamber of the Peruvian Supreme Court settled the jurisdiction battle in favor of the military courts, which failed to meet the jurisdiction, independence and impartiality criteria discussed above and convicted some military officers for the events in the case, discharged some others and applied the amnesty laws (supra para. 80(55) and infra para. 188 and 189). In the context of impunity described earlier (supra para. 81, 92, 93, 110 and 136), together with the lack of jurisdiction to investigate this type of crimes by the military courts, it is evident for this Court that, as a result of the manipulation of legal and constitutional devices by the three branches of Government, the investigations were fraudulently referred to the military courts, which for many years hindered the investigations in the ordinary courts, which were the courts with competent jurisdiction to carry out the investigations, with the aim of securing impunity for those responsible.

144. However, it is worth noting that the State has recognized, both in the proceedings before this Court and in orders and decisions issued by its domestic courts in this and “other cases” (supra para. 41, 42, 44 and 91), the partiality of the judges of the criminal courts in the trial of the La Cantuta events; the fake prosecutions instituted against several people in order to prevent them from being tried by the ordinary courts and thus secure their impunity; and the irregularities in the proceedings. Thus, for example, in deciding over a writ of amparo [enforcement of the constitutional guarantee for protection of civil rights] filed in another case by former military officer Santiago Martín Rivas, one of the defendants convicted by the military courts (supra para. 80(54)), the Peruvian Constitutional Court held:

[…] in view of the circumstances of the case, there is evidence that the criminal proceedings instituted in the military courts were aimed at preventing the petitioner from being held responsible for the acts he is accused of.

Such circumstances are connected to the existence of a systematic plan to promote impunity in human rights violations and crimes against humanity, particularly the acts committed by the members of the Colina Group, of which the petitioner is a member.

Some examples of such systematic plan are:

[…] (i) The deliberate trial of common crimes by criminal courts, as discussed earlier.
[…] (ii) The issuance of amnesty laws 26,479 and 26,492 in that period. Even though these did not apply to the first criminal trial of the petitioner, taking into account the context in which they were issued and the aim they pursued, the Constitutional Court considers that it clearly shows that the government had no will to investigate and apply punishments that would fit the crimes committed by those responsible for the events known as "Barrios Altos," [FN120]

[FN120] Cf. Judgment of the Constitucional Court, File No. 4587-2004-AA/TC, in the Case of Santiago Martín Rivas, of November 29, 2005, para. 81(b), 82 and 83.

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145. The foregoing considerations necessarily lead to the conclusion that a criminal trial in the ordinary courts was the appropriate means to investigate and eventually prosecute and punish those responsible for the events in the instant case; therefore, the irregular referral of investigations to the criminal courts and the resulting proceedings conducted against the alleged perpetrators and instigators constitute a violation of Article 8(1) of the Convention with relation to Article 1(1) thereof, to the detriment of the victims' relatives.

b) The New Investigations and Criminal Proceedings Conducted in the Ordinary courts

146. In the instant case, after the fall of ex President Alberto Fujimori Fujimori's regime and the subsequent transition process starting in 2000, new official action was taken in the ordinary criminal courts. However, no steps were taken in the criminal proceedings or in other instances to determine the fate of the victims or to search for their remains. As regards those investigations and their status at the time of this Judgment, the Court notes that at least five new proceedings have been instituted, which have had various partial results, according to the information on the record of the case (supra para. 80(67) to 80(92)).

147. As regards the effectiveness of the new investigations and criminal proceedings for establishing the truth of the facts and tracking down and eventually arresting, prosecuting and punishing the perpetrators and masterminds, the Court recognizes that such investigations and proceedings have been aimed at the then highest ranking government officers, from the former President to high military and intelligence ranks, as well as several former members of the Colina Group. However, as discussed earlier (supra para. 146), for several reasons the outcome of the proceedings have been quite partial as regards bringing charges and identifying and

eventually convicting those responsible. The absence of one of the main defendants, former President Alberto Fujimori, who was initially granted asylum in Japan and is currently arrested in Chile, determines a major part of the impunity. This latter aspect will be dealt with below (infra para. 158 to 160).

148. Furthermore, the Court views favorably the trial and punishment of persons who, in the military courts, hampered the investigations and formed part of the impunity scheme operating during the investigations conducted until 2000 (supra para. 80(71) to 80(74)).

149. As regards the length of investigations and trials, this Court has stated that the right to justice is not limited to the formal institution of domestic proceedings, but it also involves the assurance within reasonable time of the right of alleged victims or their relatives to have every necessary step taken to know the truth and punish those responsible for the events. [FN121] Certainly the Court has established, regarding the reasonable time principle set out in Article 8(1) of the American Convention, that three aspects must be taken into account to determine the reasonableness of the time within which a case is carried out. (a) the complexity of the matter, (b) the procedural activities carried out by the interested party, and (c) the conduct of judicial authorities. [FN122] However, the appropriateness of applying these criteria to determine the reasonableness of the length of a proceeding depends of the circumstances of each case. [FN123] Furthermore, in such cases, the State's duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time. As regards the new investigations and prosecutions carried out since the start of the transition, even though the matter is clearly complex due to the nature of the events, the number of victims and defendants and the delays caused by them, they cannot be considered as separate from the earlier period. The obstruction of the proceedings has led investigations and prosecutions to last over 14 years from the perpetration of the events that involved the execution or forced disappearance of the victims, which altogether has by far exceeded the term that could be considered reasonable for these purposes.

[FN121] Cf. Case of the "Mapiripan Massacre", supra note 2, para. 216; Case of the Serrano-Cruz Sisters, supra note 98, para. 66, and Case of 19 Tradesmen, supra note 110, para. 188.
[FN122] Cf. Case of Vargas-Areco, supra note 1, para. 102; Case of Ximenes-Lopes, supra note 6, para. 196, and Case of García-Asto and Ramírez-Rojas. Judgment of November 25, 2005. Series C No. 137, para. 166. Similarly, cf. European Court of Human Rights. Wimmer v. Germany, no. 60534/00, § 23, 24 May 2005; Panchenko v. Russia, no. 45100/98 § 129, 8 February 2005, and Todorov v. Bulgaria, no. 39832/98, § 45, 18 January 2005.
[FN123] Cf. Case of the Pueblo Bello Massacre, supra note 3, para. 171 and Case of the "Mapiripan Massacre", supra note 2, para. 214. Similarly, Case of García-Asto and Ramírez-Rojas, supra note 123, para. 167.

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150. Regarding to the scope of these new investigations, no new proceedings were instituted in the ordinary courts concerning persons convicted by military courts as perpetrators of the crimes, save for certain acts of one person initially prosecuted by such courts. There is no showing that said sentences, which became effective again after the CSJM's decision of 2001, have been served. Moreover, in spite of the complaint filed by the Procuraduría Ad Hoc (Ad Hoc

Prosecutor's Office) against three of the alleged instigators —to wit, Hermoza Ríos, Montesinos and Pérez Documet, who were discharged by the military courts (supra para. 80(82))—, no formal charges have been brought against them in the ordinary courts. A motion for nullity of the prosecutions conducted in the military courts filed with the CSJM by two of the victims' next of kin was dismissed in July 2004 (supra para. 80(65) and 80(66)). This means that, in a way, the proceedings in the military courts have continued to hamper the investigation and eventual trial and punishment of all those responsible in the ordinary courts.

151. In this connection, the Commission and the representatives have asserted that the State has relied on the concept of double jeopardy to avoid punishing some of the alleged instigators of these crimes; however, double jeopardy does not apply inasmuch as they were prosecuted by a court who had no jurisdiction, was not independent or impartial and failed to meet the requirements for competent jurisdiction. In addition, the State asserted that "involving other people who might be criminally liable is subject to any new conclusions reached by the Ministerio Público [General Attorney's Office] and the Judiciary in investigating the events and meting out punishments," and that "the military court's decision to dismiss the case has no legal value for the General Attorney's Office's preliminary investigation. That is, the double jeopardy defense does not apply."

152. This Court had stated earlier in the Case of Barrios Altos that

This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extra-legal, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law. [FN124]

[FN124] Cf. Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75. Para. 41.

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153. Specifically, in relation with the concept of double jeopardy, the Court has recently held that the non bis in idem principle is not applicable when the proceeding in which the case has been dismissed or the author of a violation of human rights has been acquitted, in violation of international law, has the effect of discharging the accused from criminal liability, or when the proceeding has not been conducted independently or impartially pursuant to the due process of law. [FN125] A judgment issued in the circumstances described above only provides "fictitious" or "fraudulent" grounds for double jeopardy. [FN126]

[FN125] Cf. Case of Almonacid-Arellano et al., note 6, para. 154. See also, U.N., Rome Statute of the International Criminal Courts), approved by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court U.N. Doc. A/CONF. 183/9 July 17, 1998, Article 20; Statute of the International CriminalTribunal for the former

Yugoslavia, S/Res/827, 1993, Article 10, and the Statute of the International Criminal Tribunal for Rwanda, S/RES/955, November 8, 1994, Article 9.
[FN126] Cf. Case of Almonacid-Arellano et al., note 6, para. 154; Case of Gutiérrez-Soler. Judgment of September 12, 2005. Series C No. 132, para. 98, and Case of Carpio-Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 131.
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154. Therefore, in its complaint against the alleged instigators of the crimes (supra, para. 80.82), who were discharged by the military courts, the Procuraduría Ad Hoc (Ad Hoc Prosecutor's Office) deemed it inadmissible to consider the order for dismissal of the case issued by the military judges in the course of a proceeding aimed at granting impunity as a legal obstacle for conducting prosecutions or as a final judgment, since the judges had no jurisdiction and were not impartial, and thus the order may not provide grounds for double jeopardy.

155. In close connection with this, the representatives have requested, based on several sources of international law, particularly statutes and international criminal court decisions concerning the requirements to attribute criminal liability to superiors for the acts of their subordinates, that the Court "ascertains the degrees of involvement in the serious violations of human rights pursuant to the conventional obligation to punish the perpetrators and instigators of such acts." In its answer to the application, the State pointed out that it "understands that the duty to administer justice involves investigating and punishing any individual who had a criminal conduct in the events of La Cantuta. In this respect, the State will hear and abide by the Court's decision as regards the investigation, identification and punishment of those responsible for issuing orders to commit international crimes such as those involved in the instant case." In its final arguments, the State asserted that the events recognized "constitute wrongful acts under international law [and] crimes under domestic law and amount to international crimes that the State must prosecute."

156. In this regard, it is worth noting that the Court is not a criminal court with power to ascertain liability of individual persons for criminal acts. [FN127] International liability of the States arises automatically with an international wrong attributable to the State and, unlike under domestic criminal law, in order to establish that there has been a violation of the rights enshrined in the American Convention, it is not necessary to determine the responsibility of its author or their intention, nor is it necessary to identify individually the agents who are attributed with the violations. [FN128] In this context, the Court ascertains the international liability of the State in this case, which may not be made modeled after structures that belong exclusively to domestic or international criminal law, which in turn defines responsibility or individual criminal liability; nor is it necessary to define the scope of action and rank of each state officer involved in the events.

[FN127] Cf. Case of the Pueblo Bello Massacre, supra note 3, para. 122; Case of Raxcacó-Reyes. Judgment of September 15, 2005. Series C No. 133, para. 55, and Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 61 and 62. Similarly, cf. European Court of Human Rights, Case of Adali v. Turkey, Judgment of 31 March 2005, Application No.

38187/97, para. 216, and Avsar v. Turkey, Judgment of 10 July 2001, Application No. 25657/94, para. 284.
[FN128] Cf. Case of the "Mapiripan Massacre", supra note 2, para. 110; Case of 19 Tradesmen, supra note 110, para. 141, and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 41.
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157. Thus, as regards the requests of the representatives and the State, it must be noted that the events have been described before this court by the Commission for Truth and Reconciliation, domestic judicial organs and the State's representatives as crimes against humanity, and it has been established that these were perpetrated in the context of a generalized and systematic attack against sectors of the civilian population. As a result, the duty to investigate and eventually conduct trials and impose sanctions, becomes particularly compelling and important in view of the seriousness of the crimes committed and the nature of the rights wronged; all the more since the prohibition against the forced disappearance of people and the corresponding duty to investigate and punish those responsible has become jus cogens. [FN129] The impunity of these events will not be eradicated without ascertaining general liability of the State and individual criminal liability of its agents or other individuals, both of which complement each other. [FN130] Therefore, suffice it to repeat that the investigations and prosecutions conducted on account of the events in this case warrant the use of all available legal means and must aim to determine the whole truth and to prosecute and eventually capture, try and punish all perpetrators and instigators of the acts.

[FN129] Cf. Case of Goiburú et al., supra note 1, para. 84 and 131. In connection with the duty to investigate crimes against humanity, specifically murder committed as part of a systematic practice, see also Case of Almonacid Arellano et al., supra note 6, para. 99 and 111.
[FN130] Cf. Case of Goiburú et al., supra note 1, para 131.
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c) Duties under International Law Dealing with Inter-state Cooperation Concerning Investigation and Extradition of Alleged Authors of Serious Human Rights Violations

158. Extradition proceedings have been instituted against one of the main defendants in connection with the events in the instant case [FN131] (supra para. 80(86) to 80(92) and 147).

[FN131] Since he left Perú in November 2000 until November 2005, Alberto Fujimori stayed in Japan, to which Perú requested his extradition on various grounds, including the events of La Cantuta. On January 3 2006, after Alberto Fujimori Fujimori entered Chile, the Peruvian Embassy in that country filed five requests for extradition —including the one referred to the events of La Cantuta—, which led to the current extradition case proceeding before Chile's Supreme Court of Justice (supra para 80(86) to 80.(92)).
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159. The Court has recognized Perú's efforts put into the investigations conducted after the transition (supra para. 146 to 150). The Court likewise commends the State on the fact that it is fulfilling its obligation —deriving from its duty to investigate— to request and promote, by the appropriate judicial and diplomatic means, the extradition of one of the main defendants.

160. As pointed out repeatedly, the acts involved in the instant case have violated peremptory norms of international law (jus cogens). Under Article 1(1) of the American Convention, the States have the duty to investigate human rights violations and to prosecute and punish those responsible. In view of the nature and seriousness of the events, all the more since the context of this case is one of systematic violation of human rights, the need to eradicate impunity reveals itself to the international community as a duty of cooperation among states for such purpose. Access to justice constitutes a peremptory norm of International Law and, as such, it gives rise to the States' erga omnes obligation to adopt all such measures as are necessary to prevent such violations from going unpunished, whether exercising their judicial power to apply their domestic law and International Law to judge and eventually punish those responsible for such events, or collaborating with other States aiming in that direction. The Court points out that, under the collective guarantee mechanism set out in the American Convention, and the regional [FN132] and universal [FN133] international obligations in this regard, the States Parties to the Convention must collaborate with one another towards that end. [FN134]

[FN132] Cf. Charter of the Organization of American States, Preamble and Article 3(3), Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on Forced Disappearance of Perons; and Resolution No. 1/03 of the Inter-American Commission of Human Rights on the trial of international crimes.

[FN133] Cf. Charter of the United Nations signed June 26, 1945, Preamble and Article 1(3); Universal Declaration of Human Rights, adopted and proclaimed under General Assembly Resolution 217 A (iii) of December 10, 1948; United Nations International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI) of December 16, 1966; Geneva conventions of August 12, 1949 and its Protocols; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, General Assembly 2391 (XXIII) of November 26, 1968; Convention on the Prevention and Punishment of the Crime of Genocide, resolution 260 A (III), General Assembly resolution 260 A (III) of December 9, 1948; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46 of December 10, 1984; Declaration on the Protection of All Persons from Enforced Disappearances (sic), G.A. Res. 47/133, 47 U.N. GAOR Supp. (no. 49) at 207, U.N. Doc. A/47/49 (1992), Article 14; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. Res. 1989/65, U.N. Doc. E/1989/89 para. 18 (May 24, 1989); Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, G. A. Res. 3074, U.N. Doc. A/9030 (1973); Resolution on the Question of the Punishment of War Criminals and of Persons who have Committed Crimes Against Humanity, G.A. Res. 2840, U.N. Doc. A/Res/2840 (1971); 1996 Draft Code of Crimes Against the Peace and Security of Mankind of the International Law Commission; Draft International Convention for the Protection of All Persons from Enforced Disappearance, United Nations Human Rights Council, 1st session, business No. 4 of the agenda, A/HRC/1/L.2, June 22, 2006;

Declaration on Territorial Asylum, adopted by the United Nations General Assembly, resolution 2312 (XXII) of December 14, 1967; and United Nations Convention on the Statute of Refugees, 189 U.N.T.S. 150, adopted on July 18, 1951 by the the United Nations Diplomatic Conference of Plenipotentiaries on the Statute of Refugees and Stateless, convened by the General Assembly through resolution 429 (V), of December 14, 1950.
[FN134] Cf. Case of Goiburú et al., supra note 1, paras. 128 to 132.

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161. It has been proven that, even though the criminal proceedings were reopened in order to solve the case and partial results have been achieved, such proceedings have not been efficient to prosecute and eventually punish all those responsible (supra para. 146 to 150). The Court thus considers that the State is responsible for the violation of the rights embodied in Articles 8(1) and 25 of the American Convention in relation with Article 1(1) thereof, to the detriment of Antonia Pérez-Velásquez, Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez, Vladimir Ilich Muñoz-Sarria, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar Sara Fierro-Huamán, Carmen Oyague-Velazco, Jaime Oyague-Velazco, Demesia Cárdenas-Gutiérrez, Augusto Lozano-Lozano, Juana Torres de Lozano, Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Ancco, María Amaro-Cóndor, Susana Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, Bertila Bravo-Trujillo, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Rosario Carpio Cardoso-Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños-Figueroa de Padilla, Carmen Chipana de Flores and Celso Flores-Quispe.

XI. GENERAL DUTY TO ADOPT DOMESTIC LAW MEASURES (ARTICLE 2 OF THE AMERICAN CONVENTION)

162. Argument by the Commission

a) the formal existence of amnesty laws No. 26,479 and No. 26,492 in the Peruvian legal system constitutes per se an infringement of Article 2 of the Convention. Such Article includes the positive duty of the States to repeal any legislation that runs counter to its aim and purpose;
b) since the legal system does not ensure the nullity and ineffectiveness of the amnesty laws, the State is liable for the failure to comply with the duty to have its legal system conform to the Convention. Thus, the Commission requested that the Court direct the State to adopt measures to guarantee that the laws are “deprived of effects;”
c) in its final arguments, the Commission recognized that the State has adopted measures “aimed at partly curing the structural impunity that prevailed in the previous decade” and nevertheless, citing recent decisions issued by the Court and “taking into account its power to

regard any provision in the domestic law of a State Party as violating the State's duties," it deemed it "necessary for the State to assure that such laws are ruled out from its legal system." Although the Commission considered that "it would not be appropriate to issue a decision on the specific characteristics of the official instrument aimed at repealing the amnesty laws," it pointed out that the concept of "repeal" is directly linked to the "principle of the rule of law and to that of legal certainty [...], which requires that the law be repealed by virtue of an official instrument of equal or superior hierarchy," which, in its opinion, none of the measures adopted so far by state organs has satisfied; and

d) none of the measures adopted by the State have been adequate to assure that the amnesty laws are repealed with the requisite legal certainty and finality pursuant to the full observance the Rule of Law. As long as they are not ruled out from the Peruvian legal system, there is no adequate judicial guarantee that the amnesty laws will continue to be ineffective.

163. Argument by the Representatives

a) Self-amnesty Laws No. 26,479 and No. 26,492 have completely and generally lost their legal effects and are not applicable in any case;

b) the only and direct basis for the nullity of applying the self-amnesty laws is the judgment in the case of Barrios Altos. By looking at the Peruvian legal system from a normative standpoint, it may be said that the Court's order that the amnesty laws have no effects is part of the Peruvian corpus juris. In addition, the practices of the court and of the prosecutor's office support this position. In practice, the cases in which the perpetrators of human rights violations relied on the amnesty laws have been adjudicated, declaring the absence of effects of such amnesty laws;

c) based on the above-mentioned judgment of the Inter-American Court and on its interpretation judgment, the self-amnesty laws have lost their legal effects wholly and generally. Such acts are not laws but only have the appearance of such, so no law need be "ruled out" from the legal system, as it follows from Article 2, because there is no true law to repeal. In addition, the State, pursuant to such judgments, has assured that the amnesty laws will not be applied in the domestic law;

d) the judgment in the case of Barrio Altos is still a "measure of a higher normative value" than the self-amnesty laws, given the value of international treaties and the hierarchy of Inter-American Court decisions within domestic law. The value of such a decision within the Peruvian legal system satisfies the Inter-American Commission's standard as regards the measure required to repeal the self-amnesty laws. Thus, the self-amnesty laws were ruled out with the certainty and definiteness that an act of repeal should have according to the Commission. Therefore, there is no need for adopting further measures in the domestic law to guarantee the loss of effects of the amnesty laws, and

e) the representatives agree with the State in that it is not necessary to introduce further measures in the Peruvian domestic law to ensure the loss of effects of the amnesty laws, which "have been ruled out of the legal system, not through an act of Congress but through a measure of a higher normative value, i.e. the Court's judgment in the case of Barrios Altos." Contrary to the Commission's opinion, they consider that the Peruvian Political Constitution, the legislation and the Constitutional Court's decisions ensure the full application and immediate effectiveness in the domestic law of the Court's judgment in the case of Barrios Altos. They conclude that, if the Court ordered the adoption of a legislative measure, "regard should be had to the fact that

repealing the self-amnesty laws might be inconvenient, since the repeal of a law in Perú is not retroactive, which would lead to the conclusion that the laws were effective from their enactment until the time they were repealed."

