

## DISSENTING OPINION OF JUDGE ORIHUELA-IBERICO

### I

### II

1. Regarding my **dissenting opinion** on the judgment of September 19, 1996 on Reparations in the Neira Alegría *et al.* case, which concerns the first point of its operative part, I must say that my opinion merely questions the amount of the indemnity of US\$154,040.74 to the next of kin of the victims in the instant case. The purpose of this judgment must be to establish the amount of an indemnity already ordered by the judgment on the merits of January 19, 1995.

2. Paragraph 42 of the judgment on reparations states that "*[a]lthough no proof of the amount of the expenditures has been submitted, the Court deems it fair to award each of the deceased victims' next of kin an indemnity in the amount of US\$2,000.00 as compensation for the expenditures incurred in their various petitions before the national authorities.*"

3. As regards moral damages, although in paragraph 56 of this judgment, the Court declares that "*a condemnatory judgment constitutes **per se** adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights ...*," it adds, "*However, it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the state, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve to be paid fair compensation.*" Paragraph 58 of the judgment states that "*[i]n the light of the foregoing, the Court, taking all the special circumstances of the case into account, concludes that it is fair and just to award an indemnity of US\$20,000.00 to each of the families of the deceased and to each of the survivors.*"

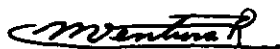
4. The reasons for my opinion with regard to paragraphs 2 and 3 above can be expressed together, since both those paragraphs are founded on the Court's decisions for reasons of equity. This is a subjective matter with which I am not in agreement, believing as I do that those amounts could have been determined in the light of the actual economic situation prevailing in the country. This situation is revealed in the evidence presented by the Government of Peru, which attests to the acute inflation during the years in which the El Frontón incidents took place and those that followed.

5. As far as the indemnity for "loss of earnings" is concerned, paragraph 50 of the Court's judgment on reparations states that to arrive at an appropriate amount for the material damages suffered by the victims, "*for reasons of equity and in view of the actual social and economic situation of Latin America, [the Court] fixes the amount of US\$125.00 as the victims' probable income, and therefore as the monthly figure to be used for calculating the correct compensation.*" It adds that "[o]nce the calculation has been made, 25 percent shall be deducted for personal expenses ... The interest accruing from the date of the events up to the present shall be to that amount."

This means that the Court does not take into account the statistics on Minimum Living Wages (Salaries) for 1986-1995 from the Ministry of Labor and Social Welfare, submitted by the Government of Peru (F. 1029 to F. 1032). Had it done so, the amount of the compensation would have been considerably lower than that established in paragraphs 51 and 52 of the judgment on reparations. Nor should it have invoked, as stated, "*reasons of equity and the actual economic and social situation of Latin America,*" when examining a specific case in one country and not in a region as a whole.



Judge Orihuela-Iberico  
Judge *ad hoc*



Manuel E. Ventura-Robles  
Secretary