164. Arguments of the State

a) ever since the Court's judgment in the case of Barrios Altos, the State has adopted a series of measures including:

i. decisions of the Appellate Court of the Consejo Supremo de Justicia Militar (Supreme Council of Military Justice) of June 1 and 4, 2001;

ii. resolution of the Fiscalía de la Nación (Attorney General´s Office of Perú) No. 631-2002-MP-FN, published in official newspaper El Perúano on April 20, 2002;

iii. resolution of the Fiscalía de la Nación (Attorney General´s Office of Perú) No. 815-2005-MP-FN, published in El Perúano newspaper on April 20, 2005, ordered that all prosecutors of all instances who have intervened before the courts that heard the cases in which the amnesty laws (No. 26,479 and 26,492) were applied must request the Trial or Appellate Court to enforce supra-national judgments;

iv. a decision of the Judiciary, which, through Administrative Order No. 170-2004-CE-PJ, published in El Perúano official newspaper of September 30, 2004, directed that the Sala Penal Nacional de Terrorismo (Peruvian Criminal Appellate Court of Terrorism) shall have jurisdiction to hear cases involving crimes against humanity;

v. Consejo Supremo de Justicia Militar (Supreme Council of Military Justice)'s decision of October 16, 2001 declared the nullity of the supreme final judgment of June 16, 1995 granting the benefit of amnesty to the members of the Peruvian Army convicted in the military courts for their material participation in the events in the instant case. The new supreme final judgment ordered that the proceedings against the perpetrators return to the procedural status they were in before applying the amnesty laws and, consequently, that the sentence passed under judgment of May 3, 1994 be served, and

vi. Constitutional Court judgments, especially in the cases of Villegas Namuche (March 18, 2004), Vera Navarrete (December 9, 2004) and Martín Rivas (November 29, 2005).

b) indeed, the granting of amnesty has no practical effects in the domestic legal system;

c) in the event the Court held a different view, it should state precisely what such measure would be, since this is not a simple issue concerning domestic law. Under the current Constitution, not only are human rights treaties part of the domestic law, but also any interpretation made by the organs created by such treaties constitute mandatory criteria by which the rights in the country are to be interpreted. Therefore, in the State's opinion, such legal framework would be sufficient in the current state of affairs;

d) in the Peruvian legal system, there is no such concept as that of a law being null. However, Peruvian officers, ever since the passing of judgment in the case of Barrios Altos, have been adopted, within their own scope of jurisdiction, measures aimed at ruling out of the Peruvian legal system the self-amnesty laws;

e) the State argues that, by reason of the unity of the State, it is incomplete to understand that it confined itself to adopting measures concerning rules that, by their nature, were general, and that were only rendered ineffective for the case of Barrios Altos. The State notes that the Commission's motion would force the State to adopt indeterminate actions, when it has already done everything possible in order that the amnesty laws have no legal effect whatsoever and such

course of action has been approved by the Inter-American Court. The State acknowledges the Commission's concern "that the rights enshrined in the Convention take precedence over the statutory law apparently in force in Perú," but it argues that the self-amnesty laws "are not law, and thus no further measures need be taken in addition to those so far adopted," and

f) The State, like the representatives of the alleged victims, considers that the measures adopted and examined by the Inter-American Court of Human Rights are adequate and there is no reason to grant the Commission's motion.

Considerations by the Court

165. In view of the nature of this case and the specific dispute between the parties with relation to the State's obligations pursuant to Article 2 of the Convention, the Court deems it fit to analyze said Article separately in the following section.

166. Article 2 of the Convention provides that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

167. Firstly, regard should be had to the fact that the Court has already examined the content and scope of amnesty laws No. 26,479 and No. 26,492 in the case of Barrios Altos v. Perú. In the judgment on the merits of March 14, 2001, it held that the laws "run counter to the American Convention [...] and, consequently, have no legal effects." [FN135] The Court interpreted the Judgment on the Merits passed in that case to mean that "the enactment of a law that overtly conflicts with the obligations undertaken by a State Party to the Convention constitutes per se a violation of the Convention and gives rise to the State's international liability [and], given the nature of the violation represented by amnesty laws No. 26,479 and No. 26,492, the mandates of the judgment on the merits in the case of Barrios Altos have general effects." [FN136]

[FN135] Cf. Case of Barrios Altos, supra note 125, para. 41 to 44 and fourth operative paragraph.

[FN136] Cf. Case of Barrios Altos. Interpretation of the Judgment on the Merits. (Article 67 American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 18 and second operative paragraph.

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168. By the same token, the Court has recently reiterated that the adopting and applying laws specifically granting amnesty for crimes against humanity is contrary to the Convention. In the case of Almonacid Arellano et al. v. Chile, the Court held that

[…] States cannot neglect their duty to investigate, identify and punish those persons responsible for crimes against humanity by enforcing amnesty laws or any other similar domestic provisions.

Consequently, crimes against humanity are crimes which cannot be susceptible of amnesty. [FN137]

[FN137] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 114.

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169. The Court notes that the parties expressly agree with the fact that the amnesty laws run counter to the American Convention, since the Court has already declared, with general effects, Perú's violation of the Convention in passing said laws and the effectiveness of the laws as such in the case of Barrios Altos. Therefore, the Court notes that the dispute existing between the Inter-American Commission and the States and the representatives in relation with the State's duties pursuant to Article 2 of the Convention, is centered around the determination of whether said laws still have effects in the light of the Court's pronouncement in the above-mentioned case.

In addition, on the assumption that the laws continue in force, it must be decided whether that would constitute a violation of the Convention by the State, or, provided the laws do not continue in force, whether their mere existence constitutes a violation of the Convention, and whether the State should consequently adopt further measures of domestic law in that regard.

170. In relation with the general duty set out in Article 2 of the Convention, the Court has repeatedly held that

This principle is universally valid and has been characterized in case law as an evident principle ("principe allant de soi"; Exchange of Greek and Turkish populations, avis consultatif, 1925, C.P.J.I., Series B, No. 10, p. 20). [FN138]

[FN138] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 117; Case of “Juvenile Reeducation Institute.” Judgment of September 2, 2994. Series C No. 112, para. 205, and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 140.

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171. This principle is contained in Article 2 of the Convention, which sets forth the general duty of each State Party to adjust its domestic law to the provisions thereof to guarantee the rights enshrined therein, [FN139] which implies that the domestic law measures must be effective pursuant to the effet utile principle. [FN140]

[FN139] Cf. Case of the “Juvenile Reeducation Institute”, supra note 139, para. 205; Case of Bulacio, supra note 139, para. 142, and Case of the “Five Pensioners” Judgment of February 28, 2003. Series C No. 98, para. 164.

[FN140] Cf. Case of the “Juvenile Reeducation Institute”, supra note 139, para. 205.

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172. Certainly, Article 2 of the Convention fails to define which measures are appropriate to adjust the domestic law to it; obviously, this is so because it depends on the nature of the rule requiring adjustment and the circumstances of each specific case. Therefore, the Court has interpreted that such adjustment implies adopting two sets of measures, to wit: (i) repealing rules and practices of any nature involving violations to the guarantees provided for in the Convention or disregarding the rights enshrined therein or hamper the exercise of such rights, and (ii) issuing rules and developing practices aimed at effectively observing said guarantees. [FN141] The Court takes the view that the first set of duties is breached while the rule or practice running counter to the Convention remains part of the legal system, [FN142] and is therefore satisfied by modifying, [FN143] repealing, or otherwise annulling, [FN144] or amending, [FN145] such rules or practices, as appropriate.

[FN141] Cf. Case of Almonacid-Arrellano et al., supra note 6, para. 118; Case of Ximenes-Lopes, supra note 6, para. 83, and Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.). Judgment of February 5, 2001. Series C No. 73, para. 85.
[FN142] Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.), supra note 142, para. 87 to 90.
[FN143] Cf. Case of Fermín Ramírez, supra note 128, para. 96 to 98, and Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 113.
[FN144] Cf. Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 91, 93 and 94.
[FN145] Cf. Case of Almonacid-Arrellano et al., supra note 6, para. 118, and Case of Raxcacó-Reyes, supra note 128, para. 87.

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173. Furthermore, as regards the scope of the State's international liability in that regard, the Court has recently stated that:

[…] The observance by State agents or officials of a law which violates the Convention gives rise to the international liability of such State, as contemplated in International Human Rights Law, in the sense that every State is internationally responsible for the acts or omissions of any of its powers or bodies for the violation of internationally protected rights, pursuant to Article 1(1) of the American Convention.
[…] The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that do not have any legal effects since their inception. In other words, the Judiciary must exercise a sort of "consistency control" between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention. [FN146]

[FN146] Cf. Case of Almonacid-Arrellano et al., supra note 6, paras. 123 to 125.

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174. In line with this view, the remaining dispute must be understood as part of the first set of measures that must be adopted to adjust the domestic law to the Convention. In order to better understand the issue, it must be noted that the Court has found that, in Perú, the self-amnesty laws are ab initio incompatible with the Convention; that is, their mere enactment "constitutes per se a violation to the Convention" since it "overtly conflicts with the duties undertaken by any State Party" to such treaty. Such is the rationale behind the Court's pronouncement with general effects in the case of Barrios Altos. That is why its application by a state organ in a specific case, through subsequent statutory instruments or through its enforcement by state officers, constitutes a violation to the Convention.

175. That being said, now the State's actions and practices must be analyzed together in order to assess compliance with the general duty imposed by Article 2 on the State. Therefore, it is appropriate to establish whether the amnesty laws have continued "to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible" or whether they have or may still have "the same or a similar impact with regard to other cases that have occurred in Perú." [FN147]

[FN147] Cf. Case of Barrios-Altos, supra note 125, para. 44.

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176. The Court finds that, during the proceeding of the instant case in the Inter-American system, the Commission initially recommended in the Report on the merits No. 95/05 that the State should "repeal" the laws. Later, in filing its application, since it considered that the State had failed to guarantee the "nullity and ineffectiveness" of the laws, it requested the Court to direct the State to adopt measures aimed at ensuring that they are "rendered ineffective." Finally, in its oral and written arguments, the Commission requested that said laws be "repealed" or "ruled out of the legal system" through "an official instrument of equal or higher hierarchy." Even though such qualifications might have hampered the State's potential definition of the precise content of the domestic law measure to adopt, the Court notes that the Commission has not determined events or situations that evidence the alleged continued effects of the amnesty laws, nor has it specified the manner in which the threat to apply them might materialize in the future.

177. Likewise, expert witness Abad Yupanqui stated that:

[e]ven though Laws No. 26,479 and No. 26,492 have not been repealed by the Congress, they have no legal effect whatsoever […]; therefore, no judicial authority may apply them, since they run counter not only to the Constitution but also to the American Convention on Human Rights and the precedents of the Constitutional Court, which has acknowledged the existence of the right to know the truth. […] If the Congress repealed the amnesty laws, it would imply an express acknowledgement of their effectiveness, which would be at odds with the assertion that

said laws have no legal effects whatsoever. Regard must be had to the fact that the repeal ceases the effectiveness of a law without retroactive effects. [FN148]

[FN148] Cf. sworn statement effected before a pulic official by expert Samuel Bernardo Abad-Yupanqui on August 17, 2006 (record of sworn statements effected before public officials, page 3531).

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178. In this connection, the Court has acquainted itself with decisions of both general and particular scope, reiterating the inapplicability and inefficiency of the amnesty laws.

179. Among the general decisions is Attorney General's Office's Resolution No. 815-2005-MP-FN of April 20, 2005, ordering that "all prosecutors of all instances who have intervened before the courts that heard the cases in which the amnesty laws (No. 26,479 and No. 26,492) were applied [shall] request the corresponding Trial or Appellate Court to enforce supra-national judgments," pursuant to Section 151 of the Judiciary's Organic Law. Reference to those judgments is precisely to this Court's decision in the case of Barrios Altos.

180. So far as particular decisions by Peruvian criminal courts are concerned, the judgment in the case of Barrios Altos has been one of the grounds upon which to dismiss "amnesty defenses," [FN149] "statute of limitations defenses" [FN150], "double jeopardy defenses" [FN151] or the opening of new criminal investigations [FN152] based on the ineffectiveness of the amnesty laws.

[FN149] The defense of amnesty raised by Ángel Arturo Pino-Díaz in the Case of Pedro Yauri Bustamante (Case No. 044-2002) was dismissed as groundless by the Segundo Juzgado Penal Especializado (Second Specialized Criminal Trial Court) on October 20, 2004, making express reference to the Case of Barrios Altos; in the same case, the Segundo Juzgado Penal Especializado (Second Criminal Specialized Criminal Trial Court) dismissed as groundless the amnesty defense raised by Hector Gamarra-Mamani making refrence to the Case of Barrios Altos; in the same case, the Quinto Juzgado Penal Especializado (Fifth Specialized Criminal Trial Court) dismissed the amnesty defense raised by José Enrique Ortiz-Mantas as groundless on November 12, 2004; in the Case of El Frontón (Case No. 125-04) the Judge of the Primer Juzgado Supraprovincial de Lima (First Supra-Provincial Court in and for Lima) dismissed the amnesty defense raised by the defendants as groundless.

[FN150] In the Case of Pedro Yauri Bustamante (Case No. 044-2002), the statute of limitations defense raised by Máximo Humberto Cáceda-Pedemonte was dismissed as groundless on February 24, 2003 by the Specialized Associate Provincial Prosecutor; in the Consolidated Case of Barrios Altos, La Cantuta, Pedro Yauri and El Santa la (Case no. 032-2001), the Quinto Juzgado Penal Especializado (Fifth Specialized Criminal Trial Court) dismissed as groundless the statute of limitations defense raised by Shirley Sandra Rojas-Castro; on October 1, 2003, the Provincial Criminal Prosecutor of Lima dismissed as groundless the statute of limitations defense raised by Marco Flores-Alvan; Superior Criminal Judge of Lima dismissed as groundless the

double jeopardy defense raised by Shirley Sandra Rojas-Castro in her decision of December 13, 2004.
[FN151] In the Case of Pedro Yauri Bustamante (Case No. 044-2002), the Segundo Juzgado Penal Especializado (Second Specialized Criminal Trial Court dismissed as groundless the double jeopardy defense raised by Orlando Ver—Navarrete; in the Consolidated Case of Barrios Altos, La Cantuta, Pedro Yauri and El Santa la (Case No. 032-2001), the Superior Criminal Judge of Lima dismissed as groundless the double jeopardy defense raised by Nelson Carvajal-García on December 7, 2004.
[FN152] In the Case of Chuschi Authorities (Case No. 023-2003), Civil and Criminal Judge of Cangallo directed the opening of a criminal prosecution against Collins Collantes-Guerra and others for the commission of the crimes of kidnapping and forced disappearance, making reference to the non-applicability of the self-amnesty laws; in the Case of El Frontón (Case 125-04), the Judge of the Primer Juzgado Supraprovincial de Lima) First Supraprovincial Trial Court in and for Lima) dismissed as groundless the defense of amnesty raised by the defendants.
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181. In addition, in the amparo proceedings instituted by Santiago Martín Rivas in order to reverse the resolutions issued by the Appellate Court of the Consejo Supremo de Justicia Militar (Supreme Council of Military Justice), which, pursuant to the judgment in the case of Barrios Altos, ordered that investigations continue, Perú's Constitutional Court held that

the State’s duty to investigate the events and punish those responsible for the violation of the human rights recognized in the Judgment of the Inter-American Court of Human Rights involves not only the nullity of those proceedings in which amnesty laws No. 26,479 and No. 26,492 have been applied, once such laws have been declared devoid of effects, but also all practices aimed at impeding investigation of and punishment for the violation of the rights to life and personal integrity, including orders for dismissal of the criminal case such as those issued in favor of the petitioner. [FN153]

[FN153] Cf. Judgment of the Constitutional Court, File No. 4587-2004-AA/TC, of November 29, 2005 (case of Santiago Martín Rivas), para. 63.
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182. In addition, the previous section has discussed some decisions of the Constitutional Court in which, based on the Court’s judgment in the case of Barrios Altos, it denied petitions for writs of amparo [protection of constitutional guarantees and rights] filed by former military officers investigated or convicted for the events in the instant case who sought to rely on the non bis in idem principle (supra para. 151 and 154).

183. Furthermore, the Court notes that there are internal rules regulating the effect of international decisions and their incorporation into the Peruvian legal system. The Court notes that there are rules in Perú that allow for the incorporation of international decisions into the domestic legal system, and authorizing justice administrators to apply and enforce them. Thus, Law No. 27,775, "Regulating the procedure for enforcing Judgments issued by Supranational

Tribunals," is an important instrument in this regard. Furthermore, Section 115 of the Code of Constitutional Procedure [FN154] provides that:

Decisions from judicial bodies to whose jurisdiction the Peruvian State has submitted need not be recognized, reviewed or examined to be valid and effective. Such decisions are remitted by the Ministry of Foreign Affairs to the President of the Judiciary, who in turn refers them to the court of final recourse in that matter and directs the competent judge to enforce it pursuant to Law No. 27,775, regulating the procedure for enforcing judgments issued by supranational courts.

Section V of the Preliminary Chapter of the Code of Constitutional Procedure, dealing with the interpretation of Constitutional Rights, provides that:

[t]he content and scope of the constitutional rights protected by the proceedings regulated in this Code must be interpreted in a manner consistent with the Universal Declaration of Human Rights, human rights treaties, and decisions adopted by the international human rights courts created under the treaties to which Perú is a party.

[FN154] Cf. Law No. 28,237, Code of Constitucional Procedure, Publisher on May 31, 2004.

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184. Furthermore, the Peruvian Constitutional Court has recognized the value of the judgments issued by international courts whose jurisdiction Perú has acknowledged. Thus, in considering the petition for a writ of habeas corpus filed by Gabriel Orlando Vera Navarrete, [FN155] the Constitutional Court held that:

[…] not only are human rights clearly rooted in the constitution, but they are also based on and developed by International Law. The imperative mandate derived from interpretation in matters of human rights therefore implies that all official activity must consider the direct application of rules embodied in international human rights treaties and in the decisions of the international bodies to which Perú has submitted.

[FN155] Cf. Judgment of the Constitutional Court in the case of Orlando Vera-Navarrete, File No. 2798-04-HC/TC, of December 9, 2004, para. 8.

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185. In other cases, the Constitutional Court has analyzed the binding effects of the Inter-American Court's decision thus: [FN156]

[…] The binding force of the [Inter-American Court's] decisions is not confined to their operative parts (which indeed affect only the State which is a party to a case), but it also involves the rationale or ratio decidendi for such decisions. In addition, under the CDFT (Fourth Final and Transitory Provision) of the Constitution and Section V of the Preliminary Chapter of the [Code of Constitutional Procedure], the judgment is binding to that extent for the entire national

government, even in those cases in which the Peruvian State has not been a party to the case. In effect, the [Inter-American Court's] power to interpret and apply the Convention under Article 62(3) thereof, together with the mandate contained in the CDFT (Fourth Final and Transitory Provision) of the Constitution, makes the interpretation of the Convention in every court case binding for all organs of government including, naturally, this Court.
[…] The constitutional nature of such binding force, directly derived from the CDFT (Fourth Final and Transitory Provision) of the Constitution, has a twofold aim in each specific case: (a) to repair, since interpreting the fundamental right violated in the light of the Court's decisions increases the possibility of protecting it adequately and efficiently; and (b) to prevent, since observing it avoids the dramatic institutional consequences brought by the [Inter-American Court's] disfavourable judgments, which unfortunately our State has got far too many times. It is the duty of this Court, and generally of the entire government, to prevent such a negative thing from happening again.

[FN156] Cf. Judgment of the Constitutional Court in the case of Arturo Castillo-Chirinos, File No. 2730-06-PA/TC, of July 21, 2006, paras. 12 and 13.
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186. Under the domestic law rules and court decisions analyzed, this Court's decisions have immediate and binding force and, therefore, the judgment issued in the case of Barrios Altos is fully incorporated into the domestic legal system. If that Judgment was conclusive that it had general effects, such declaration makes it ipso jure part of Perú's domestic law, which is reflected in the fact that such Judgment has been applied and interpreted by state organs.

187. The ab initio incompatibility of the amnesty laws with the Convention has generally materialized in Perú ever since it was pronounced by the Court in the judgment rendered in the case of Barrios Altos; that is, the State has suppressed any effects that such laws could have had. In effect, in monitoring compliance with the Judgment ordering Reparations in the case of Barrios Altos, [FN157] in its Order of September 22, 2005, the Court

[...] [found] that Perú [had] complied with:
[…] (b) the enforcement of the Court's mandate in its interpretation of Judgment on the Merits of September 3, 2001 in the instant case "concerning the meaning and scope of the declaration of ineffectiveness of Laws No. 26,479 and [No] 26,492" (operative paragraph 5(a)) of the Judgment ordering Reparations of November 30, 2001).

[FN157] In the fifth operative paragraph of that Judgment, the Court ordered that "the Peruvian State must effect […] the following non-monetary reparations: […] (a) to enforce the Court's interpretation of the judgment on the merits "concerning the meaning and scope of the declaration of ineffectiveness of Laws No. 26,479 and [No.] 26,492" (Cf. Case of Barrios Altos. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 75, fifth operative paragraph).
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188. In the instant case, the Court notes that the Supreme Final Judgment of June 16, 1995 of the CSJM (Supreme Council of Military Justice) constituted an act of application of the amnesty laws and was effective until the same tribunal declared the nullity of such act through Supreme Final Judgment of October 16, 2001, consistent with domestic laws and the Inter-American Court's decision in the case of Barrios Altos (supra para. 80(60) and 80(63)). Such act of application of the amnesty laws was performed by the CSJM with the aim to leave unpunished those it had initially investigated and convicted in one of the military criminal prosecutions and for some time it obstructed the investigation, trial and punishment of the alleged authors of the events, and it meant that the State breached its guarantee obligations, to the detriment of the victims' relatives. In addition, the parties have failed to provide information showing that ever since the passing of the Court's Judgment in the case of Barrios Altos and the CSJM's decision, the amnesty laws have been applied in the criminal investigations and prosecutions opened as from 2001, or that the laws have prevented further investigations or prosecutions from being conducted in relation with the events in the instant case or other cases in Perú.

189. Based on the foregoing, the Court concludes that, during the time in which the amnesty laws were applied in the instant case (supra para. 80(58) to 80(62) and 188), the State breached its obligation to adjust its domestic law to the Convention pursuant to Article 2 thereof, in relation with Articles 4, 5, 7, 8.1, 25 and 1(1) of the Convention, to the detriment of the victims' relatives. In addition, the Court is not satisfied that the State has ever since breached the obligations set forth in Article 2 of the Convention by adopting appropriate measures to eliminate the effects that at some times the amnesty laws —which were declared incompatible ab initio with the Convention in the case of Barrios Altos— might have had. However, as discussed earlier (supra paras. 167 and 169), such decision had general effects. Therefore, such "laws" have not been capable of having effects, nor will it have them in the future.

XII. REPARATIONS (Application of Article 63(1) of the American Convention)

Arguments of the Commission

190. As to the beneficiaries, in its Application the Commission stated that "generally, the persons entitled to [the] compensation are those directly injured by the facts constituting the breach under analysis." In this regard, it stated that, considering the nature of the case at hand, the beneficiaries of such reparations as may be awarded by the Court as a result of the human rights violations committed by the State in the instant case are Hugo Muñoz-Sánchez, his wife, two daughters, three sons, one sister and one brother; Dora Oyague-Fierro, her mother and father, two sisters, two brothers and an aunt; Marcelino Rosales-Cárdenas, his mother, one sister and one brother; Bertila Lozano-Torres, her mother and father, one sister and three brothers; Luis Enrique Ortiz-Perea, his mother and father and five sisters; Armando Richard Amaro-Cóndor, his mother and father, two sisters and four brothers; Robert Edgar Teodoro-Espinoza, his mother and father; Heráclides Pablo-Meza, his mother and father, two sisters, one brother and an aunt; and Juan Gabriel Mariños-Figueroa, his mother and father, four sisters and two brothers.

191. On the subject of pecuniary damage, the Commission noted that the next of kin of the alleged victims were required to be compensated for consequential damages, as they have made, and continue to make, significant monetary efforts in their quest to see justice done at the local

level, and possibly to overcome the physical, psychological and moral trauma inflicted upon them by the State's actions. The Commission further stated that the alleged victims should be granted compensation for lost earnings. Accordingly, the Commission requested that the Court set, in fairness and by virtue of its broad authority in this regard, the amount of compensation for consequential damages and lost earnings.

192. According to the Commission, the Court has suggested that a presumption exists regarding non pecuniary damage suffered by the victims of breaches of human rights. The Commission further argued that, in the case at hand, the next of kin of the alleged victims were, in turn, the victims of intense psychological suffering, distress, uncertainty, sadness and the disruption of their own lives, among other things, owing to the lack of justice for the forced disappearance and the extra-legal execution of their loved ones. Those next of kin have a fair expectation of justice in order to try and have the historical truth of the facts established and the guilty parties punished. Therefore, the Commission requested that, in fairness, the Court set the amount of compensation for non pecuniary damage.

193. As to the measures of satisfaction and guarantees of non-repetition, the Commission requested the Court to order the State:

a) to carry out an exhaustive judicial investigation of the facts of the instant case, identifying all guilty parties, including both physical and intellectual perpetrators, leading to the punishment of those convicted therefor;
b) to take such measures as may be required in order to establish the whereabouts of Dora Oyague-Fierro, Felipe Flores-Chipana, Marcelino Rosales-Cárdenas, and Hugo Muñoz-Sánchez, who still remain missing, and, as the case may be, to release their remains to their next of kin;
c) after obtaining the opinion of the victims' next of kin, the State should offer symbolic recognition with a view to keeping alive the historical memory of the victims and of UNE, and erect a public monument in memoriam of the victims;
d) that the judgment to be handed down by the Court be widely publicized in Perú, and
e) to pass, as part of its domestic law, any and all such measures as may be required to effectively guarantee that Laws No. 26,479 and No. 26,492 will have no legal effects, as their provisions are in conflict with the American Convention.

194. The Commission requested that the Court order the State to pay the legal expenses and costs incurred by the victims' next of kin in connection with the processing of this case, both at the national level and through the Inter-American system.

Arguments of the representatives

195. The representatives echoed most of the arguments set forth in the Commission's application on the subject of reparations. In addition, they stated, inter alia, that:

a) they had received a power-of-attorney from four of the next of kin of the alleged victims who had not been included in the Commission's application;
b) securing justice is the most important reparation measure. Accordingly, in the course of the investigations and court proceedings currently in progress or to be undertaken domestically,

the competent authorities should refrain from relying on concepts such as the statute of limitations on criminal actions, applying amnesty orders favoring the defendants, and wrongfully applying the res judicata principle and the double jeopardy safeguard for the benefit of those who were under investigation by the Supreme Council of Military Justice;

c) even though Perú is the one State that is directly bound by its obligation to investigate, and prosecute and impose punishment for, the facts of the instant case, the other State Parties to the American Convention are also under a duty, in their very capacity as such, to take all measures required in order to guarantee that the violations of human rights do not go unpunished, and that their investigation, prosecution and punishment take place in line with the Inter-American standards. In the instant case, one of the guilty parties is former President Fujimori, who is currently a fugitive and whose extradition from Chile has already been requested by Perú but is still pending. Since this issue is closely connected to the case, they asked the Court to lay down standards based on the developments made in the fields of international human rights law and international criminal law. Specifically, they requested that the Court lay down standards on the manner in which the State Parties to Inter-American treaties are to fulfill their obligation to prosecute for and punish serious human rights violations where the defendants are outside the jurisdiction of the State that is required to carry out the investigation;

d) the search for and subsequent examination of the remains of those alleged victims that still remain missing needs to be performed by professional forensic anthropologists specializing in the exhumation of bodies and human remains;

e) the act of public acknowledgement of international liability is to be presided over by the President, and express reference is to be made to the fact that the victims were in no way involved in the Tarata street attack of July 16, 1992 or in any other terrorist action;

f) the State is to provide medical and psychological treatment to the alleged victims' next of kin for as long as such treatment may be required;

g) in assessing pecuniary damages, regard should be had to the fact that the State did deposit three million New Soles in the name of the legal heirs of the victims in this case;

h) in assessing consequential damages, due account should also be taken of the fact that the action undertaken to obtain justice has taken up a large part of the lives of Gisela Ortiz-Perea, Antonia Pérez-Velásquez, Raida Cóndor, and Dina Flormelania Pablo-Mateo; and

i) in assessing lost earnings, the Court should allow for the fact that nine of the alleged victims were students who, in about two years' time, would have probably entered the job market. Furthermore, Mr. Hugo Muñoz-Sánchez was a Professor at La Cantuta. In the aggregate, they requested that the Court order the State to pay compensation for lost earnings in the amount of US$ 408,136.10145.

196. Lastly, the representatives requested that the Court order the State to reimburse APRODEH for the costs and expenses incurred since 1992, both at the local level and before the Inter-American system, in such amount as the Court may in fairness assess. Also, CEJIL incurred expenses before the Inter-American system over more than seven years, totaling about US$ 29,710.46.

Arguments of the State

197. The State has argued that:

a) between 1996 and 1998, it paid compensation in the amount of three million Soles to the alleged victims' next of kin. In this regard, it has fulfilled its obligation to adequately compensate such next of kin;
b) it has been driving the investigation of the facts in order that all guilty parties may be identified and punished as required by law. In particular, the State emphasized the matter of the intellectual perpetrators or those who allegedly ordered the commission of international crimes. At the judicial and institutional level, the right to truth is not only acknowledged as a right of individuals but also as a collective right. Furthermore, the State argued that in Perú, the reading of a judgment issued in a criminal action is a public event and, considering that the case at hand is public knowledge and one of public interest, the outcome of the proceeding will be naturally publicized;
c) on June 21, 2006, acting through the President of Perú, the State apologized to the authorities of Universidad Nacional de Educación "Enrique Guzmán y Valle," La Cantuta, during a ceremony held for his decoration by said institution. This is a specific and recent measure that was relayed by the mass media. The Court should adjudge and declare whether such action amounts to a reparative measure equal or similar to the one sought herein. Moreover, an attempt at having an act directed at a legal entity included as part of the measures of non-repetition is inadmissible;
d) a State policy is in place for national reconciliation. The CVR's Final Report is a part of such policy. Also, the State has created the Comisión Multisectorial de Alto Nivel [High-Level Cross-Sector Commission,] placed in charge of peace, collective reparation and national reconciliation policies;
e) a monument known as "El ojo que llora" ["The Crying Eye"] already exists in Lima in memoriam of all victims of violence. In this regard, this is a measure of reparation in the honor and memory of all victims of Perú's domestic armed conflict;
f) it will accept such costs and expenses as may be reasonably proved before the Court and which are directly connected to the steps and action taken in this proceeding both domestically and before the Inter-American system. Given that APRODEH has counseled the alleged victims from the very beginning, CEJIL's claims must necessarily be proved, and
g) an adequate legal and institutional framework is in place such that no occurrences similar to the facts of this case will ever take place in the future.

The Court's Assessments

198. Given the State's acknowledgement of liability (supra paras. 37 to 57), and in line with the arguments on the merits stated in the above chapters, the Court found the State responsible for the violation of Articles 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, and Felipe Flores-Chipana (supra para. 116). The State further breached the rights established in Articles 5(1), 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the above-named persons' next of kin (supra paras. 112, 129 and 161).

199. It is a principle of International Law that any breach of an international obligation resulting in harm gives rise to the duty to adequately redress such harm. [FN158] The Court has based its decisions on this issue on Article 63(1) of the American Convention, under which:

[i]f the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right of 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.

[FN158] Cf. Case of Goiburú et al., supra note 1, para. 140; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 115, and Case of Ximenes-Lopes, supra note 6, para. 208.

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200. Article 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of the contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State's international liability, and its resulting duty to make reparation for and remove the consequences of the violation. [FN159] The obligation to compensate is governed by International Law and it may be neither modified nor disregarded by the State in reliance upon its domestic law. [FN160]

[FN159] Cf. Case of Goiburú et al., supra note 1, para. 141; Case of Ximenes-Lopes, supra note 6, para. 209; and Case of Ituango Massacress, supra note 8, para. 346.
[FN160] Cf. Case of Goiburú et al., supra note 1, para. 141; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 117, and Case of Ximenes-Lopes, supra note 6, para. 209.

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201. The reparation of the damage flowing from a breach of an international obligation calls for, if practicable, full restitution (restitutio in integrum), which consists in restoring a previously-existing situation. If not feasible, the international court will then be required to define a set of measures such that, in addition to ensuring the enjoyment of the rights that were violated, the consequences of those breaches may be remedied and compensation provided for the damage thereby caused. [FN161] In addition, there is also the State's obligation to adopt affirmative measures to guarantee that no injurious occurrences such as those analyzed in the case at hand will take place in the future. [FN162]

[FN161] Cf. Case of Goiburú et al., supra note 1, para. 142; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 117, y Case of Ximenes-Lopes, supra note 6, para. 209.

[FN162] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 136; Case of Goiburú et al., supra note 1, para. 142; and Case of Baldeón-García. Judgment of April 06, 2006. Series C No. 147, para. 176.

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202. Reparations are measures aimed at removing the effects of the violations. Their nature and amount are dependent upon the specifics of the violation and the damage inflicted at both the pecuniary and non pecuniary levels. These measures may neither enrich nor impoverish the victim or the victim's beneficiaries, and they must bear proportion to the breaches declared as such in the Judgment. [FN163]

[FN163] Cf. Case of Goiburú et al., supra note 1, para. 143; Caso Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 118; and Caso Ximenes-Lopes, supra note 6, para. 210.

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203. In the light of the above criteria and the facts of this case, the Court will now analyze the claims asserted by the Commission and the representatives on the subject of reparations, so as to order the measures of redress.

A) BENEFICIARIES

204. The Court will now determine which persons should be deemed "injured parties" pursuant to Article 63(1) of the American Convention and, as such, entitled to such reparations as the Court may decide. First, the Court considers Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, and Felipe Flores-Chipana "injured parties," in their capacity as victims of the violations found to have been committed to their detriment (supra paras. 112, 116 and 161); accordingly, they are entitled to such reparations as the Court may establish for pecuniary and non pecuniary damage.

205. The Court also considers that the next of kin of the above-named persons, in their own capacity as victims of the violation of the rights recognized in Articles 5(1), 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof (supra paras. 129 and 161) are "injured parties."

206. The victims' next of kin are entitled to the reparations to be set by the Court for non pecuniary and/or pecuniary damage, in their own capacity as victims of the declared breaches of the Convention, as well as to the reparations set by the Court in their capacity as successors of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, and Felipe Flores-Chipana. Consequently, in addition to the aforementioned ten victims, the following persons are deemed "injured parties:"

a) next of kin of Hugo Muñoz-Sánchez: Antonia Pérez-Velásquez (wife), Margarita Liliana Muñoz-Pérez (daughter), Hugo Alcibíades Muñoz-Pérez (son), Mayte Yu yin Muñoz-Atanasio (daughter), Hugo Fedor Muñoz-Atanasio (son), Carol Muñoz-Atanasio (daughter), Zorka Muñoz-Rodríguez (daughter), Vladimir Ilich Muñoz-Sarria (son), Rosario Muñoz-Sánchez (sister), and Fedor Muñoz-Sánchez (brother);
b) next of kin of Dora Oyague-Fierro: José Esteban Oyague-Velazco (father), Pilar Sara Fierro-Huamán (mother), Carmen Oyague-Velazco (aunt), and Jaime Oyague-Velazco (uncle);
c) next of kin of Marcelino Rosales-Cárdenas: Demesia Cárdenas-Gutiérrez (mother);
d) next of kin of Bertila Lozano-Torres: Augusto Lozano-Lozano (father) and Juana Torres de Lozano (mother);
e) next of kin of Luis Enrique Ortiz-Perea: Víctor Andrés Ortiz-Torres (father), Magna Rosa Perea de Ortiz (mother), Andrea Gisela Ortiz-Perea (sister), Edith Luzmila Ortiz-Perea (sister), Gaby Lorena Ortiz-Perea (sister), Natalia Milagros Ortiz-Perea (sister), and Haydee Ortiz-Chunga (sister);
f) next of kin of Armando Richard Amaro-Cóndor: Alejandrina Raida Cóndor-Saez (mother), Hilario Jaime Amaro-Ancco (father), María Amaro-Cóndor (sister), Carlos Alberto Amaro-Cóndor (brother), Carmen Rosa Amaro-Cóndor (sister), Juan Luis Amaro-Cóndor (brother), Martín Hilario Amaro-Cóndor (brother), Francisco Manuel Amaro-Cóndor (brother), and Susana Amaro-Cóndor (sister);
g) next of kin of Robert Edgar Espinoza: José Ariol Teodoro-León (padre), Edelmira Espinoza-Mory (mother), and Bertila Bravo-Trujillo (stepmother);
h) next of kin of Heráclides Pablo-Meza: José Faustino Pablo-Mateo (father), Serafina Meza-Aranda (mother), and Dina Flormelania Pablo-Mateo (aunt);
i) next of kin of Juan Gabriel Mariños-Figueroa: Isabel Figueroa-Aguilar (mother), Román Mariños-Eusebio (father), Rosario Carpio Cardoso-Figueroa (brother), Viviana Mariños-Figueroa (sister), and Margarita Mariños-Figueroa de Padilla (sister), and
j) next of kin of Felipe Flores-Chipana: Carmen Chipana de Flores (mother), and Celso Flores-Quispe (father).

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207. The Court considers that the irregular transfer of the investigation to the military jurisdiction amounted to the State's failure to comply with its duty to investigate and, if appropriate, prosecute and punish, those responsible for the facts, as well as a breach of the right to fair trial, embodied in Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the victims' next of kin (supra para. 145). Nevertheless, the Court cannot disregard the fact that the judgment issued by the CSJM on May 3, 1994 also ordered, inter alia, payment of compensation in the amount of 300,000.00 (three hundred thousand) Peruvian New Soles per each one of the ten victims, "as civil damages to the legal heirs of the aggrieved parties." Thus, between 1996 and 1998, the State made payment of said amount to the legal heirs of the aforementioned ten victims (supra para. 80(56)). In this regard, the Court is aware of the principle under which compensation may neither enrich nor impoverish the victim or the victim's beneficiaries (supra para. 202), and therefore this aspect needs to be analyzed.

208. Due to the fact that the aforementioned CSJM judgment did not clearly state on what account the victims' heirs had been awarded said "civil damages," the Court requested the parties to submit information and clarifications in that regard, to be used as evidence to facilitate adjudication of the case (supra para. 36). In this regard, the State argued that, even though the judgment failed to expressly mention the legal grounds on which such damages were awarded, "in Peruvian military criminal law, civil damages cover both the pecuniary damage and moral prejudice inflicted upon the victim and the victim's representatives." The State further contended that "ordinary criminal law provisions also apply[, in respect of which,] in the event of civil damages awarded in a criminal action, compensation for the damage caused to the aggrieved party is covered, in addition to the restitution of property." On the other hand, the Commission stated that the compensation paid had been awarded "to the victims, but not to their next of kin, as civil damages to compensate for the harm caused."

209. In their final plea, the representatives stated that "such payment does not mean that the State has in [any] way fulfilled its international obligation to make reparation for the damage caused through adequate compensation[; that such payment] failed to meet the requirements established by the Inter-American Court's case law for damages compensation […] as […] it was effected on a partial basis[,] since it is yet unclear on what account it was made [and] because the compensation thus paid does not cover the damage caused after the awarding judgment was issued[, i.e. it only accounted] for the timespan between the occurrence of the facts and the issue of the judgment." Moreover, in its final plea, the State claimed that "in the Peruvian legal system, civil reparation awarded through a criminal judgment is payable [only] to the aggrieved party's legal heirs." In turn, in its final plea, the Commission merely noted that the payment ordered to be made to the victims' legal heirs through the CSJM's Judgment was actually effected, even though such heirs were prevented from appearing as civil parties in the military proceeding.

210. In this regard, the Court considers that the civil reparation awarded through said CSJM judgment was granted on account of the damage caused to the ten victims that were executed and caused to disappear –the "aggrieved parties," in the language of the judgment– and that said compensation did not provide redress for damage directly caused to their next of kin, who were paid the aforementioned amounts in their capacity as the victims' next of kin. Moreover, it is the Court's opinion that the elements of the body of evidence do not show on what account such "civil damages" were awarded, as the legislation invoked before the Court deals with "pecuniary damage or moral prejudice" – in the case of military criminal law – and "damages" – in civil legislation. Put differently, said legislation does not clearly show which specific damage was sought to be redressed through the payment ordered. However, and due to the fact that payment has already been made, the Court will take it into consideration for the purposes of setting reparations in this Judgment, as compensation for the monetary aspects of both the pecuniary and non pecuniary damage sustained by the ten victims that were executed or caused to disappear. Therefore, the timespan covered by said civil damages is irrelevant, as indicated by the representatives.

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211. Moreover, the State argued that "in order to comprehensively address the harms the Peruvian population has been subjected to, [the Truth and Reconciliation Commission] submitted a series of recommendations, obviously including those to the effect that the State establish a policy for reparations[, which] are to be […] applied and interpreted in the light of a law recently enacted last year and adopting the key recommendation to […] establish a comprehensive reparations program, which […] will allow the adoption and application of collective reparation measures as well as, following the creation of a central victims' register, measures to provide monetary compensation individually to the victims' next of kin. This is part of a very important process which cannot, however, […] be implemented over a shorter period of time."

212. In this regard, notwithstanding the above statements (supra para. 211), there is no evidence that Law No. 28592, "creating the comprehensive reparations program – PIR," of July 29, 2005, which was relied upon by the State, has been applied at all in the instant case. Furthermore, under Section 4 thereof, "victims who have been awarded reparations by virtue of other decisions or State policies […] shall not be deemed victims and, accordingly, shall not benefit from the programs addressed herein." Therefore, this Court will not go into the analysis of the scope of said Law.

B) PECUNIARY DAMAGE

213. According to the Court's case law, pecuniary damage entails the loss or impairment of the victims' income, the expenses incurred as a result of the facts and the monetary consequences thereof bearing a causal link to the facts of the instant case; for this purpose, if appropriate, the Court will set a damages amount intended to provide compensation for the monies and personal effects lost as a result of the violations declared to be such in the relevant Judgment. [FN164] Based on what was said regarding the payment of certain amounts to the legal heirs of the ten victims that were executed or caused to disappear (supra paras. 207 to 210), in this separate heading the Court will merely set compensation for pecuniary damage on account of the monies and personal effects lost by the next of kin and bearing a causal link to the facts of the case, considering the circumstances of the case, the evidence offered, the case law of the Court and the parties' arguments.

[FN164] Cf. Case of Goiburú et al., supra note 1, para. 150; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 126, and. Case of Ximenes-Lopes, supra note 6, para. 220.

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214. Moreover, at least four of the next of kin of the victims have seen their main regular activity as of the date of the facts interrupted, as they put all their efforts into their quest for justice for the case at hand, which caused them to incur expenses. Thus, Ms. Andrea Gisela Ortiz-Perea stated that she quit her university studies; Ms. Antonia Pérez-Velásquez stated that she quit her job as an elementary school teacher; Ms. Alejandrina Raida Cóndor-Saez stated that she quit working as a clothes launderer; and Ms. Dina Flormelania Pablo-Mateo said she quit her job at the market. In view of said circumstances, the Court considers it appropriate to order that the State pay, in fairness, compensation in the amount of US $20,000.00 (twenty thousand

United States Dollars) to each of Ms. Alejandrina Raida Cóndor-Saez and Ms. Dina Flormelania Pablo-Mateo, and US $25,000.00 (twenty-five thousand United States Dollars) to each of Ms. Andrea Gisela Ortiz-Perea and Ms. Antonia Pérez-Velásquez.

215. Also, the Court has taken due account of the fact that, in the instant case, some of the next of kin of the disappeared or executed persons have incurred expenses in their quest for justice. Such next of kin are as follows: Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, Hilario Jaime Amaro-Ancco, Magna Rosa Perea de Ortiz, Víctor Andrés Ortiz-Torres, José Ariol Teodoro-León, Bertila Bravo-Trujillo, and José Esteban Oyague-Velazco. Therefore, the Court considers it appropriate to order that the State pay, in fairness, compensation in the amount of US $5,000.00 (five thousand United States Dollars) to each of the above-named persons.

C) NON PECUNIARY DAMAGE

216. Non pecuniary damage may cover both the suffering and distress caused to the direct victim and the victim's relatives, the impairment of values of major personal significance, and the non pecuniary changes to the victim's or the victim's family's living conditions. Since accurately quantifying non pecuniary damage is impossible, such damage can only be compensated, for the purpose of providing comprehensive reparation to the victim, through the payment of such sum of money or the provision of such goods or services of monetary worth as may be determined by the Court, in fairness and at its reasonable judicial discretion, and through public action or works aimed at giving recognition to the victim's human dignity and preventing any further human rights violations. [FN165] The former aspect of reparation of non pecuniary damage will be analyzed in this section, whereas the latter aspect will be addressed in section D) of this chapter.

[FN165] Cf. Case of Goiburú et al., supra note 1, para. 156; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 130; and Case of Ximenes-Lopes, supra note 6, para. 227.

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217. As held by the Court in previous cases, [FN166] the non pecuniary damage caused to Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, and Felipe Flores-Chipana is evident, as it is human nature for any person who is subjected to arbitrary detention, forced disappearance or extra-legal execution to experience deep suffering, distress, terror, impotence and insecurity, which is why no proof of such damage is required. As noted above (supra para. 210), the Court considers that the State has already provided compensation for such damage, in connection with the civil damages awarded to the ten victims that were executed or caused to disappear.

[FN166] Cf. Case of Goiburú et al., supra note 1, para. 157; Case of the Ituango Massacress, supra note 8, para. 384, and Case of the Pueblo Bello Massacre, supra note 3, para. 255.

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218. As regards the next of kin of the ten victims that were executed or caused to disappear, the Court insists that the suffering caused to the victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim." [FN167] Furthermore, the Court has found that a person's suffering or death – in this case, the forced disappearance and extra-legal execution – cause non pecuniary damage to that person's daughters, sons, spouse or common-law spouse, and mother and father, which is why no proof is required in this regard. [FN168]

[FN167] Cf. Case of Goiburú et al., supra note 1, para. 159; Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 132(b); and Case of the Pueblo Bello Massacre, supra note 3, para. 257.
[FN168] So was found in other cases as well, also with regard to the daughters, sons, spouse, common-law spouse, mother and father, among others. Cf. Case of Goiburú et al., supra note 1, para. 159; Case of the Ituango Massacress, supra note 8, para. 386; and Case of the Pueblo Bello Massacre, supra note 3, para. 257.

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219. International courts have repeatedly held that a judgment is, in and of itself, a form of redress. [FN169] The Court does, however, consider it necessary to order, in fairness, [FN170] payment of the following sums as compensation for non pecuniary damage on account of the suffering of the next of kin of the ten victims that were caused to disappear or executed, such next of kin being in turn victims of the breach of the right to humane treatment (supra para. 129):

i. US$ 50,000.00 (fifty thousand United States Dollars) to the mother, father, spouse or common-law spouse and each daughter or son of the ten victims caused to disappear or executed. Ms. Dina Flormelania Pablo-Mateo, Ms. Carmen Oyague-Velazco and Ms. Bertila Bravo-Trujillo, as well as Mr. Jaime Oyague-Velazco, shall be put on a level, respectively, with the victims' mothers and fathers, as they were declared victims of the violation of Article 5 of the Convention (supra paras. 127 and 129);
ii. US$ 20,000.00 (twenty thousand United States Dollars) to each sister or brother of the ten victims that were caused to disappear or executed;
ii. The sum stated in subparagraph (i) above shall be increased by US$8,000.00 (eight thousand United States Dollars) for Margarita Liliana Muñoz-Pérez and Hugo Alcibíades Muñoz-Pérez, who were minors at the time of the forced disappearance of their father, as their suffering was aggravated by their condition as minors and the situation of vulnerability to which they were pushed by the State;
iii. The sum stated in subparagraphs (i) and (ii) shall be increased by US$10,000.00 (ten thousand United States Dollars) for Ms. Andrea Gisela Ortiz-Perea and Ms. Alejandrina Raida Cóndor-Saez, as they were mostly forced to deal with the irregularities in the investigations and domestic proceedings in connection with their relatives, and
iv. The sum stated in subparagraph (ii) shall be increased by US$3,000.00 (three thousand United States Dollars) for Mr. Rosario Carpio Cardoso-Figueroa, who lived in exile for one year

and nine months, and by US$9,000.00 (nine thousand United States dollars) for Viviana Mariños-Figueroa, who lived in exile for 12 years.

[FN169] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 161; Case of Vargas-Areco, supra note 1, para. 150; and Case of Goiburú et al., supra note 1, para. 160.
[FN170] Cf. Case of Goiburú et al., supra note 1, para. 160; Case of the Ituango Massacress, supra note 8, para. 390; and Case of the Pueblo Bello Massacre, supra note 3, para. 258.

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220. Based on the foregoing, the compensation set by the Court is as follows:

Next of Kin of Hugo Muñoz-Sánchez		
Antonia Pérez-Velásquez	Wife	US $ 50,000.00
Margarita Liliana Muñoz-Pérez	Daughter	US $ 58,000.00
Hugo Alcibíades Muñoz-Pérez	Son	US $ 58,000.00
Mayte Yu yin Muñoz-Atanasio	Daughter	US $ 50,000.00
Hugo Fedor Muñoz-Atanasio	Son	US $ 50,000.00
Carol Muñoz-Atanasio	Daughter	US $ 50,000.00
Zorka Muñoz-Rodríguez	Daughter	US $ 50,000.00
Vladimir Ilich Muñoz-Sarria	Son	US $ 50,000.00
Rosario Muñoz-Sánchez	Sister	US $ 20,000.00
Fedor Muñoz-Sánchez	Brother	US $ 20,000.00
Next of Kin of Dora Oyague-Fierro		
Pilar Sara Fierro-Huamán	Mother	US $ 50,000.00
José Esteban Oyague-Velazco	Father	US $ 50,000.00
Carmen Oyague-Velazco	Aunt	US $ 50,000.00
Jaime Oyague-Velazco	Uncle	US $ 50,000.00
Next of Kin of Marcelino Rosales-Cárdenas		
Demesia Cárdenas-Gutiérrez	Mother	US $ 50,000.00
Next of Kin of Bertila Lozano-Torres		
Juana Torres de Lozano	Mother	US $ 50,000.00
Augusto Lozano-Lozano	Father	US $ 50,000.00
Next of Kin of Luis Enrique Ortiz-Perea		
Magna Rosa Perea de Ortiz	Mother	US $ 50,000.00
Víctor Andrés Ortiz-Torres	Father	US $ 50,000.00
Andrea Gisela Ortiz-Perea	Sister	US $ 30,000.00
Edith Luzmila Ortiz-Perea	Sister	US $ 20,000.00
Gaby Lorena Ortiz-Perea	Sister	US $ 20,000.00
Natalia Milagros Ortiz-Perea	Sister	US $ 20,000.00
Haydee Ortiz-Chunga	Sister	US $ 20,000.00
Next of Kin of Armando Richard Amaro-Cóndor		
Alejandrina Raida Cóndor-Saez	Mother	US $ 60,000.00
Hilario Jaime Amaro-Ancco	Father	US $ 50,000.00
María Amaro-Cóndor	Sister	US $ 20,000.00

Susana Amaro-Cóndor	Sister	US $ 20,000.00
Carlos Alberto Amaro-Cóndor	Brother	US $ 20,000.00
Carmen Rosa Amaro-Cóndor	Sister	US $ 20,000.00
Juan Luis Amaro-Cóndor	Brother	US $ 20,000.00
Martín Hilario Amaro-Cóndor	Brother	US $ 20,000.00
Francisco Manuel Amaro-Cóndor	Brother	US $ 20,000.00
Next of Kin of Robert Edgar Teodoro-Espinoza		
Edelmira Espinoza-Mory	Mother	US $ 50,000.00
José Ariol Teodoro-León	Father	US $ 50,000.00
Bertila Bravo-Trujillo	Stepmother	US $ 50,000.00
Next of Kin of Heráclides Pablo-Meza		
Serafina Meza-Aranda	Mother	US $ 50,000.00
José Faustino Pablo-Mateo	Father	US $ 50,000.00
Dina Flormelania Pablo-Mateo	Aunt	US $ 50,000.00
Next of Kin of Juan Gabriel Mariños-Figueroa		
Isabel Figueroa-Aguilar	Mother	US $ 50,000.00
Román Mariños-Eusebio	Father	US $ 50,000.00
Rosario Carpio Cardoso-Figueroa	Brother	US $ 23,000.00
Viviana Mariños-Figueroa	Sister	US $ 29,000.00
Margarita Mariños-Figueroa de Padilla	Sister	US $ 20,000.00
Next of Kin of Felipe Flores-Chipana		
Carmen Chipana de Flores	Mother	US $ 50,000.00
Celso Flores-Quispe	Father	US $ 50,000.00

D) OTHER FORMS OF REPARATION (Satisfaction measures and guarantees of non-repetition)

221. Under this heading, the Court will set non-monetary satisfaction measures aimed at redressing non pecuniary damage, also ordering measures of public import or impact.

a) Obligation to investigate the facts that amounted to the violations complained of in the case at hand, and to identify, prosecute and punish those responsible

222. The State is under a duty to use all means available to fight the situation of impunity surrounding the instant case, as impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin, [FN171] who are entitled to learn the whole truth of the facts, [FN172] even the names of all responsible parties. Upon being acknowledged and enforced in a specific situation, this right to truth becomes a relevant means for redress and creates a fair expectation in the victims that the State is required to satisfy. [FN173]

[FN171] Cf. Case of Goiburú et al., supra note 1, para. 164; Case of the Ituango Massacress, supra note 8, para. 399, and Case of Baldeón-García, supra note 163, para. 195.

[FN172] Cf. Case of Goiburú et al., supra note 1, para. 164; Case of Ximenes-Lopes, supra note 6, para. 245; and Case of the Pueblo Bello Massacre, supra note 3, para. 266.

[FN173] Cf. Case of Goiburú et al., supra note 1, para. 164; Case of the Pueblo Bello Massacre, supra note 3, para. 266; and Cases of Blanco-Romero et al., supra note 100, para. 95.
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223. The Court views as a significant first step towards reparation the publication of Perú's Truth and Reconciliation Commission, which, on the La Cantuta case stated, inter alia, as follows:

[T]he CRV urges the Judiciary and provides its support for it to continue to investigate the submitted facts in order to identify those responsible therefor and punish them, as required under the domestic legislation, for the human rights violations and other crimes committed against the administration of justice and the State's authorities.
Furthermore, it requests that the Supreme Court of Justice of Perú hand down a judicial ruling on the inapplicability of Laws No. 26,479 and No. 26,492, the amnesty laws, based on the judgments issued by the [Inter-American] C[ourt of Human Rights] in the case of Barrios Altos. […]

224. It is the Court's view that the work undertaken by said Commission constitutes a major effort and has contributed to the search for and establishment of truth for a period of Perú's history. However, and without failing to recognize the foregoing, the Court deems it appropriate to specify that the "historical truth" contained in said report does not complete or substitute the State's obligation to also establish the truth through court proceedings, [FN174] as acknowledged by the State itself by keeping the investigations open even after the report was issued. In this regard, it is worth noting that, in the framework of Articles 1(1), 8 and 25 of the Convention, the victims' next of kin have a right, and the State has the obligation, to have what happened to the victims effectively investigated by the State's authorities, the parties allegedly responsible for such illegal acts prosecuted, and, if appropriate, appropriately punished. In view of the above, the State is required to immediately take the steps required to effectively complete, in a reasonable period, the pending investigations and the criminal proceedings instituted before the regular criminal courts and to open, if appropriate, such proceedings as may be necessary to establish the criminal liability of all perpetrators of the acts committed to the detriment of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa, and Felipe Flores-Chipana.

[FN174] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 150.
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225. In this regard, the Court will emphasize that the acts committed in La Cantuta to the detriment of the victims of extra-legal execution or forced disappearance, are crimes against humanity that cannot go unpunished, are non-extinguishable and cannot be the subject-matter of amnesty (supra para. 152). Accordingly, the Court's considerations in the case of Almonacid-Arellano et al. v. Chile apply:

[…] According to the International Law corpus iuris, a crime against humanity is in itself a serious violation of human rights and affects mankind as a whole. [FN175]
[…] Since the individual and the whole mankind are the victims of all crimes against humanity, the General Assembly of the United Nations has held since 1946 [FN176] that those responsible for the commission of such crimes must be punished. In that respect, they point out Resolutions 2583 (XXIV) of 1969 [FN177] and 3074 (XXVIII) of 1973. [FN178]
[…] Crimes against humanity are intolerable in the eyes of the international community and offend humanity as a whole. The damage caused by these crimes still prevails in the national society and the international community, both of which demand that those responsible be investigated and punished. In this sense, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity [FN179] clearly states that "no statutory limitation shall apply to [said internationally wrongful acts], irrespective of the date of their commission."
[…] Even though [the State] has not ratified said Convention, the Court believes that the non-applicability of statutes of limitations to crimes against humanity is a norm of General International Law (ius cogens), which is not created by said Convention, but it is acknowledged by it. Hence, [the State] must comply with this imperative rule.

[FN175] Cf. International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Erdemovic, Case No. IT-96-22-T, Sentencing Judgment, November 29, 1996, at para. 28:
Crimes against humanity are serious acts of violence which harm human beings by striking what is most essential to them: their life, liberty, physical welfare, health, and or dignity. They are inhumane acts that by their extent and gravity go beyond the limits tolerable to the international community, which must perforce demand their punishment. But crimes against humanity also transcend the individual because when the individual is assaulted, humanity comes under attack and is negated. It is therefore the concept of humanity as victim which essentially characterizes crimes against humanity.
[FN176] Cf. U.N., Extradition and punishment of war criminals, adopted by the General Assembly of the United Nations by resolution 3 (I) of February 13, 1946; Affirmation of the principles of international law recognized by the Charter of the Nurnberg Tribunal, adopted by the General Assembly of the United Nations by resolution 95 (I) of December 11, 1946; Surrender of war criminals and traitors, adopted by the General Assembly of the United Nations by resolution 170 (II) of October 31, 1947; Question of the punishment of war criminals and of persons who have committed crimes against humanity, adopted by the General Assembly of the United Nations by resolution 2338 (XXII) of December 18, 1967; Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, adopted by the General Assembly of the United Nations by Resolution 2391 (XXIII) of November 25, 1968; Question of the punishment of war criminals and of persons who have committed crimes against humanity, adopted by the General Assembly of the United Nations by Resolution 2712 (XXV) of December 14, 1970; Question of the punishment of war criminals and of persons who have committed crimes against humanity, adopted by the General Assembly of the United Nations by Resolution 2840 (XXVI) of December 18, 1971; and Crime Prevention and Control, adopted by the General Assembly of the United Nations by Resolution 3021 (XXVII) of December 18, 1972.

[FN177] The General Assembly stated that the "thorough investigation" of war crimes and crimes against humanity, and the punishment of those responsible for such crimes "constitute an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security." Cf. U.N., Question of the punishment of war criminals and of persons who have committed crimes against humanity, adopted by the General Assembly of the United Nations by Resolution 2583 (XXIV) of December 15, 1969.
[FN178] "War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment. […] States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity" (U.N., Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crime against humanity, adopted by the General Assembly of the United Nations by resolution 3074 (XXVIII) of December 03, 1973).
[FN179] Adopted by the General Assembly of the United Nations by Resolution 2391 (XXIII) of November 26, 1968. Entry into force: November 11, 1970.
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226. Therefore, further to its duty to investigate and, if appropriate, punish the guilty parties, the State is required to remove all obstacles –both factual and legal– contributing to impunity, and use all available means to expedite the investigation and the relevant proceedings, thus preventing the recurrence of acts as serious as those under analysis in the case at hand. The State may not rely upon any domestic law or regulation to justify its failure to comply with the Court's order to investigate and, if appropriate, criminally punish the parties responsible for the La Cantuta events. Particularly, as has been the case ever since the Court's judgment in the case of Barrios Altos v. Perú, the State may never apply amnesty laws –which will produce no effects in the future (supra para. 152)–, raise the statute of limitations, non-ex post facto nature of criminal laws or res judicata defenses, or rely upon the principle of double jeopardy (supra para. 182), or resort to any other similar measure designed to eliminate responsibility in order to escape its duty to investigate and punish those responsible. [FN180] Accordingly, as the case may be, the relevant investigations need to be opened against all parties investigated, convicted, or acquitted or whose cases were dismissed, in a military criminal proceeding.

[FN180] Cf. Case of Almonacid-Arellano et al., supra note 6, para. 154.
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227. Additionally, in line with the arguments above (supra paras. 159 and 160), further to the general obligation to respect laid down in Article 1(1) of the American Convention, Perú is to continue to adopt all judicial and diplomatic measures required in order to prosecute and, if appropriate, punish, all parties responsible for the violations committed in this case, and to continue to insist on the requests for extradition under the applicable domestic or international law rules. Furthermore, based on the effectiveness of the collective protection mechanism

established under the Convention, the States Parties to the Convention are required to cooperate with each other in order to put an end to the impunity existing for the violations committed in the case at hand by prosecuting and, if appropriate, punishing, those responsible therefor.

228. Lastly, as has been the case so far, the State is required to guarantee to the victims' next of kin full access and procedural capacity at all stages of and before all courts involved in such investigations and proceedings, pursuant to the domestic law and the provisions of the American Convention. [FN181] Furthermore, the outcome thereof is to be published by the State in order that the Peruvian society may learn the truth of the facts of the case at hand.

[FN181] Cf. Case of Montero-Aranguren et al. (Detention Center of Catia), supra note 97, para. 139; Case of Baldeón-García, supra note 163, para. 199; and Case of Blanco-Romero et al., supra note 100, para. 97.

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b) Search and burial of the remains of the disappeared persons

229. In the instant case, the Court has established that Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana are still disappeared (supra. 80(16)).

230. Moreover, the Court has proven that during the exhumations in Cieneguillas and Huachipa, bone remains and victims' belongings were found, but it was not able to prove that the necessary actions to identify the remains found in the clandestine graves have been taken. There is no evidence either that the State has taken further actions to search for and, in turn, identify the remains of the above-mentioned disappeared victims.

231. The right of the next of kin to know the location of the mortal remains of the victims [FN182] is in itself a measure of reparation and gives rise to expectations that must be fulfilled by the State. [FN183] Furthermore, the Court has sustained that mortal remains deserve to be duly respected for the special relevance that the victims bear to their next of kin. [FN184]

[FN182] Cf. Case of Goiburú et al. supra note 1, para. 171; Case of the Pueblo Bello Massacre, supra note 3, paras. 270-273; and Case of 19 Tradesmen, supra note 110, para. 265.
[FN183] Cf. Case of Goiburú et al. supra note 1, para. 171 Case of 19 Tradesmen, supra note 110, para. 265 and Case of Juan Humberto Sánchez, supra note 98, para. 187.
[FN184] Cf. Case of Goiburú et al. supra note 1, para. 171; Case of Baldeón-García, supra note 163, para. 208; and Case of Acevedo-Jaramillo et al., supra note 16, para. 315.

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232. The Court considers that the State must search for and locate the mortal remains of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-

Figueroa and Felipe Flores-Chipana, by means of the identification of the other remains found at Cieneguilla and Huachipa, or by taking any action necessary to that effect either in those places or in any location where said remains are thought to be. Should the remains of the victims be found, the State must deliver them without delay to their next of kin, prior genetic parentage evaluation thereof. The State must also bear any burial expenses, as agreed with the victims' next of kin.

c) Public acknowledgement of liability

233. This Court considers approvingly that in the month of June of the current year, the President of the Republic apologized to the authorities of the University of La Cantuta during a ceremony where he was awarded a decoration by the University (supra para. 197(c)).

234. Furthermore, the Court has as well approvingly assessed the acknowledgement and acquiescence made by the State in the instant case, and the presentation made by the President of the Republic which was read out by the state Agent during the public hearing held in the month of September of the current year (supra paras. 43 and 56).

235. However, in order for the acknowledgement made by Perú and the rulings of this Court to be fully effective as a measure of reparation to the memory of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores Chipana and to be deemed a non repetition guarantee, the Court finds that the State must make a public acknowledgement of liability for the forced disappearance or extra-legal execution of the victims. That public acknowledgement must be made in the presence of the relatives of the aforementioned victims and must count on the participation of the State's highest-ranking authorities. Said public act must be performed within six months following notice of this Judgment.

236. Moreover, with regard to the request to build a memorial, the Court thinks highly of the memorial and public site named "El ojo que llora" (The Crying Eye), built by a civil association in collaboration with state authorities as a main acknowledgement to the victims of violence in Perú. However, the Court considers that the State must ensure that, within the term of one year, the 10 individuals declared executed or forcefully disappeared victims in the instant case shall be represented in said memorial if they are not represented so far and provided their relatives so desire. In doing so, the State must coordinate the victims' relatives' efforts to place a sign with the name of each victim, in the manner that may best fit the characteristics of the memorial.

d) Publication of the Judgment

237. As ordered in other cases and as a measure of satisfaction, [FN185] the State shall publish at least once in the Official Gazette and in another national daily newspaper, the sections entitled Partial Acknowledgement, Proven Facts, without the corresponding footnotes, and paragraphs 81 to 98, 109 to 116, 122 to 129, 135 to 161 and 165 to 189, and the operative paragraphs of this Judgment. Said publication shall be made within six months following notice of this Judgment.

[FN185] Cf. Case of Goiburú et al. supra note 1, para. 175; Case of Montero-Aranguren et al. (Retén de Catia), supra note 97, para. 151; and Case of Ximenes-Lopes, supra note 6, para. 249.

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e) Medical and psychological treatment for the next of kin of executed or forcefully disappeared victims

238. The Court considers that it is necessary to provide for a measure of reparation seeking to relieve the bodily and psychological suffering of the relatives of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana. To that end, the Court orders the State to provide the above-mentioned individuals, with their prior consent and for the necessary period of time from the date the notice of this Judgment is served upon them, free of charge and at national health-care facilities, with any necessary medical and psychological treatment which shall comprise provision of medicines. The psychological treatment must be provided taking into account the specific conditions and needs of each individual.

g) Training in human rights

239. The acts attributable to the State in the instant case were perpetrated by members of the "Grupo Colina" forces in violation of the provisions of compulsory International Law. The Court has further argued that [FN186] in order to adequately secure the right to life and humane treatment, the members of security forces must receive proper training and education. Furthermore, the events in the instant case occurred amidst a then existing generalized context of impunity of severe violations of human rights, which was fostered and encompassed by the lack of respect to the right to a fair trial and the inefficacy of judicial authorities to handle those situations, which in turn translated as the impunity of the major perpetrators of the violations.

[FN186] Cf. Case of Montero-Aranguren et al. (Retén de Catia), supra note 97, para. 147.

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240. Consequently, the State must adopt the necessary measures to train and educate the members of intelligence services, the Armed Forces and the National Police on legality issues and restrictions related to the use of force in general situations, armed conflict and terrorism, the due obedience concept and the role of said institutions in situations such as the events in the instant case. In doing so, the State must implement, on a permanent basis and within a reasonable time, human rights-oriented programs for all-rank members of the above-mentioned institutions.

241. The State must also adopt the necessary measures to train and educate prosecutors and judges, including officers of military criminal courts, on international standards related to the judicial protection of human rights. In doing so, the State must also implement, on a permanent

basis and within a reasonable time, human rights-oriented programs for the above-mentioned officers.

242. Said programs shall specially focus on the instant Judgment and the international instruments on human rights.

E) COSTS AND EXPENSES

243. As the Court has stated on previous occasions, costs and fees are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, since the victims' endeavor to obtain justice in the domestic as well as international levels lead to expenses that must be compensated when the State's international responsibility has been determined in a conviction judgment. With regard to their reimbursement, the Court must prudently assess their extent, which involve the expenses incurred when acting before the authorities within the domestic jurisdiction as well as those incurred in the course of proceedings before the Inter-American System, taking into account the particular circumstances of the specific case and the nature of international jurisdiction in the protection of human rights. Such estimate may be made on grounds of equitable principles and in consideration of the expenses reported and evidenced by the parties, provided they are reasonable. [FN187]

[FN187] Cf. Case of Goiburú et al. supra note 1, para. 180; Case of Montero-Aranguren et al. (Retén de Catia), supra note 97, para. 152; and Case of Ximenes-Lopes, supra note 6, para. 252.

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244. The Court takes into account that the above-mentioned relatives acted through their representatives in the domestic jurisdiction and before the Commission and this Court as well. In this regard, while the representatives in the instant case filed requests for reimbursement of costs and expenses, they failed to submit supporting documents.

245. Therefore, based on equitable standards, the Court orders the State to pay as costs and expenses incurred in the domestic jurisdiction and during the proceedings before the Inter-American System, the amount of US$40,000.00 (four thousand United States dollars) or an equivalent amount in Peruvian currency, to Andrea Gisela Ortiz-Perea and Alejandrina Raida Cóndor-Saez, who will in turn distribute said amount among their representatives as they deem appropriate.

F) METHOD OF COMPLIANCE

246. In order to comply with the instant Judgment, the State must pay the compensations for pecuniary and non pecuniary damage, and reimburse costs and expenses, within the term of one year following notice of this Judgment (supra paras. 214, 215, 220 and 245). With regard to the publication of the instant Judgment and the public acknowledgement of liability and apology (supra paras. 237 and 235), the State has a six-month term, following notice of this Judgment, to comply with said obligations. As regards the adequate treatment of the disappeared victims' next of kin, the State must provide for the same from the date of notice of this Judgment and for the

period of time deemed necessary (supra para. 238). Furthermore, Perú must take without delay the necessary actions to effectively conduct and complete, within a reasonable time, the ongoing investigations and the criminal proceedings pending in the domestic courts, and to carry out, as the case may be, the necessary investigations to determine the criminal liability of the perpetrators of the violations committed to the detriment of the victims (supra paras. 222 to 228). The State must forthwith carry out the search and localization of the remains of the victims and, once located, the State must deliver them as soon as practicable to the next of kin and give them dignified burial (supra paras. 229 to 232. With regard to the education programs on human rights, the State must implement them within a reasonable time (supra paras. 239 to 242).

247. The compensations established to the benefit of the relatives of the 10 executed or disappeared victims shall be delivered directly to each beneficiary. If a beneficiary dies before the date of payment, the compensation must be paid to the heirs according to applicable domestic laws. [FN188]

[FN188] Cf. Case of Goiburú et al. supra note 1, para. 162; Case of Ximenes-Lopes, supra note 6, para. 240; and Case of Baldeón-García, supra note 163, para. 192.

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248. If the beneficiaries of compensations are not able to receive the payments within the specified term, due to causes attributable to them, the State shall deposit said amounts in an account to the beneficiary's name or draw a certificate of deposit from a reputable Peruvian financial institution, in United States dollars, under the most favorable financial terms the laws in force and customary banking practice allow. If after ten years compensations were still unclaimed, these amounts plus any accrued interest shall be returned to the State.

249. Payment of the costs and expenses incurred by the representatives in said proceedings shall be made to Andrea Gisela Ortiz-Perea and Alejandrina Raida Cóndor-Saez, who will in turn make the pertinent payments (supra para. 245).

250. The State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the currency of Perú, at the New York, USA exchange rate between both currencies on the day prior to the day payment is made.

251. The amounts allocated in this Judgment as compensations and reimbursement of costs and expenses, shall not be affected, reduced or conditioned by taxing conditions now existing or hereafter created. Therefore, beneficiaries shall therefore receive the total amount as per the provisions herein.

252. Should the State fall into arrears with its payments, Peruvian banking default interest rates shall be paid on the amount owed.

253. In accordance with its constant practice, the Court retains the authority emanating from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State implements in full

the provisions herein. Perú shall, within a year, submit to the Court a report on the measures adopted in compliance with this Judgment.

XIII. OPERATIVE PARAGRAPHS

254. Therefore,

THE COURT,

DECIDES:

Unanimously

1. To admit the acknowledgement of international liability made by the State for the violation of the rights protected under Articles 4, 5 and 7 of the American Convention on Human Rights, in relation to the obligation to respect rights provided for in Article 1(1) thereof, to the detriment of Muñoz Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana, as set forth in paragraphs 40, 41, 43, 44 and 52 of the instant Judgment.
2. To accept the partial acknowledgement of international liability made by the State for the violation of the rights to a fair trial and judicial protection established in Articles 8(1) and 25 of the American Convention, in relation to the obligation to respect the rights enshrined in Article 1(1) thereof, as set forth in paragraphs 40 to 44 and 53 of the instant Judgment.

DECLARES:

Unanimously that:

3. The State violated the rights protected in Articles 4(1), 5(1) and 5(2) and 7 of the American Convention on Human Rights, in relation to the obligation to respect rights provided for in Article 1(1) thereof, to the detriment of Muñoz Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana, as set forth in paragraphs 81 to 98 and 109 to 116 of the instant Judgment.
4. No facts allow this Court to conclude that the State violated the right to juridical personality established in Article 3 of the American Convention on Human Rights, for the reasons detailed in paragraphs 117 to 121 of the instant Judgment.
5. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention on Human Rights, in relation to the obligation to respect rights provided for in Article 1(1) thereof, to the detriment of Antonia Pérez-Velásquez, Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez, Vladimir Ilich Muñoz-Sarria, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar Sara Fierro-Huamán, Carmen Oyague-Velazco, Jaime Oyague-Velazco, Demesia Cárdenas-

Gutiérrez, Augusto Lozano-Lozano, Juana Torres de Lozano, Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Ancco, María Amaro-Cóndor, Susana Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, Bertila Bravo-Trujillo, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Rosario Carpio-Cardoso-Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños-Figueroa de Padilla, Carmen Chipana de Flores and Celso Flores-Quispe, as set forth in paragraphs 81 to 98 and 122 to 129 of the instant Judgment.

6. The State violated the rights to a fair trial and judicial protection enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to the obligation to respect rights provided for in Article 1(1) thereof, to the detriment of Antonia Pérez-Velásquez, Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez, Vladimir Ilich Muñoz-Sarria, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar Sara Fierro-Huamán, Carmen Oyague-Velazco, Jaime Oyague-Velazco, Demesia Cárdenas-Gutiérrez, Augusto Lozano-Lozano, Juana Torres de Lozano, Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Ancco, María Amaro-Cóndor, Susana Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, Bertila Bravo-Trujillo, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Rosario Carpio-Cardoso-Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños-Figueroa de Padilla, Carmen Chipana de Flores and Celso Flores-Quispe, as set forth in paragraphs 81 to 98 and 135 to 161 of the instant Judgment.

7. The State violated the obligation to adopt domestic legal provisions as may be necessary to adapt its domestic legislation to the provisions of the American Convention on Human Rights, established in Article 2 thereof, in relation of Articles 4, 5, 7, 8(1), 25 and 1(1) thereof, during the term Amnesty "laws" No. 26,479 of June 14, 1995 and No. 26,492 of June 28, 1995 were applied in the instant case. From said period until now, this Court has not been able to prove that the State violated the obligation established in Article 2 of the Convention, as a result of having adopted measures aimed at eliminating the effects that amnesty “laws" might have had, for they were not effective at all, are not currently effective and will not be in effect in the future, as set forth in paragraphs 81 to 98 and 165 to 189 of the instant Judgment.

8. This Judgment is per se a form of reparation.

AND RULES:

Unanimously that:

9. The State must take without delay the necessary actions to effectively conduct and complete, within a reasonable time, the ongoing investigations and the criminal proceedings

pending in the domestic courts, and to carry out, as the case may be, the necessary investigations to determine the criminal liability of the perpetrators of the violations committed to the detriment of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana, as set forth in paragraph 224 of the instant Judgment. The State must adopt all judicial and diplomatic measures to prosecute and, in turn, punish the perpetrators of the violations committed in the instant case and file any corresponding extradition request under applicable domestic and international rules, as set forth in paragraphs 224 to 228 of the instant Judgment.

10. The State must forthwith carry out the search and localization of the mortal remains of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana and, once located, the State must deliver them as soon as practicable to the relatives and bear the burial costs, as set forth in paragraph 232 of the instant Judgment.

11. The State must publicly acknowledge its liability within a term of six months, as set forth in paragraph 235 of the instant Judgment.

12. The State must ensure that, within the term of one year, the 10 individuals declared executed or forcefully disappeared victims in the instant case shall be represented in the memorial named "El Ojo que Llora" (The Crying Eye) if they are not represented so far and provided their relatives so desire; in doing so, the State must coordinate the victims' relatives' efforts to place a sign with the name of each victim, in the manner that may best fit the characteristics of the memorial, as set forth in paragraph 236 of the instant Judgment.

13. The State must publish, within the term of six months, at least once in the Official Gazette and in another national daily newspaper, paragraphs 37 to 44 and 51 to 58 of the chapter related to the partial acknowledgement, the proven facts in the instant Judgment, without the corresponding footnotes, and paragraphs 81 to 98, 109 to 116, 122 to 129, 135 to 161 and 165 to 189, and the operative paragraphs thereof, as set forth in paragraph 237 of the instant Judgment.

14. The State must provide the relatives of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Bertila Lozano-Torres, Luis Enrique Ortiz-Perea, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana, at their discretion and for as long as necessary, free of charge and at national health-care facilities, with any necessary treatment which shall comprise provision of medicines, as set forth in paragraph 238 of the instant Judgment.

15. The State must implement, on a permanent basis and within a reasonable time, human rights-oriented programs for the members of intelligence services, the Armed Forces and the National Police, as well as for prosecutors and judges, as set forth in paragraphs 240 to 242 of the instant Judgment.

16. The State must pay Andrea Gisela Ortiz-Perea, Antonia Pérez-Velásquez, Alejandrina Raida Cóndor-Saez, Dina Flormelania Pablo-Mateo, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, Hilario Jaime Amaro-Ancco, Magna Rosa Perea de Ortiz, Víctor Andrés Ortiz-Torres, José Ariol Teodoro-León, Bertila Bravo-Trujillo and José Esteban Oyague-Velazco, within the term of one year, the amounts set out in paragraphs 214 and 215 of the instant Judgment, as compensation for pecuniary damage, as set forth in paragraphs 246 to 248 and 250 to 252 thereof.

17. The State must pay Antonia Pérez-Velásquez, Margarita Liliana Muñoz-Pérez, Hugo Alcibíades Muñoz-Pérez, Mayte Yu yin Muñoz-Atanasio, Hugo Fedor Muñoz-Atanasio, Carol Muñoz-Atanasio, Zorka Muñoz-Rodríguez, Vladimir Ilich Muñoz-Sarria, Rosario Muñoz-Sánchez, Fedor Muñoz-Sánchez, José Esteban Oyague-Velazco, Pilar Sara Fierro-Huamán, Carmen Oyague-Velazco, Jaime Oyague-Velazco, Demesia Cárdenas-Gutiérrez, Augusto Lozano-Lozano, Juana Torres de Lozano, Víctor Andrés Ortiz-Torres, Magna Rosa Perea de Ortiz, Andrea Gisela Ortiz-Perea, Edith Luzmila Ortiz-Perea, Gaby Lorena Ortiz-Perea, Natalia Milagros Ortiz-Perea, Haydee Ortiz-Chunga, Alejandrina Raida Cóndor-Saez, Hilario Jaime Amaro-Ancco, María Amaro-Cóndor, Susana Amaro-Cóndor, Carlos Alberto Amaro-Cóndor, Carmen Rosa Amaro-Cóndor, Juan Luis Amaro-Cóndor, Martín Hilario Amaro-Cóndor, Francisco Manuel Amaro-Cóndor, José Ariol Teodoro-León, Edelmira Espinoza-Mory, Bertila Bravo-Trujillo, José Faustino Pablo-Mateo, Serafina Meza-Aranda, Dina Flormelania Pablo-Mateo, Isabel Figueroa-Aguilar, Román Mariños-Eusebio, Rosario Carpio-Cardoso-Figueroa, Viviana Mariños-Figueroa, Marcia Claudina Mariños-Figueroa, Margarita Mariños-Figueroa de Padilla, Carmen Chipana de Flores and Celso Flores-Quispe, within the term of one year, the amounts set out in paragraph 220 of the instant Judgment, as compensation for non pecuniary damage, as set forth in paragraphs 219, 246 to 248 and 250 to 252 thereof.

18. The State must pay, within the term of one year, the amounts set out in paragraph 245 of the instant Judgment, as reimbursement for costs and expenses, which shall be delivered to Andrea Gisela Ortiz-Perea and Alejandrina Raida Cóndor-Saez, as set forth in paragraphs 246 and 249 to 252 thereof.

19. The Court shall monitor full compliance with this Judgment and the instant case shall be closed once the State implements in full the provisions herein. Within one year of the date of notification of this judgment, the State shall furnish the Court with a report on the measures taken in compliance therewith, in the terms of paragraph 253 of said judgment.

Judges Sergio García-Ramírez and Antônio Augusto Cançado Trindade informed to the Court their Separate Opinions, and Judge ad hoc Fernando Vidal-Ramírez informed to the Court his Concurring Opinion, which are attached to this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on November 29, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles

Fernando Vidal-Ramírez
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE SERGIO GARCÍA-RAMÍREZ IN THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF LA CANTUTA, OF NOVEMBER 29, 2006

THE COURT'S CASE LAW ON SELF-AMNESTY

1. The Court has repeatedly addressed the issue posed by the so-called "self-amnesty" laws. The Court first dealt with this issue directly in the Judgment on reparations in the Case of Castillo-Páez (November 27, 1998) in connection with orders issued by the very same State at which this Judgment is directed; it was also addressed in the Judgment on reparations handed down in the Case of Loayza-Tamayo (also dated September 27, 1998); and, lastly –at a first stage of definitions and clarifications— the issue was analyzed in the widely known and cited Judgment rendered in the Case of Barrios Altos (March 14, 2001). I have expressed my views on this issue in successive separate Opinions, starting with the one I wrote for the aforementioned Case of Castillo-Páez. I will refer to my statements in such cases.

2. In recent times, the Court's case law on this issue has been articulated in two judgments fashioned along the same lines, which, basically, uphold the Court's findings in the aforementioned decisions: the Case of Almonacid-Arellano et al. (Judgment of September 26, 2006) and the Case of La Cantuta. No changes have been introduced as to the substance of the matter; these judgments merely incorporate clarifications or characterizations that perhaps can be attributed to the peculiarities of each case. The Court has thus established what can be referred to as the "Inter-American view on self-amnesty," which has been expressly embraced by the judgments of several domestic courts. This has consolidated, both at the international and domestic level, a standard that, when first entertained, represented a major sign of innovation, and which has now been turned into an increasingly known, recognized and applied guarantee in the system of human rights protection.

3. To sum up, the Inter-American Court's position on this issue upholds:

a) the full force and effect of the obligations to respect rights and ensure their exercise, under Article 1 of the American Convention on Human Rights (ACHR), notwithstanding any domestic-law obstacles that might hinder due compliance with such obligations that the State has undertaken, acting in its sovereign capacity, upon becoming a party to the Convention;
b) the resulting eradication of the impunity that such obstacles might allow in connection with particularly egregious crimes; and

c) the State's duty to adopt, at the domestic law level, such measures as may be required to enforce said duties and root out impunity, pursuant to the provisions of Article 2 of the ACHR.

4. At some point, a question arose concerning the means through which the State should do away with any such laws that are in conflict with the American Convention on Human Rights. Abrogation? Invalidation or unenforceability by way of judicial or administrative interpretation? Nullification? It is not the Inter-American Court's but the State's place to answer this question, i.e. to analyze and implement the decision that will lead to the intended end, which is the elimination of any potential effect of a legal provision that is incompatible with the Convention.

5. For international jurisdiction purposes suffice to make that last comment and, in any event, explain –as even though not essential, in practice this may prove to be helpful in tackling doubts and conflicting interpretations– that, because from the very moment of their enactment they are in conflict with the international obligations of the State under the ACHR, the so-called self-amnesty laws can produce no legal effects whether at the time of being issued, at present or in the future. Basically, such laws are invalid –with no need for a special decision so holding as, in any event, any such decision would be a mere declaration of invalidity— from the very moment they conflict with the American Convention, a conflict arising right from their inception in the domestic legal system, i.e. ab initio, as already established by the Court.

6. In its ruling in the Case of La Cantuta, the Court has ratified the decision based on the interpretation of the Judgment rendered in the Case of Barrios Altos (of September 2001); such interpretation is certainly not the expression of a point of view or a recommendation but a determination –made by way of genuine interpretation—of the scope of said Judgment on the merits and reparations, an integral part of the same decision. The interpretation does not incorporate a new order to the rulings contained in the judgment, but clarifies the terms of that judgment. The judgment rendered in La Cantuta ratifies the general applicability of the position adopted by the Inter-American Court in the Case of Barrios Altos. As a matter of fact, the source of the violation lies in a general-scope provision. The Court's decision shares the same general scope.

7. There would be no point in holding that a law is "in conflict with the Convention" in a specific case, just to leave the source of the violation standing for future cases. Far from providing a guarantee of non-repetition –a critical objective of the system of human rights protection—, this would leave the door open to a repeat violation. It would be impracticable –not to mention frustrating— to require new rulings by the Inter-American Court, covering and dealing with an indefinite number of cases of the very same nature, submitted one by one to the Court's consideration, in order to obtain the relevant declaration that they are "in conflict with the Convention."

8. Furthermore, the Court has also made it clear that the obligations undertaken by a State upon becoming a party to the international convention on human rights are binding upon that State as a whole. This extends to executive, legislative and judicial bodies, as well as self-governed bodies outside of the domain of the three traditional branches, which are a part of the State itself. Therefore, it is inadmissible for one of such bodies to refrain from complying with an obligation that binds the State of which it is a part, or to directly act in violation thereof, on the

grounds that another body has failed to fulfill its own duties in the general system for the adoption of and compliance with international obligations. This notion calls for further consideration, exploring all sides and implications, and it obviously points to the convenience of providing, also in this case, the timely and sufficient "bridge" to link the international legal system and the domestic body of law and move past any doubt or contradiction that might arise as a result of a lack of definition on this matter.

DUE PROCESS, RES JUDICATA AND NE BIS IN IDEM

9. The Inter-American Court –as has also been the case with other international and domestic courts— has laid down certain criteria regarding res judicata and the related principle of ne bis in idem. Res judicata and the principle of ne bis in idem support legal certainty and entail guarantees that are of major importance to all citizens and, specifically, to defendants. However, res judicata involves a judgment carrying that effect: definition of a right, immutability, finality. The guarantee of ne bis in idem is based on that assumption: the prohibition of a new trial based on the same facts that were the subject-matter of a judgment that has the authority of a final judgment (not open to appeal).

10. The judgment is the outcome of the proceeding, i.e. it is the culmination of a series of actions that are fully regulated and subject to an order providing guarantees that defines the requirements for the proceeding and the conditions for the validity of the key acts that make up that proceeding, and thus prove the legitimacy of the proceeding itself as basis for the judgment. The development of the procedural system under the drive of human rights prevails in the notion of due process. In this regard, it exposes the substitution of the criticized expression that "the end justifies the means" with another rule that goes quite in the opposite direction: "the legitimacy of the means used justifies the end thus attained."

11. Due process is, basically, the basis of the judgment. The case here –to use the analogy, if I may— is the same as with a building: a building with no foundations will collapse and will have to be rebuilt on a solid foundation. It is only in this way and through this method that the definition of rights and the imposition of duties at the end of a dispute brought before an authority with jurisdictional powers is legitimized. There is no due process –and, therefore, no valid determination of rights and duties— without the right to a fair trial provided for in Article 8 of the ACHR. And without due process, there is no real judgment, no res judicata and no room for the principle of ne bis in idem to come into operation either.

12. Currently, the international Law on human rights, as well as international criminal Law, condemn sham trials the purpose or outcome of which is other than justice and which pursue a goal that is contrary to their intended purpose: injustice, concealed between the folds of a "pseudo" proceeding guided by prejudice and aimed at allowing impunity or violations. Hence the fact that the decisions of international courts on human rights do not necessarily conform to the latest domestic-law decision analyzing the violation of a right (and authorizing or allowing the violation to continue, along with the damage inflicted upon the victim), and that is also why international criminal courts refuse to validate decisions made by domestic criminal courts that are unable or unwilling to get justice done.

13. Does this entail the decline of res judicata –a concept frequently brought into question in the realm of criminal law—and the elimination of the ne bis in idem principle, creating a general risk to legal certainty? The answer to this question, which prima facie seems to be in the affirmative, is not necessarily so. And it is not so because the ideas expressed above do not question the validity of res judicata or the prohibition against double jeopardy, provided that both find support in the applicable legal provisions and do not involve fraud or abuse but entail a guarantee for a legitimate interest and the protection of a well-established right. Therefore, there is no attack on the "sanctity" of res judicata or the finality of the first trial –viewed, accordingly, as the only possible trial–, but against the lack of a legitimate ruling –i.e. one legitimized through due process— carrying the effects of a final judgment and suitable to serve as basis for ne bis in idem.

CONFLICT OF RIGHTS

14. At some point, the Judgment rendered in the Case of La Cantuta does bring up a potential conflict between fundamental rights that are a part of due process. I am referring to the guarantee for a reasonable term, which does come up fairly often in the context of the proceeding, or in broader terms –as has been argued—of the procedure which affects the rights of private parties and must end with a judicial ruling thereon; and the guarantee of proper defense, which is a key, basic expression of the right of access to justice in its two-fold connotation: the formal one (the possibility to call for a judicial ruling, to prove the facts, present arguments and file appeals) and the material one (securing a fair judgment).

15. A court ruling on human rights must be especially careful when solving alleged or actual dilemmas, in order to secure, to the greatest extent possible, the conciliation of the rights at issue, so as to guarantee the broadest protection to the holder of such rights. However, there is no denying either that, in certain cases, it is necessary to give priority to one of such rights in order to provide, through such acknowledgement, more complete and satisfactory substantial protection to the affected person. The right to a reasonable term thus gives in to the demands of Justice.

16. The Court has noted that an excessively long term may prove to be as unreasonable –precisely due to its "excessive" nature— as an excessively short one –for the exact same reason. However, it was expressed that, ultimately, guaranteeing a fair judgment through more and better defense action is more important than having the case heard and disposed of in a brief period of time. This prevalence of material justice requires, however, that the term be reevaluated subject to adequate standards of proportionality, relevance and opportunity, all in line with whatever may be necessary to secure justice in each specific case.

THE CONTEXT OF OR CIRCUMSTANCES SURROUNDING THE VIOLATION

17. In the Judgment rendered in the case of La Cantuta –as in the rulings handed down in cases such as Goiburú, Almonacid, and Castro-Castro–, the Court introduced a consideration of "context," allowing an analysis of the facts that constitute the violations in the specific circumstances of the case. Such circumstances bring about the facts, their characteristics,

meaning and support, and contribute to the judicial solution, both as regards the evaluation of the facts and the reparations and guarantees of non-repetition.

18. An ordinary court decision might do without reflections or descriptions regarding the circumstances in which the case arose, as extended to the parties and the general status of society or a given social group, or a given set of relationships at a given place and time. However, a human rights ruling aimed at shedding some light on the violations and preventing new ones from taking place, creating the proper conditions for the better recognition and exercise of fundamental rights, cannot disengage itself from the context and be rendered in a "void." This "historical" aspect of the case and the desired "far reach" of the relevant ruling explain and justify the "backdrop" unfolded by the Court in examining a case, as a preface to the account of the facts and as reference for applying the law.

19. The special characteristics of human rights justice also explain and justify a practice followed by the Inter-American Court both in carrying out public hearings and in the structuring of its judgments, which at times may appear overabundant or redundant. In the event of acceptance and acquiescence by the State –acceptance of the facts and acquiescence to the claims— it might be possible to do without the presentation of evidence of the facts, which have already been accepted, and accounts of such facts in a judgment in which the court is no longer required to verify the facts that constitute the violations, but merely to define their consequences (if the parties have not reached a settlement regarding such consequences or if such consequences cannot be the subject-matter of a settlement agreement by the parties).

20. However, court decisions on human rights seek to "set an example" and "be instructive." They contribute to the "uncovering of the truth" and "political and social rectification." Put differently, they are not limited to or satisfied by a brief decision on the specific dispute –which, by the way, has already come to an end–, but seek to instruct on the factors that breach fundamental rights, breaching practices, the suffering of victims, the requirements of a reparation that extends beyond compensation or monetary redress, the general knowledge of the violations committed. In this sense, it has a more pronounced social, historical, moral, and pedagogic nature than other expressions of public justice.

21. To sum up, this is a sui generis form of justice that takes on the political and moral values of a given society and goes over the relations between political power and human beings. This is the reason why the hearings held by the Inter-American Court and the judgments rendered by it address issues that are formally not the subject-matter of the dispute but which nevertheless affect society as a whole and have to do with the duties created by the system of human rights protection, of which the Inter-American jurisdiction is a part. Fortunately, these particularities of human rights justice have been properly understood by the parties to the proceedings, and this allows cases to proceed subject to their distinctive features, which might be unnecessary or even inadmissible in other jurisdictions.

ASSESSMENT OF THE SERIOUSNESS OF THE FACTS

22. The existence of very serious violations, in a context that is specifically injurious to the human rights of a large group of people, or of vulnerable individuals that would require special

guarantees by the State, supports the Court's ruling on reparations. It is here that the Court's assessment of the significance and egregious nature of the violations and the nature and amount, if appropriate, of the reparations is expressed. Sometimes reference is made to the "aggravated liability" of the State when dealing with a series of violations that are particularly reprehensible. Strictly speaking, actually, there is no "aggravated liability" but facts that engage the State's international responsibility and the seriousness of which warrants more serious consequences.

23. I have previously stated that liability –the capacity or duty to be answerable for certain facts, conduct, duties or guarantees— is a relationship between the holder of a right and the facts and conduct, viewed in the light of a given legal classification and specified legal consequences. Therefore, this is a formal concept that creates a link between the responsible party, the conduct for which such liability applies and the consequences flowing from the whole matter. Accordingly, liability in and of itself is neither aggravated nor mitigated. The serious or minor nature pertains to the facts and, therefore, influences the greater or lesser harshness of the reaction allowed by the legal system. The use of such expression may nevertheless be illustrative of the court's disapproval of the wrongful conduct.

REPARATIONS AND ACKNOWLEDGEMENT OF LIABILITY

24. The case law of the Inter-American Court has been particularly dynamic and highly evolving on the subject of reparations. The development of Inter-American case law on this subject becomes obvious when reflecting upon the distance between a reparations scheme revolving around monetary compensation –which is most certainly indispensable and relevant— and another one which, in addition to compensation, makes provision for broad-scope measures aimed at securing moral satisfaction for the victims and preventing new violations: for instance, through constitutional reforms, the enactment of laws, the repealing of general-scope provisions, the annulment of proceedings and judgments, political or judicial reforms, and so on. All of this applies to the entire public structure and concerns society as a whole, in addition to benefiting a given person or group of persons whose legitimate interests and proven rights are sought to be enforced.

25. Among the measures of satisfaction ordered by the Court in the context of reparations, the acknowledgement of international liability by the State has already become systematic. The Court's judgment certifies that such liability does in fact exist as a consequence of a wrongful act attributable to the State. Therefore, from a strictly legal perspective –i.e. for the formal validity of the judgment and compliance with the obligations thereby imposed— there is no need for the State to acknowledge its liability, but to fulfill the duties imposed by it. However, if made at a public act and in the presence of high-ranking authorities –the Court does not decide which such authorities should be present; the decision in this regard lies with the State, and it is to be consistent with the importance of the facts and the formal nature of the act–, such acknowledgement bears special moral relevance to the satisfaction of the victims or their next of kin and has political significance for the protection of human rights.

26. Such satisfaction may include –and often has, an encouraging occurrence that has been highlighted by the Court— some additional public expression. In this regard, there have been apologies to the victims or their next of kin and requests for their forgiveness, condemnations of

the violations, offers to pass measures favorable to the victims and preventing new violations, etc. A deeper analysis is in order regarding the possibility, convenience and relevance of asking the authority to apologize to the victims or obtain their forgiveness, considering the nature of the "apology," the moral qualities of which are indisputable but which calls for further consideration from the legal standpoint.

27. Generally, an apology for a serious violation is of specific ethical value for both the person offering it and the one at whom the apology is addressed. In these cases, the person offering an apology is not –even though in certain cases it might in fact be— the one who actually committed the offense. It is a formal, rather than a substantial, expression. It is the State who, acting through a state agent, apologizes for the wrongful conduct engaged in by another agent of the State. The latter one is the responsible party –morally, as well as legally–; conversely, the former is unrelated to the facts, being tied to the proceeding because of his or her official capacity and not because of his or her guilt, and is alien to the deep feelings, intimate pain and serious alterations that the facts have caused to the victim.

28. As far as the person to whom the apology is addressed is concerned, we should consider the meaning of the forgiveness sought and granted: does it provide absolution? Does it redeem the person offering the apology? Does it produce any legal effect at all, even though it does certainly have moral implications? Basically, what is the point of an apology for extremely serious facts (that sometimes, to be perfectly honest, seem beyond forgiveness) and what is its true validity in connection with the proceeding, the judgment, the State's duty of justice, the claims to which the victim is entitled? Is it a part of the settlement and reconciliation? And, if so, what settling effects does it produce from the legal standpoint of the international Court's judgment, which extends to the duties of the State?

29. In the experience of the Inter-American Court, it is increasingly more frequent to find cases in which there is a full or partial acknowledgement of liability by the State, which accepts (confesses to, as a State) the existence of the violation and the identity of the affected parties, recognizes that such violations breach specific provisions of the ACHR and even commits to certain reparations. This phenomenon marks a positive trend in the protection of human rights and the legal and moral redress to the victims. The Court has recognized the merits of this trend and the value entailed by the acknowledgement in each particular case.

30. It has been said that the acknowledgement might be intended to prevent the facts from being assessed by the Court and revealed to society, thus impairing the right to learn the truth. I am not questioning the reasons behind each specific acknowledgement. I would like to insist on the merits of the acknowledgement –which entails taking a step further beyond the denial of facts that are impossible to conceal or the defense of situations that cannot possibly be justified— and note that it does not prevent the facts from being known by the court or revealed to society. No such thing is possible if we take into consideration the well-established practice of holding public hearings at which witness accounts of the facts are heard –even if the focus is on reparations— and that of having the judgment include an account of the violations that are the source of reparations, notwithstanding the confession, acceptance or acknowledgement by the State; in other prosecutorial systems this might cause the proceeding to come to an early end by dismissal,

with no account of facts that are no longer at issue and no witness testimony on events that nobody has denied.

Sergio García-Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have voted for the adoption, by the Inter-American Court of Human Rights, of this Judgment in the case of La Cantuta v. Perú. Considering the relevance of the issues therein addressed by the Court, I am obliged to add this Separate Opinion to the Judgment, with my personal opinions as grounds of my position regarding the matters discussed by the Court. I shall focus my considerations in four basic points, to wit: a) the recurrence of the State crime: the massacre of La Cantuta in the context of a State criminal practice (as detached from the application filed before the Inter-American Court, the determination of the facts by the Inter-American Court, and the acknowledgement of aggravated liability by the respondent government itself); b) the contribution of the Inter-American Court to the prevalence of the Law towards the end of self-amnesties; c) the inadmissible aggression to the Universitas; and d) the inadmissibility of violations against jus cogens.

I. The Recurrence of the State Crime: The Massacre of La Cantuta in the Context of a State Criminal Practice.

1. The Application before the Inter-American Court

2. In the application of February 14, 2006 filed by the Inter-American Commission of Human Rights before this Court in the case at issue, the Commission refers, inter alia, to a public complaint (dated May 5, 1993) by a General of the Peruvian Army (Mr. Rodolfo Robles Espinoza) in the sense that the National Intelligence Service (SIN) of Peru had organized a "death squad" called Grupo Colina, "responsible for the physical elimination of terrorists," which perpetrated the massacre of November 1991 of 14 people in the case of Barrios Altos (known to this Court), as well as the extra-legal executions of a professor and 9 students of the University of La Cantuta (which took place in July, 1992) (para. 84), also a case which this Court has ruled upon. In fact, the cases are part of a systematic practice planned and executed by State agents, according to the orders given by the highest rank of the State public power.

3. The enumeration of facts included in the above mentioned application filed by the Commission is based, also, in the broad determination of facts by the Comisión de la Verdad y Reconciliación -CVR- (Truth and Reconciliation Commission of Peru), included in its Final Report of 2003. In this case of La Cantuta, the members of the Peruvian army and the agents of the Grupo Colina broke in the university campus, burst into the homes of professors and students, kidnapped the victims (in the dawn of July 18, 1992), took them with "unknown destination" and executed them. The kidnapped victims of La Cantuta remained missing until

July 12, 1993, when mortal remains were located, apparently theirs, in clandestine graves located in the Chavilca gorge, in the city of Cienguilla (paras. 54-58).

4. However, to date, the mortal remains of only two of the executed victims have been identified. Examinations by experts concluded that the victims - the professor and the nine university students kidnapped at La Cantuta - had been executed with “shots of firearms in the head” and that their mortal remains had been “burnt in state of putrefaction” (pars 68 and 61). In the dawn of the day, the crime was committed (on July 18, 1992) the State machinery of concealment was set to work.

5. The above mentioned application filed by the Inter-American Commission before this Court mentions that the CVR identified a “whole organized power structure” by means of which it carries out, within the context of an “anti-subversive strategy by the State agents,” a “systematic practice” of “arbitrary executions,” which reached the highest levels of victimized people in the periods 1983-1984 and 1989-1992 (paras. 73, 70 and 76); also, “the practice of forced disappearance was a mechanism of anti-subversive fight systematically used by the State agents between 1988 and 1993,” estimating that the “members of the Armed Forces” where those “charged with the greatest proportion (more than 60%) of the victims of forced disappearance caused by State agents in the period 1980-2000" (para. 77).

6. Then, the Inter-American Commission transcribed, out of the Final Report of the CVR, the “stages” in which this macabre practice was conducted:

"victim selection and detention, deposit in a detention center, eventual transfer to another detention center, interrogation, torture, processing of the information obtained, decision of elimination, physical elimination, disappearance of victim´s remains, use of State resources” (para. 78).

7. The Final Report of the CVR, extensively quoted in the application filed by the Inter-American Commission before this Court, refers to a criminal practice by the State, encompassing a “clandestine circuit” of arbitrary detentions followed by extra-legal executions (para. 150). The Grupo Colina was a group of extermination inserted within the SIN structure (leaded by Vladimiro Montesinos) to face alleged “enemies” of the regime of the then President Alberto Fujimori (paras. 96 and 85). The Grupo Colina operated with State resources (para. 80), and

"fullfilled a State policy which consisted in the identification, control and elimination of those people suspected to belong to insurgent groups, by systematic actions of indiscriminate extra-legal executions, selective murders, forced disappearances and tortures” (para. 89).

2. The Determination of Facts by the Inter-American Court.

8. In this Judgment of the case La Cantuta, in chapter VII, regarding the proven facts, the Inter-American Court, taking into account the Final Report of the CVR, set forth that

"Arbitrary executions were a systematic practice carried out in the backdrop of the contra-subversive strategy of State agents, especially during the hardest times of the conflict (1983-1984 and 1989-1992)" (para. 80(1)).

There was a whole organized state power structure, and the extra-legal executions did not constitute isolated or sporadic facts, but a behavior pattern by the State in the context of its above mentioned strategy, leading to a truly criminal practice, applying resources and material means of the State itself.

9. The modus operandi, as identified by the CVR and recapped by this Court, consisted in the

"selection of the victim, detention, deposit of the victim in a detention center, contingent transfer to other detention center, interrogation, torture, processing of the data obtained, decision to eliminate the victim, physical elimination, concealment of victim´s remains and use of State resources." The common denominator in the whole process was "the denial of the detention itself and denial of any information on what had happened to the arrested person. That is, the victim entered an established circuit of clandestine detention, which only very lucky people could survive." (para. 80(5)).

10. Regarding the "methods applied to destroy evidence" of the crimes committed, the Court remembers that the CVR itself pointed out that these included, among others, "mutilation or incineration" of the mortal remains of the victims (para. 80(7). In this case of La Cantuta, the Court considered proved that the "incinerated bone remains" found in Cieneguilla were part of a "secondary burial," as they "had already remained in other graves" and, after having been removed and burnt ("the bodies were burnt in state of putrefaction"), were "taken and buried in the Chavilca region" (para. 85(34). That is, the violation of the principle of human dignity took place not only in life, but also after life.

11. It is notorious and public that the illegal detention, followed by extra-legal execution of the victims of cases of both Barrios Altos and La Cantuta, were perpetrated by the "death squad" called "Grupo Colina." This extermination group was directly organized within the hierarchical structure of the Peruvian State armed forces, and

"carried out a State policy consisting in the identification, control and elimination of those persons suspected of belonging to insurgent groups or who opposed to the government of former President Alberto Fujimori. It operated through the implementation of systematic indiscriminate extra-legal executions, selective killings, forced disappearances and tortures." (paras. 80(18)).

12. An account of the history of "Grupo Colina" says that former President A. Fujimori and his consultant V. Montesinos made that choice so as to combat terrorism with the "clandestine war" of "State terrorism," performing "kidnapping, forced disappearances and extra-legal executions," and using the "perverse resource of transferring liabilities to lower ranks," thus eluding "their direct liability"; however, the so called "Grupo Colina" was authorized to act "from the highest Government instance." [FN1] The crimes of both Barrios Altos and La Cantuta constituted an unequivocal and conclusively proven part of a State policy. [FN2] An analysis of

the Final Report of the CVR confirms, fully detailed, the criminal operations of “Grupo Colina,” with express reference and accounts of the crimes of both Barrios Altos and La Cantuta as part of a behavior pattern of criminal conduct on the part of the State. [FN3]

[FN1] U. Jara, Ojo por Ojo - La Verdadera Historia del Grupo Colina (The True Story of the Colina Group), Lima, Edit. Norma, 2003, pp. 59-60; and cf. pp. 75, 78, 88 and 124, for the “learnt lessons” by the murderers at the Escuela de las Américas.
[FN2] Ibid., pp. 180-181, and cf. pp. 130-133, 144, 150-151, 160-163 and 177-179.
[FN3] Cf. Comisión de la Verdad y Reconciliación de Perú (Truth and Reconciliation Commission of Peru) (CVR), Informe Final (Final Report), book VII (Part I: The Process, the Facts, the Victims), Lima, CVR, 2003, pp. 81, 97, 100, 116, 119, 130-158, 233-245 (case of La Cantuta), 369, 390, 475-493 (case Barrios Altos); and cf. pp. 455-473 on the case of students disappearances of Universidad Nacional del Centro (1990-1992).

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13. Considering the above, it is concluded that we are, in the case of La Cantuta and in the context of this sinister State strategy, unequivocally in the presence of a State crime which also - as set forth by this Judgment- counted on the State concealment of the facts and the systematic obstruction of the investigations, including the destruction of evidence of the serious crimes committed. In this case of La Cantuta, it was conclusively proven that premeditation (mens rea), planning and commission of the crime, under aggravated circumstances, and the subsequent concealment of the facts, were executed by numerous State agents, with State resources (including those derived from income tax contributors), in a command line which involved both the perpetrators of the atrocities and the highest authorities of the State power. Facts reveal a horrendous investment of the State purposes, and they constitute an unequivocal State crime, with all its legal consequences (cf. infra).

3. Acknowledgement of Aggravated Liability by the Respondent Government itself.

14. In this case of La Cantuta, the respondent Government itself, in a constructive attitude in the course of the adversarial proceedings, acknowledged international liability both before the Commission and before this Court, although not encompassing all the facts and their legal consequences. Before the Court, it did so both in its response to the application (chapter V) and in its written closing arguments (chapter III). Also, as significantly recorded by the Court in this Judgment (para. 44), in its oral and written closing arguments, the respondent Government itself expressly acknowledged that “international crimes” had been committed. The State expressed, in its own words that

"(...) It reiterates (...) that such acts and omissions constitute international unlawful facts which generate international liability of the State. They constitute crimes according to domestic law and international crimes that the State must punish. (...)" (para. 44).

15. What do those jusinternationalists, who keep on insisting to declare that there can be no State crime, have to say before this manifestation of the State itself, before the overwhelming evidence of the facts and proof in this case of La Cantuta? How long will they remain in the

shadows of their lack of conscience and sensitivity regarding the fate of the victims of human brutality? When will they awake to the need to contribute to the credibility of the legal profession, and stop closing their eyes to the State criminality?

16. In this Judgment of the case La Cantuta, the Court determined the scope of the consequences of the State acknowledgement regarding to the legal claims (paras. 52-54). Furthermore, it observed that it was not an isolated or single manifestation by the State, but a significant manifestation to which others have been added, remembered by the Court in this Judgment:

"The facts of this case have been classified by the CVR, the domestic judicial bodies and by the State´s representative before this Court, as "international crimes" and "crimes against humanity" (...). The extra-legal execution and forced disappearance of the alleged victims were perpetrated in a context of generalized and systematic attack against sectors of the civil population.
Merely pointing out (...) that the Court considers it acknowledged and proven that the planning and execution of detention and subsequent cruel, inhumane and degrading treatment, extra-legal execution or forced disappearance of alleged victims, carried out in a coordinated and concealed way by members of the military forces and the Colina Group, could not have passed unnoticed to or have occurred without the orders of the highest ranks of the Executive Power and the then military forces and intelligence bodies, especially the chiefs of intelligence and the President of the Republic himself" (paras. 95-96).

17. The Court added that, regarding the violation of the right to life – acknowledged by the respondent Government - of the professor and the nine students kidnapped at the University of La Cantuta, "the case facts were the result of an operation executed, coordinated and concealed by the Grupo Colina, with the knowledge and superior orders of the intelligence services and of the then President of the Republic himself" (para. 114). When referring to the forced disappearance of the victims, the Court accurately remarked that

"the international liability of the State is aggravated when the disappearance is part of a systematic pattern or practice applied or tolerated by the State, as it constitutes a crime against humanity which implies a crass abandonment of the essential principles on which the Inter-American system is grounded.
(...) The international liability of the State is configured in an aggravated manner due to the context in which the facts were perpetrated, (...) as well as the flaws regarding protection and investigation obligations (...)." [FN4]

[FN4] Paragraphs 115-116 (emphasis added).

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18. Also, this Court has ruled that the respondent Government itself has acknowledged "the partiality of the judges of the criminal courts in the trial of the La Cantuta events" (para. 144). The Court repeated its understanding in the sense that "in a democratic constitutional state, the jurisdiction of military criminal courts must be restrictive and exceptional" (para. 142). In this case, there was "manipulation of legal and constitutional mechanisms," obstruction of the

investigations of the ordinary justice, “irregular deviation of the military jurisdiction investigations,” with the aim of “securing impunity for those responsible” (para. 143).

19. It is significant that, regarding that matter, the Peruvian Constitutional Court itself, in its Judgment of November 29, 2005 (re: S. Martín Rivas), warned that considering the circumstances of the cas d'espèce,

"there is evidence that the purpose of the criminal process filed within the military jurisdiction environment was to prevent the petitioner from being held liable for the acts charged with. Those circumstances are related to the existence of a systematic plan to promote impunity regarding human rights and crimes against humanity, particularly regarding to acts committed by Grupo Colina, to which the petitioner is linked.
In fact, that systematic plan is expressed by: (i) the deliberate prosecution of ordinary crimes by military bodies (...); (ii) the enactment, during that term, of amnesty laws 26,479 and 26,462. (...).” [FN5]

[FN5] Peru Constitutional Court, Judgment of November 29, 2005 (re: S. Martín Rivas), file No. 4587-2004-AA/TC, p. 19, paras. 81-83.
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20. In the same Judgment, the Peruvian Constitutional Court added that, also in the case of Barrios Altos, in its opinion, "there are numerous objective elements which show that the prosecution of the petitioner for crimes against humanity (...) was not really aimed at investigating and punishing him in an effective way.” [FN6] That is to say, the Peruvian Constitutional Court itself set forth the manipulations, on the part of the military jurisdiction, to conceal a criminal State practice, and to guarantee the impunity of those who were liable.

[FN6] Ibid., p. 18, para. 78.
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21. Said Law denial was not disregarded - it could not be so - by this Court. In this Judgment in the case of La Cantuta, this Court, coherently with its Judgments of Barrios Altos (2001) and Almonacid et al. (2006), pondered, specifically regarding the legal concept of res judicata, that the principle of non bis in idem is not applied when the process, not independently or impartially instituted, boiled down to exempt the accused from his criminal liability, thus configuring and “apparent” or “fraudulent” res judicata (para. 153), which constitutes the Law denial itself.

22. Finally, the extensive and detailed Final Report of Peru´s CVR determines the facts which configured the State criminal practice during the period at issue. The cases of La Cantuta (1992), [FN7] Barrios Altos (1991), [FN8] Huilca Tecse (1992), [FN9] among others, are therein fully described with high degree of detail. When determining the “legal frame of forced disappearance in Peru,” the said Final Report of the CVR repeatedly took into account, when developing its arguments, the jurisprudence of this Inter-American Court.” [FN10]

[FN7] CVR, Final Report, op. cit. supra No. (3), sections 2(19), pp. 605-632, and 2(22), pp. 233-245.
[FN8] CVR, Final Report, op. cit. supra No. (3), section 2(45), pp. 475-493.
[FN9] CVR, Final Report, op. cit. supra No. (3), section 2(58), pp. 629-647.
[FN10] CVR, Final Report, op. cit. supra No. (3), section 1(2)(1), pp. 59, 63, 65, 67-68, 107, 118, 131-132, 143, 151, 178, 191, 212-213, 260, 380, 401, 404-406, 408, 410, 413-414, 417, 421, 436, 439, 467-468, 472-475, 480-481, 484, 498-500, 504, 510, 521 and 529.

II. Towards the End of Self-Amnisties: The Contribution of the Inter-American Court to the Prevalence of the Law.

23. In its Judgment in the Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) vs. Chile, Judgment of February 5, 2001), this Court stated that the general duty imposed by Article 2 of the American Convention requires that each State Party adopts all the necessary provisions so that what is established by the Convention is effectively fulfilled within the domestic law system, which means that the State must adapt its acting to the protection rules and regulations of the Convention (para. 87). Seven months later, the Court remembered said obiter dictum in its historical Judgment in the case of Barrios Altos, regarding to Peru (Judgment Construction of September 3, 2001), in relation to the "duty of the State to suppress, from its legal system, those rules in force which imply a violation" of the American Convention (para. 17), and added:

"The enactment of a law expressly contrary to the obligations assumed by the State Party of the Convention constitutes per se a violation of the latter and generates international liability of the State. Consequently, the Court considers that, given the nature of the violation of amnesty laws No. 26,479 and 26,492, the ruling of the Judgment on the merits of the case in Barrios Altos has general effects (...)" (para. 18).

24. In the case of El Amparo (Reparations, Judgment of September 14, 1996), regarding Venezuela, I stated, in my Dissenting Opinion, that the existence of a legal provision of domestic law itself can, per se, create a situation which directly affects the rights protected by the American Convention, due to the risk or actual threat that its applicability represents, without the need to expect the occurrence of detriment (paras. 2-3 and 6). In the same case of El Amparo (Interpretation of Judgment, Ruling of April 16, 1997), and in my subsequent Dissenting Opinion, I insisted in my understanding in the sense that

"A State may (...) have its international liability compromised, in my opinion, merely by approving and enacting a law in conflict with its conventional obligations of protection, or by the lack of adaptation of its domestic law to guarantee the faithful fulfillment of said obligations, or by the non adoption of the necessary legislation to fulfill the latter.
(...) The tempus commisi delicti would extend in such a way to encompass the whole period during which the national laws remained in conflict with the conventional obligations of protection, thus entailing the additional obligation to remedy the subsequent detriments resulting from such "continued situation" during the whole period under analysis" (paras. 22-23).

25. I reaffirmed the same position in my Concurring Opinion in the above mentioned case of "The Last Temptation of Christ"(paras. 2-40), where I pondered that, considering that the tempus commisi delicti is the same as that of the approval and enactment of a law incompatible with a human rights treaty, since then compromising the international liability of the State, the modifications in the domestic legal system of a State Party, necessary to its harmony with the rules and regulations of such a treaty, may constitute, within the context of a specific case, a way of non-monetary compensation under such treaty. The Judgment of the Court in this case was adopted on February 5, 2001.

26. A few days later, in an extraordinary period of sessions of this Court held in its central office in Costa Rica, a new chapter on this matter was opened. Due to a blackout in the main building in which the former deliberations room is located, the Court moved to its Library [FN11] building, where there was power (provided by a generator of their own); where it elaborated and adopted its historical Judgment in the case of Barrios Altos (merits), on March 14, 2001. I felt moved at that time, because it was the first time, in contemporary International Law, that an international court (as the Inter-American Court) set forth that amnesty laws (as Peruvian laws No. 26,479 and 26,492) are incompatible with a human rights treaty (as the American Convention) and have no legal effects (operative paragraph No. 4).

[FN11] At present, Joint Library with the Instituto Interamericano de Derechos Humanos (IIDH), that I was pleased to open.

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27. That is, they are flawed with nullity, ex tunc nullity and ab initio nullity, therefore lacking any and all legal effect. The abovementioned Barrios Altos Judgment is, at present, recognized in the specialized legal bibliography in different continents and in the jusinternationalist circles in the whole world, as a landmark in the history of International Human Rights Law. In that Judgment, the Court stated that

- "(...) Amnesty and prescription provisions, and the setting of liability exemptions with the purpose of preventing the investigation and punishment of those responsible for serious violations of human rights such as torture, summary executions, extra-legal or arbitrary executions and forced disappearances are inadmissible, and all of them are prohibited as they contravene rights than cannot be abolished which are recognized by International Human Rights Law.

(...) In the light of the general obligations consecrated in Articles 1(1) and 2 of the American Convention, the States Parties have the duty to take all the measures necessary so that nobody is deprived from legal protection and the exercise of the right to an effective and simple remedy, in the terms of Articles 8 and 25 of the Convention. That is why the State Parties of the Convention which adopt laws having this effect, such as the self-amnesty law, commit a violation of Articles 8 and 25, consistently with Articles 1(1) and 2, all included in the Convention. Self-amnesty laws lead to victims defenselessness and to the perpetuation of impunity, so that is why they are patently incompatible with the content and the spirit of the American Convention. This type of law prevents the identification of individuals responsible for violations of human rights, as the

investigation and access to justice are hindered, and the victims and their next of kin are prevented from knowing the truth and receive the corresponding remedy" (paras. 41 and 43).

28. In my Concurring Opinion in that Judgment on the merits of Barrios Altos, I pondered that

"To sum up, the so called self-amnesties are an inadmissible affront to the right to truth and the right to justice (beginning by the access to justice itself). They are openly incompatible with the general obligations –those that cannot be dissociated- of the States Parties of the American Convention to protect and guarantee the human rights the latter protects, assuring their free and full exercise (in the terms of Article 1(1) of the Convention), and also the adaptation of their domestic law to the international rules and regulations of protection (in the terms of Article 2 of the Convention). Furthermore, they affect those rights protected by the Convention, particularly the rights to a fair trial (Article 8) and the legal protection (Article 25).
With respect to self-amnesty laws, we have to bear in mind that their legality within the scope of domestic law, as they lead to impunity and injustice, are in flagrant incompatibility with the protection rules and regulations of International Human Rights Law, thus entailing de jure violations of human rights. The corpus juris of International Human Rights Law emphasizes that not everything that is legal within the domestic legal system is so in the international legal system, especially when higher values are at stake (such as truth and justice). Actually, the so called amnesty laws, particularly the perverse modality of the so called self-amnesty laws, although considered laws under a certain domestic legal system, are not so in the scope of International Human Rights Law. (...)
We do not have to ever forget that the State was originally conceived aiming at common welfare. The State exists for the human being, and not vice versa. No State can be considered above the Law, which regulations´ final addressees are human beings. (...) We have to firmly say and repeat it, as many times as necessary: in the scope of International Human Rights Law, the so called "laws" of self-amnesty are not actually laws: they are a mere aberration, an inadmissible affront to the legal conscience of humanity" (paras. 5-6 and 26).

29. Subsequent to the Judgment on the merits, the above mentioned Construction of Judgment in the same case of Barrios Altos, explained that the ruling by the Court regarding the merits, given that the nature of the violation by amnesty laws No. 26,479 and 26,492, "has general effects" (operative paragraph No. 2). Consequently, said laws of self-amnesty are inapplicable (in any given situation, whether before, during or after their alleged "adoption"), they are simply not "laws." The Court explanation has had, since then, a sensitive impact in the domestic legal system, not only of the Peruvian State, but also of other South-American States. Regarding to the responding Government in the cas d'espèce, as it is made clear by the Court in this Judgment of the case La Cantuta,

"the Judgment issued in the case of Barrios Altos is fully incorporated into the domestic legal system. (...) If that Judgment was conclusive that it had general effects, such declaration makes it ipso jure part of Peru's domestic law, which is shown in the fact that such Judgment has been applied and interpreted by state bodies.

The ab initio incompatibility of the amnesty laws with the Convention has generally materialized in Peru ever since it was pronounced by the Court in the judgment in the case of Barrios Altos; that is, the State has suppressed any effects that such laws could have had." (paras. 186-187)

30. Recently, the Inter-American Court took a new step in the evolution of the subject matter, in the same line of the Barrios Altos Judgment, in its Judgment on the case Almonacid Arellano y Otros vs. Chile (dated September 26, 2006). The Court declared that "when expecting to grant an amnesty to those responsible for crimes against humanity, decree law No. 2191 is incompatible with the American Convention and, therefore, lacks legal effects under said treaty" (operative paragraph No. 3). And the Court set forth that the respondent Government must guarantee that the above mentioned amnesty decree-law of the Pinochet regime, does not continue representing an obstacle for the investigation, prosecution and punishment of those who were responsible for violations of human rights in the cas d'espèce (operative paragraphs No. 5-6).

31. In my long Separate Opinion of the case Almonacid Arellano y Otros, I focused my arguments in three basic points, to wit: a) the lack of legal validity of self-amnesties; b) self-amnesties and the obstruction and denial of justice: the broadening of the material content of jus cogens prohibitions; and c) the conceptualization of crimes against humanity in the confluence between International Human Rights Law and International Criminal Law (paras. 1-28). I do not intend to repeat here what I developed in that recent Opinion, but only to refer to them and extract the following warning that I formulated in my Separate Opinion in the case of Almonacid:

"(...) Self-amnesties are not true laws, as they lack the generic characteristic of the latter, the idea of Law which inspires them (essential even for legal certainty), and their search for common welfare. They do not even look for the organization or regulation of the social relation for achieving common welfare. They just expect to subtract certain facts from justice, conceal serious violations of rights, and guarantee the impunity of some people. They do not satisfy the minimum requirements of laws; very much on the contrary, they are legal aberrations. (...)
(...) Self-amnesties are, in my opinion, the denial itself of the Law. They openly infringe general law principles, as the access to justice (which in my opinion belongs to the scope of jus cogens), equality before the law, the right to a natural judge, among others. In some cases, they have even concealed crimes against humanity and genocide acts. Considering that they prevent the concretization of justice for crimes of such seriousness, self-amnesties infringe. As far as they hinder justice from its execution for crimes of such seriousness, self-amnesties infringe jus cogens. (...)
Finally, self-amnesties violate the rights to truth and justice, they cruelly disregard the terrible suffering of the victims, hinder the right to proper reparations. Their perverse effects, in my opinion permeate the whole social tissue, with the resulting loss in the faith for human justice and real values, and a perverse distortion of the State purposes. Originally created for the realization of common welfare, the State boils down to an entity which exterminates members from segments of its own population (the most precious element of the State itself, its human substratum) before the most absolute impunity. From an entity created for the concretization of common welfare, it turns into an entity responsible for truly criminal practices, for undeniable State crimes" (paras. 7, 10 and 21).

32. Judgments of this Court in the cases of Barrios Altos (2001), Almonacid (2006), and La Cantuta (2006), constitute a decisive contribution of this Court towards the end of self-amnesties and the prevalence of the Law. I perfectly remember that, in the public hearing of September 29, 2006 in this case of La Cantuta, held in the Court´s house in San José de Costa Rica (my last public hearing as Incumbent Judge of this Court), the common concern, expressed by both the Inter-American Commission and by the counsel of the victims and their next of kin, as I understood it, was in the sense to guarantee the due remedies, among which the guarantee of non-repetition of injurious facts, -although their arguments regarding self-amnesty laws have not been converging or coincident.

33. The victims and their next of kin counsel (interventions of Ms. Viviana Krsticevic and Ms. María Clara Galvis, of CEJIL) firmly held that what was set forth by the Court in the Judgment of Barrios Altos was already directly incorporated in the domestic Peruvian legal system, and was convalidated by the constant practice of the Peruvian Judicial Power since then (excluding the military jurisdiction, the decisions of which lack “jurisdictional” characteristics). Also, the Inter-American Commission Delegate (Commissioner Paolo Carozza), lucidly and correctly stated that the amnesty laws of the Fujimori regime had to be abolished (term used by this Court in the Judgment of Barrios Altos) so as to make it clear that they never had validity regarding the American Convention, being contrary to the jus cogens (cf. infra).

34. Also, an equally lucid and substantial amicus curiae submitted by the Institute of Legal Defense -Instituto de Defensa Legal (IDL)- with offices in Lima, Peru, urged the Court to declare self-amnesty laws No. 26479 and No. 26492 inexistent (pp. 4 and 40), remarking that the international courts jurisprudence, among which that of the Inter-American Convention, has immediate effects, direct application and is binding, thus incorporating “directly in the Peruvian corpus juris" (p. 30). The said amicus curiae of the IDL added that those self-amnesty laws “are inexistent,” as they “exceeded the intangible limit (constitutional guarantee of human rights”, and were placed “in an extralegal and extraconstitutional scope” (p. 38). The amicus curiae of the IDL concluded that

"there is a repeated, consistent and uniform practice of the Peruvian Attorney General Office and the Peruvian Judicial Power in the sense that such self-amnesty laws lack legal effects and do not constitute an obstacle for starting the investigations, prosecution and punishment of human rights infringers; there is a set of decisions issued by the Constitutional Court understanding that, within the domestic scope and according to the text of the Peruvian Constitution, the procedural obstacles hindering the punishment of human rights violations are inadmissible, and that the jurisprudence of the Inter-American Human Rights Court is of direct application in the domestic legal system (...).
For the same reasons, it is not necessary that the Peruvian State adopts any additional provisions to those already assumed, in the domestic law, to guarantee the lack of legal effects of self-amnesty laws in an effective way. (...) In the particular case of the Peruvian self-amnesty laws, it is worth mentioning that, considering their non-existing condition, they are inefficient from their origin (as they were not part of the domestic legal system they produced no legal effect whatsoever)” (p. 39).

35. The above mentioned participants of the public hearing before this Court, as well as the aforementioned amicus curiae, expressed a common concern, and also a common purpose, even though through arguments of different nuances. I understand that the Inter-American Court has paid attention to this common concern and has contributed to this also common purpose, when determining, in a very clear way, that the so called self-amnesty "laws" "were unable to generate effects, do not keep them at present, nor can they be generated in the future." [FN12] Said "laws" of self-amnesty are not truly laws, but a legal aberration, an affront to the recta ratio.

[FN12] Para. 189, and operative paragraph No. 7 (emphasis added).

III. The Inadmissible Aggression against the Universitas.

36. There is another aspect in this case of La Cantuta that deeply moves me, at the time I complete 12 years as Incumbent Judge of this Court and 30 years as university Professor. [FN13] I find myself obliged to express my unbreakable faith in the Universitas, and my conviction that, in the cas d'espèce, apart from the State crime perpetrated in the victims detriment (a Professor and 9 university students) and their next of kin, an inadmissible aggression was committed against an institution of universality character: the University, - in this case in particular, the University of La Cantuta.

[FN13] Permanently settled in Brasilia, but as invited Professor in many of the main Universities in every continent.

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37. On July 6, 1953, the University of La Cantuta opened its doors; its name derives from the fact that "it was built in an ancient town that had the name of the Incas heraldic flower, which is cultivated along the Mantaro valley, with red and yellow tints." [FN14] The above mentioned University prepared future teachers for practicing in schools (high school level) of the country, that is, it had a social and teaching function (although it was already taken by military forces since May 21, 1991). [FN15]

[FN14] Efraín Rúa, El Crimen de La Cantuta - La Desaparición y Muerte de un Profesor y Nueve Estudiantes que Estremeció al País, 4th. ed., Lima, Universidad La Cantuta, 2005, p. 41.
[FN15] Asociación Pro Derechos Humanos (APRODEH), De la Tierra Brotó la Verdad - Crimen e Impunidad en el Caso La Cantuta, Lima, APRODEH, 1994, p. 9.

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38. But apart from the teaching and social function that it represents in each country, the University would hardly be realized without the supranational function - beyond the State - that belongs to it by an intrinsic demand. [FN16] At present, broad ways of communication and understanding are available for the new generations, more than in other times, for exchanging ideas, the refinement of the concentration capacity, discernment and criticism, intergenerational dialogue (between professors and students), to look for the construction of a fairer and better

world for future generations. We are summoned to rethink the whole conceptual universe within which we are trained, in our vision of both the international and national system, of the public institutions, starting with the State itself in a democratic society.

[FN16] As it is known, the Universities appeared in the European continent during the Low Middle Age, cultivating essentially scholastic reasoning and debating methods. By the end of the 14th Century, the concept of University approached this of today; during Renaissance, the term Universitas acquires the present meaning . The feeling of universality was encouraged by the use of Latin, by the culture of universal knowledge (to be spread everywhere), and by the gradual search of authors of every culture. As time went by (until the 18th Century), Universities looked for their legal autonomy.

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39. It is inadmissible that armed forces invade a university campus in the most possible arbitrary way. The campus is the space for free thinking, where the production and circulation of ideas must be preserved and cultivated. Along the centuries, the University was awarded the characteristic of alma mater ("madre nutricia," alma -soul- from Latin alere, which means feeding and growing), as a generator and promoter of ideas and knowledge, so as to engender and transform the human being by means of the knowledge, for him to be able to give answer to the challenges of the world in which he lives. The armed invasion is not the only way of aggression against the University as it was conceived along the centuries [FN17], but maybe it is the roughest aggression against the production and free circulation of ideas. In this case of La Cantuta, as already remarked, the State security agents invaded the university campus and broke in the houses of professors and students to kidnap and execute their victims in the name of the "security of the State." The Universitas itself was also attacked by the repression forces. The time for light searching was unduly taken by the State shadows heralds.

[FN17] Another form of aggression, which has regrettably become normal in our shadow times, is the so called "privatization" of public Universities as "State policy" (in a dreadful inversion of values). As a defender of public University (thus belonging to an extinguishing species), I consider teaching as a public asset, to be conveyed from generation to generation, and not goods to be sold to whoever can pay more. At present, in the neighborhoods of Latin-American cities, there is a "Private University" next to any bakery, willing to "teach", or, rather, to inform on anything, as long as they are well paid (with due respect for the bakeries which provide us, at an affordable price –almost a giveaway price-, our daily bread).

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40. A departing Judge of the Inter-American Court, -who thanks God never missed one single session and never excused himself from participating in any deliberation of the Court during his 12 years of service rendered as Incumbent Judge- is fully entitled to set forth, in this Separate Opinion, one of his many reminiscences regarding the arguments on this case. Little after the Fujimori regime I visited Peru as President of the Inter-American Court, for a series of events; at that time, when receiving the degree of Emeritus Professor granted by another University which suffered during the dark days of the said regime [FN18], in my speech of

September 13, 2001, at the President´s Office of the Universidad Nacional Mayor de San Marcos, among other things, I pointed out that

"After the times of shadow, those of light have come. But nobody can guarantee us -and this with relation to any country - that the shadows will not return. Should this happen, the only certain thing is that the light would emerge again, - as in the sequence of night and day, or day and night. In the same way that shadows appear when the light fades, the first rays of light arise from the last remains of darkness. The clear-dark tension, of progress mixed with regression, is inherent to human condition, as the ancient Greek (always so contemporary) remarked centuries ago with total lucidity in one of their greatest legacies to the evolution of human thought.
International human rights instruments have decisively contributed to wake up human conscience for the need to protect individuals in any and all circumstances. Events in Peru during the last months have revealed a true reencounter of Peru with its best tradition and legal thoughts (...). When this happens, we can say that the international human rights system has effectively reached the bases of the national society.
Nothing of what happened during the last months in this Latin-American country, so rich in legal culture and tradition, which today I am honored to visit, would have been possible without the admirable mobilization of the Peruvian civil society, and its impact on the public institutions. This shows the importance of the international instances of protection of human rights: they represent the last hope for those who had lost trust and faith in justice, mainly those defenseless, oppressed and forgotten.
There could hardly be, for a jusinternationalist, such a gratifying experience as the one I am living in these four days of visit to Peru. (...) This ceremony has great symbolic importance to me. I come from the Academy, to which I shall continue belonging. I belong to the University, the Universitas, which, by definition, has a universal vocation. As jusinternationalist, I uphold the principles of mankind reason above State reason." (...). [FN19]

[FN18] V.g., the military occupation of the Universidad Nacional Mayor de San Marcos in May, 1992. And to this, other acts of violence are added, such as, for instance, the case of the disappeared students of the Universidad Nacional del Centro in Huancayo; cf. "Huancayo y Cantuta: Dónde Están los Desaparecidos?", 4 Ideele Magazine (November, 1992) No. 44, pp. 13-14. Also, the crime of La Cantuta was attributed – as notorious and public – to a reprisal perpetrated by the Grupo Colina of extermination of senderistas, by the Tarata street attack; cf. U. Jara, Ojo por Ojo - La Verdadera Historia del Grupo Colina, op. cit. supra No. (1), p. 177.
[FN19] A.A. Cançado Trindade, "Speech by the President of the Inter-American Human Rights Court at the Celebrations during the 450th Anniversary of the Universidad Nacional Mayor de San Marcos (Appointed as Emeritus Professor)," 58 Revista de Derecho y Ciencia Política de la Universidad Nacional Mayor de San Marcos - Lima (2001) nrs. 1-2, pp. 729-730 and 733, paras. 21-24 and 33.

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41. Two years later, in a co generic ceremony in another Peruvian University, on November 18, 2003, presided over by the President of the Pontificia Universidad Católica del Perú (Dr. S. Lerner Febres), also President of the Comisión de la Verdad y Reconciliación Nacional (CVR) of Peru, I outlined, in my speech at that time

"the continued applicability of the people´s law, the humanity laws and the demands of public conscience, regardless of the raising of new situations (...).” [FN20]

Once again, the Universitas found its true vocation as nucleus of culture and irradiation of culture, of the free circulation of ideas, of the recognition of the necessary prevalence of the Law above the force, [FN21] of the intangibility of the rights inherent to the human being. After years of shadows, then the light came. The Universitas, as originally conceived, was in effect a center of cultural irradiation, of teaching and of transmission of culture.

[FN20] A.A. Cançado Trindade, "Hacia el Nuevo Jus Gentium del Siglo XXI: El Derecho Universal de la Humanidad", in A.A. Cançado Trindade Doctor Honoris Causa - Cuadernos del Archivo de la Universidad (No. 39), Lima, PUC/Peru, 2005, p. 38, and cf. pp. 30-41.
[FN21] Cf., Regarding that matter, A.A. Cançado Trindade, A Humanização do Direito Internacional, Belo Horizonte/Brasil, Edit. Del Rey, 2006, pp. 175-193.

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42. Along the 19th Century and the beginning of the 20th, together with several attacks suffered in numerous countries, the University tragically lost sight of the original sense of its vocation, as it gradually limited itself to a “specialized” professional research center, thus substituting culture, so important to life. In our times, the University is still attacked and shown as trivial, in many ways. In a renown manifest of 1930, in defense of the recovery of the University and its teaching and transmission of cultural subjects role, J. Ortega y Gasset warned:

"La vida es un caos, una selva salvaje, una confusión. El hombre se pierde en ella. Pero su mente reacciona ante esa sensación de naufragio y perdimiento: trabaja por encontrar en la selva 'vías', 'caminos'; es decir: ideas claras y firmes sobre el Universo, convicciones positivas sobre lo que son las cosas y el mundo. El conjunto, el sistema de ellas es la cultura en el sentido verdadero de la palabra; todo lo contrario, pues, que ornamento. Cultura es lo que salva del naufragio vital, lo que permite al hombre vivir sin que su vida sea tragedia sin sentido o radical envilecimiento.
No podemos vivir humanamente sin ideas. De ellas depende lo que hagamos (...). Es forzoso vivir a la altura de los tiempos y muy especialmente a la altura de las ideas del tiempo. Cultura es el sistema vital de las ideas en cada tiempo. (...) La Universidad contemporánea ha (...) [quitado] casi por completo la enseñanza o transmisión de la cultura.” [FN22]

[FN22] J. Ortega y Gasset, Misión de la Universidad (1930), Madrid, Rev. Occidente/Alianza Ed., 2002 [reed.], pp. 35-36, and cf. pp. 37, 40-41 and 53.

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43. Violence and aggression perpetrated against cultivation and the intergenerational transmission of ideas have assumed several forms. As pointed out in a book originally published in Bologna in 1991 (Il Passato, la Memoria, l'Oblio),

"(...) La historia de nuestro siglo, como bien sabemos, aunque tratemos de olvidarlo, está llena de censuras, supresiones, ocultamientos, desapariciones, condenas, retractaciones públicas y confesiones de traiciones innominables, declaraciones de culpabilidad y de vergüenza. Obras enteras de historia fueron rescritas borrando los nombres de los héroes de un tiempo, catálogos editoriales fueron mutilados, fueron robadas fichas de los catálogos de las bibliotecas, fueron reeditados libros con conclusiones distintas de las originales, pasajes enteros fueron suprimidos, fueron antologados textos en un orden cómodo que permitiera documentar inexistentes filiaciones ideales e imaginarias ortodoxias políticas.
Primero se quemaron libros. Después se los ha hecho desaparecer de las bibliotecas con el intento de borrarlos de la historia. Primero se eliminaron innumerables seres humanos, después se trató de suprimir esa supresión, de negar los hechos, de obstaculizar la reconstrucción de los acontecimientos, de prohibir el recuento de víctimas, de impedir el recuerdo. (...).” [FN23]

[FN23] P. Rossi, El Pasado, la Memoria, el Olvido, Buenos Aires, Ed. Nueva Visión, 2003 [reed.], p. 33.
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44. A University cannot fulfill its function if the free flow of ideas of each time, which constitutes culture, is inhibited by the State security forces. The armed invasion of a University, apart of being a serious crime in detriment of the victimized university students (kidnapped, tortured, executed and disappeared), is an obscurantist aggression against a supranational institution (the Universitas), - an aggression which affects the whole social tissue. During the 20th Century, several Universities in different places around the world were attacked. Numerous Universities, in a certain moment of their existence, were violated and forced by the State security forces. [FN24]

[FN24] As it happened, inter alia, during the first years of its existence, also with the University where I lecture International Law since three decades ago: the University of Brasilia.
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45. Some of these aggressions have become renown, and today they appear in the specialized bibliography of Human Rights International Law. It is the case of the University of La Cantuta, brought to the knowledge of this Inter-American Court. [FN25] Others, which did not reach the Court, have left a lesson; for instance, to evoke another renown episode, in a more distant past,

"The entering of police horses in the Universidad de Buenos Aires and the violent and ferocious repression of the so called 'noche de los bastones largos' –night of the long sticks- of July 1966, constitutes a fundamental landmark of the repressive political project of the armed forces. All these events contributed, to a great extent, to push young people of the middle class towards the fields of “national and popular” opposition. [FN26]

Despite the repression against Universities, the freedom of spirit has reacted against the repressing State forces, which have damaged the ideals of the new generations with the force of

their ideas and purpose to build a better world than the one which was given to them. After the shadows, the light came.

[FN25] According to a recent account, “President Fujimori had decided not to leave any free space to his opponents. Thus, he ordered his parliamentary majority to set forth the reorganization of the Universities of San Marcos and La Cantuta, places where the students had claimed his responsibility in crimes against humanity” ; Efraín Rúa, El Crimen de la Cantuta - La Desaparición y Muerte..., op. cit. supra No. (14), p. 276.

[FN26] M. Raffin, La Experiencia del Horror - Subjetividad y Derechos Humanos en las Dictaduras y Posdictaduras del Cono Sur, Buenos Aires, Edit. del Puerto (Colección Tesis Doctoral, No. 5), 2006, p. 147.

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46. The Universitas is inviolable. The forces of repression, not satisfied with victimizing thinking human beings, along many years also eliminated the most faithful partners of the latter: the books. They destroyed or burnt entire libraries [FN27], but they could not prevent the raising of emancipating human ideals. Along the centuries, the oppressors killed thinking human beings, they burnt their remains (as in this case of La Cantuta); burnt the faithful partners of those who thought -the books-, but they could not extirpate the free thinking, the ideals of young people, the right to dissent, the freedom of spirit.

[FN27] Cf., regarding that matter, v.g., F. Báez, História Universal da Destruição dos Livros, Rio de Janeiro, Ediouro, 2006, pp. 17-376.

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47. As after the shadows the light gradually appears, the chiaroscuro of the life of the individuals and the people, of human existence, we must not disregard that, in this Judgment, the Inter-American Court has set forth “that in June of this year the President of the Republic has apologized to the authorities of the University of La Cantuta" (para. 233). Also, the Court has taken the provisions necessary so that the suffering of the Professor and the nine students killed or disappeared remains not only in the memory of their next of kin and beloved human beings but also in the collective memory, as a way to honor the victims and resist the erosion of time.

48. As it did in its recent Judgment in the case of La Prisión de Castro Castro, also in this Judgment of the case La Cantuta, the Court has equally valued the existence of the monument and public site called "El Ojo que Llora" (the Crying Eye),

"created at the request of civil society and with the cooperation of the State authorities, which constitutes an important public recognition to the victims of violence in Peru. However, the Court considers that the State must guarantee that, in the term of a year, the 10 people declared as executed victims or victims of forced disappearance in this Judgment are represented in the said monument, in case they are not already represented, and if their next of kin wish so. (...)" (para. 236).

IV. The Inadmissibility of Violations against Jus Cogens.

49. As a conclusion of this Separate Opinion, my last Opinion as Incumbent Judge of this Court, I allow myself to return to the starting point. State crimes entail serious legal consequences. At the time I finish writing this Separate Opinion, there are twelve requests of extradition of former President A. Fujimori submitted by Peru to Chile [FN28], among which, the one corresponding to the liability for the events in this case of La Cantuta is included. Recently, in another case decided by this Court, that of Goiburú et al. vs. Paraguay (Judgment of September 22, 2006), the horrors of the so called "Operación Condor" were revealed, in the context of which State crimes were committed in a beyond-the-border or interstate level. [FN29] At present, the reaction of legal conscience is shown in the recognition that the general duty of investigation, to guarantee the respect for the human rights consecrated in the American Convention (Article 1(1)), also applies in an interstate level, in the exercise of the collective guarantee by the States Parties in the American Convention (as it is the case of Chile and Peru).

[FN28] As remembered by this Court's Judgment, para. 80(91).
[FN29] A matter that is analyzed in my Separate Opinion (paras. 1-68) in that case.

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50. In my Separate Opinion in the recent case of the Pueblo Bello Massacre (Judgment of January 31, 2006) I developed (as in several of my former Opinions) my arguments regarding the broad scope of the general duty of guarantee (Article 1(1) of the Convention) and the erga omnes obligations of protection of the Convention (paras. 2-13). The Court, in its Judgment in this case of La Cantuta, when pointing out that the facts of the cas d'espèce have infringed imperative laws of International Law (jus cogens), has positively esteemed the efforts of the respondent Government to attend "its duty -derived from its obligation to investigate - to request and impel, through appropriate judicial and diplomatic measures, the extradition of one of the main defendants" (paras. 159-160). An approximation or convergence between International Human Rights Law and International Criminal Law can be developed therefrom.

51. When underlining the broad scope of Article 1(1) of the American Convention, the Court has immediately after affirmed the obligation of the States Parties to investigate human rights violations and to prosecute and punish the responsible participants (para. 160). The fulfillment of such an obligation gains importance before the seriousness of the facts of this case of La Cantuta, eloquently emphasized at the very beginning of an account in the case:

"As opposed to what is expected, impunity does not conceal the crime, it increases it. The chain of crimes by the concealers is added to the crime committed by the perpetrators – material and intellectual. Kidnapping, cold-blooded murdering, concealed burial and body incineration are completed by lying, denial and delay in justice administration. Except for honorable cases, prosecutors and judges, non executive members, members of congress, military and civil governors have become part of the large file of the accessory impunity with which it is expected to return the case of the nine students and the professor of the Universidad de la Cantuta to the mass grave, cold-blooded murdered at the dawn of July 18, 1992." [FN30]

[FN30] APRODEH, De la Tierra Brotó la Verdad..., op. cit. supra No. (7), p. 5.

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52. It was a State crime which involved, with animus agressionis, a chain of command, composed by several agents of the public power (of the different State powers), from the President of the Republic to the perpetrators of the extra-legal executions and other human rights violations. When analyzing the legal consequences of the said violations, this Court has pointed out, in this Judgment of the case La Cantuta, that

"Before the nature and seriousness of the facts, and within a context of systematic violation of human rights, the need to eradicate impunity appears before the international community as a duty of interstate cooperation for such effects. Access to justice constitutes an imperative rule of International Law and, as such, it generates erga omnes obligations for the States to adopt the necessary provisions so as not to leave those violations without punishment, whether exercising its jurisdiction to apply its domestic law and International Law to prosecute and, eventually, penalize those responsible for such facts, or cooperating with other States that do so or attempt to do so. The Court remembers that, under the mechanism of collective guarantee set forth in the American Convention, jointly with regional and universal international obligations on the matter, the States Parties of the Convention must cooperate with each other in that sense" (para. 160). [FN31]

[FN31] And also cf. paras. 239-241, regarding the intangibility of imperative rules of International Law (jus cogens) and the role of education in human rights.

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53. Consequently, the broadening of the material content of the jus cogens is consolidated in this Judgment, as it encompasses the right of access to justice lato sensu, without which there is simply no Constitutional State. I honestly hope that the Court maintains this position in the future, and does not admit any attempt to stop its guaranteeing and emancipating jurisprudence of the human being regarding the matter, as this scope of protection of the human being does not imply nor admits steps back. I sincerely hope that the Court always keeps progressing in its jurisprudential construction regarding the imperative rules of International Law.

54. As a reaction of the universal legal conscience (which to me constitutes the ultimate material source of the whole Law), in our times a truly universal legal system of absolute prohibition of torture, of forced disappearances of people and of summary and extra-legal executions has been constituted. The said prohibition belongs to the scope of jus cogens. And said crimes against humanity (located in the confluence of International Human Rights Law and International Criminal Law) as pointed out by the Court in its Judgment in the case of Almonacid and has just repeated so in this Judgment of the case La Cantuta, affect not only those victimized, but also humankind as a whole (para. 225).

55. Thus the State duty of investigating, suing and punishing those who were liable, in order to avoid the repetition of such serious facts as the ones of this case. Furthermore, the Court added that,

"(...) The State shall not allege any law or domestic law provision so as to be exempted from the Court order to investigate and criminally punish those responsible for the events of La Cantuta. Particularly, as it has proceeded since the passing of Judgment by this Court in the case of Barrios Altos versus Perú, the State shall not apply amnesty laws again, as they generate no effects in the future (...), nor shall it allege prescription, non-retroactivity of criminal law, nor the principle of non bis in idem (...), or any other similar responsibility exemption so as to remain free from its duty to investigate and punish those responsible. (...)
(...) Also, by virtue of the effectiveness of the collective guarantee mechanism set forth under the Convention, the States Parties must cooperate with each other so as to eradicate the impunity of the violations committed in this case through the prosecution, and, should it be the case, the punishment of the responsible parties" (paras. 226-227).

56. Legal conscience has finally awaken to reveal at present with transparence the occurrence of true State crimes, which are brought before a human rights international court (as this Inter-American Court), and to promptly react against them, -which would probably be unthinkable, or could not be anticipated, some decades ago. However, this is what happens today, as testified by the Judgments of this Court in the cases of Barrios Altos vs. Peru (of March 14, 2001), of Myrna Mack vs. Guatemala (of November 25, 2003), of Masacre de Plan de Sánchez vs. Guatemala (of April 29, 2004 and November 19, 2004), of Masacre de Mapiripán vs. Colombia (of March 7, 2004), of the massacre of Comunidad Moiwana vs. Surinam (of June 15, 2005), of Masacres de Ituango vs. Colombia (of July 01, 2006), of Goiburú y Otros vs. Paraguay (of September 22, 2006), of Almonacid Arellano y Otros vs. Chile (of September 26, 2006), and of Prisión de Castro Castro vs. Peru (of November 25, 2006), among others.

57. Along this jurisprudencial evolution, I have insisted, in successive Opinions I let the Court know, in the occurrence of true State crimes, with their legal consequences. Not long ago, in my Separate Opinion in the case of the Castro Castro Prison (of November 25, 2006), in this same ordinary term of sessions of the Court, I made a warning regarding the recurrence of the State crime and to remember the forgotten legal thought on the matter (paras. 40-51). And I added that the conception of a State crime

"entails to the "progressive development" itself of International Law. It presupposes the existence of former and above the State rights , the violation of which, to the detriment of human being, is particularly serious and damages the international legal system itself. The latter provides universal values, as it inhibits said serious and damaging violations, and it seeks to guarantee the international ordre juridique.
Furthermore, it expresses that the belief that certain behaviors -which constitute or are part of a State policy - are inadmissible and generate the aggravated international liability of the State, with its legal consequences. It signals the path to be followed towards the construction of an organized international community, of the new jus gentium of the 21st century, of the International Law for humankind." (...)

The State crime effectively entails legal consequences, -this being inevitable-, with direct incidence in the reparations owed to the victims and their next of kin. One of the consequences consists in the lato sensu "punitive damages," these being conceived beyond the purely monetary sense to them improperly awarded (in certain national jurisdictions), as certain reparation duties that the liable States must assume by criminal acts or practices; said duties may configure an adequate response or reaction of the legal system against the State crime.
They are obligations to perform. And, among these, there is the obligation to identify, trial and punish the perpetrators of State crimes who, by their acts (or omissions), incurred in international criminal liability, apart from compromising the international liability of their State, in the name of which they acted (or omitted), in the execution of a criminal State policy. It is not the case of purely individual acts (or omissions), but a criminality organized by the State itself. Consequently, it becomes necessary to take jointly into account, the criminal international liability of the individuals involved as well as the international liability of the State, essentially supplementary; the aggravated international responsibility of the State in question corresponds to the State crime"; (paras. 52-53 and 55-56).

58. In cases such as this one, where the State power apparatus wasimproperly used to commit State crimes (in a shocking distortion of the State purposes), constituting inadmissible violations of the jus cogens, to then conceal said crimes and keep its agents -perpetrators of those crimes- in impunity, and the victims´ next of kin (also victimized) in the most complete desolation and desperation, -in cases as those of La Cantuta and Barrios Altos, in which the crimes against human rights were perpetrated in the context of a proven practice by the State,- the patient reconstitution and determination of the facts by this Court constitute, themselves, one of the ways of providing satisfaction - as a form of reparation - owed to the victims´surviving next of kin (who are also victims), and a way to honor the memory of the deceased victims.

59. The jus cogens resists State crimes, and imposes sanctions to them, by virtue of the prompt commitment of the international aggravated liability of the State. As a consequence of said crimes, the owed reparations assume the way of different obligations to perform, including the investigation, trial and punishment of those responsible for the perpetration of the State crimes (by action or omission). The Law does not cease to exist by the violation of its rules, as the "realists" expect to insinuate, degenerated by their inevitable and pathetic idolatry for the established power. Very much on the contrary, the imperative law (jus cogens) immediately reacts against those violations, and it imposes sanctions.

60. For years, within this Court, I have insisted upon the need to recognize and identify the jus cogens, and I have elaborated, in several Opinions (both in adversarial and in consulting functions for the Court), the doctrinal construction of the application of the material content of the jus cogens and the corresponding erga omnes obligations of protection, in both their horizontal (vis-à-vis the international community as a whole) and vertical (encompassing the relations of the individual with the public power and with non-State entities and other individuals). With this, under the American Convention, the concept of "victim" itself has evolved and expanded, and so have the parameters of protection owed to the justiciable ones and the circle of protected people.

61. I feel grateful because the Court has adopted my reasoning, which today is an acquis, a conquest of its jurisprudence constante on the matter. Now that my time as Incumbent Judge of this Court expires, a Court which has assumed a vanguard position among the contemporary international courts regarding to this matter in particular, I feel entirely free to point out that this is an advance that admits no steping back. I insist (considering that very soon, on January 1, 2007, the time to silence in my present office shall come) that this Court cannot let itself stop or regress its own jurisprudence regarding imperative law (jus cogens) within this scope of protection of the human being, regarding both substantive and procedural law.

62. With this Judgment of the Court in the case of La Cantuta, a historical cycle of rendering of justice by this Court comes to an end, which has revealed that the prevalence of Law is affirmed even in the most adverse conditions for the bearers of human rights - the human being, subject of International Law, even in a status of complete defenselessness, - as it was revealed, for instance, in the cases tried by this Court which took place during the Fujimori regime (Barrios Altos and La Cantuta, among others), the Pinochet regime (Almonacid), and the Stroessner regime (Goiburú y Otros) within the context of the sinister "Operación Cóndor." On my part, I close with nostalgia this unforgettable period of services rendered and of being personally fulfilled as Encumbent Judge of this Court, period that could not be more gratifying, in the never ending learning process provided by the search -against all kinds of adversity- of the right to the truth and justice, as well as the never ending search of the sense of life, of human existence.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary

CONCURRING OPINION OF JUDGE AD HOC FERNANDO VIDAL-RAMÍREZ

The truthfulness of the facts has been acknowledged by the Peruvian State, and that acknowledgement also entails that of its liability before the States, which are part of the Inter-American System of Protection of Human Rights.

As accurately expressed by the Judgment, the acknowledgement by the State constitutes a positive contribution to the principles that inspire the American Convention; however, the Judgment has also pondered the need of determination of the facts and causes and consequences of its international liability.

The facts and their consequences, occurred in the decade of the 90s have violated the right to life, to personal integrity and liberty, as well as the right to judicial guarantee and protection, and to that we have to add the non-fulfillment of the obligation of not passing laws adversarial to the American Convention on Human Rights and which are oriented to prevent the effective exercise of the rights and liberties that the latter consecrates, as it was expected to apply amnesty laws, the inefficacy of which has been definitely established ad initio.

The consequences of these facts, which violate the principles and rules that inspire and consecrate the Inter-American System, determine the reparations that the Peruvian State, by virtue of its historical continuance, must fulfill. The recognition of liability for the facts occurred in the interregnum of the 90s -even if later on recognized by the subsequent direction of the State with praiseworthy sensitivity- does not exempt it from international liability.

The historical continuity of the State thus determines the assumption of responsibilities and duties generated by international treaties, especially those oriented to the preservation and enforcement of human rights, which must be fulfilled at all time. This reflection has motivated my Opinion and so I certify.

Fernando Vidal-Ramírez
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary