

**SPEECH DELIVERED BY DR. RODOLFO PIZA-ESCALANTE,
PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,
ON THE OCCASION OF ITS INSTALLATION, ON MONDAY, SEPTEMBER 3, 1979,
AT THE NATIONAL THEATER OF COSTA RICA.**

It is not often that Providence offers men the privilege of being active participants in the making of history and it is rarer still to be able to participate in that history which moves towards the horizon, perhaps never reached though always within reach; the history of a humanity which is closer to the pure attributes of what non-believers call the Ideal and believers call God: Justice and Love.

We, the first Judges of this first Inter-American Court of Human rights, are today very aware of this rare privilege which we have come to share with you, representatives of Costa Rica, of the Americas and of the world, in such an important a field as that of the fundamental rights and liberties of man, surely the most crucial and long—lasting for mankind, in one of whose most transcendental moments it has fallen upon us to live and, therefore, to play some role: victim or victimizer, loser or winner, spectator or actor. . . but the role is almost always that of victim, loser or mere spectator of our own drama for those of us who belong to the so—called Third World, or Developing World, as we poor countries are euphemistically called by the rich who are ashamed of our poverty because of their guilt for the part they play in it.

We are particularly aware of this privilege because in launching the activities of the Inter-American Court of Human Rights we are opening a new era of history for our American continent; however, we are fully conscious that we are barely crossing the threshold of that new era; that we still have before us the entire journey that must be made; and that it is possible that at the end of the road we shall encounter another door which we shall be forced to open in order to start a new cycle, though one that is loftier and more complete.

We feel, then, extremely privileged, for although when we look towards the future we perceive the enormity of the distance still to be covered in man's fight for his fundamental rights and liberties, it is also true that if we look back we can see the trail of miseries we have managed to shake off in our long pilgrimage toward better ways and standards of human life, ever since man —that sick animal described by Unamuno— rose on his hind legs, freed his arms, broadened his chest, made room in his head for the human brain, and invented the word «we» in order to become involved in the life of his fellowmen and to permit them to do likewise in his own life, with all the positive and negative effects of coexistence.

The Inter-American Court of Human Rights, which we are today solemnly installing in San José, Costa Rica, is, in the first place, the historic culmination of an important phase in the long battle fought by the American community for the fundamental rights and liberties of man. This is a battle which, of course, has involved the whole of humanity ever since the philosophers of old, in their search for basic truths, discovered

in the human being an entity that was entirely different from all other visible ones and, consequently, a bearer of special dignity. This was particularly true from the moment that the Mediterranean civilizations in general, and Christianity in particular, definitely gave that sublime being, man, its roots in the very essence of God. In this sense, whatever our religious convictions, we shall always feel admiration for the two first chapters of that history: the first, the proposition that, according to the Bible, God made to himself when he stated in Genesis: «Let us create man to our own image and likeness»; the second, when God himself, personally and committing himself to the world, «was made flesh, and lived among us,» thus granting to us His own dignity as a supreme guarantee of what we are and what belongs to all men, and which results from our own nature —human and divine at the same time— and is, as a result, above all earthly authority.

It is true that many centuries were required for these inspiring principles to be truly digested before human rights, in the language of juridical science, were recognized in our legal codes: but the time finally came, and mainly through the English bills of rights, the great achievements of the imperial Spanish law, the declaration of rights of the American and French revolutions, they began to spread throughout the civilized world, becoming the touchstone of modern constitutional law.

It was not until the XIX century and the first part of this century that the original concept of these rights «of Liberty» «in the face of the State» (which my friend Dr. Vasak so accurately describes as «first generation rights») was broadened with the concept of «second generation human rights», «by action of the State», derived from the principle of equality and referred to in modern texts as economic, social and cultural rights. And already one hears of «third generation human rights» derived from the principle of fraternity or solidarity among men and nations, such as the rights to peace, to development, to the environment and to participation in all things that are the common heritage of humanity.

It is true that, apart from earlier flashes, it was not until after the Second World War that human rights took the historic step of reaching an international dimension. And it is here precisely that our America places itself at the forefront of man's fight for liberty; months before the United Nations General Assembly promulgated the Universal Declaration of Human Rights on December 10, 1948, the Organization of American States in Bogotá had issued the American Declaration of the Rights and Duties of Man, the Inter-American Charter on Social Guarantees and other documents of similar importance; among these, there was a resolution asking the Inter-American Juridical Committee to draft a statute for an Inter-American Court for the protection of the rights of man. From that point on, evolution has been, though slow, constant and consistent.

There have been two important landmarks in this gradual evolution: The first was a series of resolutions passed by the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the OAS, held in Santiago, Chile in August, 1959, which ordered the preparation of a draft Inter-American Convention on Human Rights which would contemplate the creation of an Inter-American Court and which created what would later become a partner of the Court; the Inter-American Commission of Human Rights. The second landmark was the OAS Specialized Inter-American Conference which was held ten years later at this very spot, here in the National Theater of the capital of Costa Rica, in November of 1969, and which gave birth to our charter: the American Convention on Human Rights, which, to the great honor of Costa Ricans, also bears the name of Pact of San José.

It would seem that the rhythm followed by our disturbed continent is marked by decades: it took nine years for the American Convention to receive the eleventh ratification which finally allowed it to enter into force on July 18, 1978, and a full ten years for the States Parties to the Convention, at an OAS Special General Assembly held on May 22nd of this year, to form the Court, so that it could hold its first meeting on June 29 and 30 in order to elect its officers and pave the way for its installation today, September 3, in San José.

People with sharp tongues like to say that we of the legal profession specialize among other, uglier things, in making simple realities of life difficult. I don't know how much truth there is in this statement, but I am afraid that this time I shall have to commit, albeit knowingly, that same sin in order to state -as a jurist and as a judge- what simple people and, above all, people who have actually suffered or whose loved ones have suffered violations of human rights which are unfortunately so frequently committed, accept and understand without needing much explanation: why the installation of the Inter-American Court of Human Rights can be likened to the culmination, not of the fight for human rights which has barely started, but of the effort to provide such rights with the necessary documents and institutions, without which success would be either impossible or much more difficult to achieve.

Simple people know by intuition that a court of human rights is essential to this design and that this Court, at the very summit of the system, is the only thing that can give it cohesion and permanence. We jurists have the following explanation: a juridical system can only be worthy of the name if it constitutes a system of standards for human conduct, which though admittedly vulnerable to violation because they are directed to the free conscience of man but it must also operate on the basis of two fundamental premises: one, the general acceptance of those norms by the community to which they are directed; the other, the existence of a socially organized and efficacious system which would at the same time resolve any controversies arising from such standards and repair the injustices resulting from their violation. This is precisely the function and importance of courts of justice and, at the same time, their tragedy and frustration.

Their function and importance because without those courts, justice cannot shine forth with the security and permanence it needs; their tragedy and frustration because the best courts of justice are worthless if men and the community in which they live lack the moral strength to adhere to their conduct. And this statement is valid as regards both international and domestic law.

In view of the above, when I express the enthusiasm with which the judges of the Inter-American Court welcome this day, and as we prepare to fulfill our duties with the love and commitment of crusaders, I feel that I must also make some important observations with regard to both the limitations and the possibilities we face. Not only because they are the limitations and possibilities of that same American Convention on Human Rights which provides the institutional framework of our Court, but also because they are also the limitations imposed on us, and the possibilities offered to us, by the political and juridical situation of the continent and of the people, men and governments, who compose it. And, as if all that were not enough, because they are the limitations and possibilities that we ourselves have as judges, for we are but human beings who, however much we might so wish, cannot completely divest ourselves of our personal, cultural, intellectual and even national limitations and possibilities, which are inherent our status as Americans.

As regards the institutional aspect, it is important to bear in mind that all our authority, our very existence as the Inter-American Court of Human Rights, springs from, and is bound by, the terms of the Pact of San José which is, in turn, because of its international character, an instrument of compromise and of minimum standards. We would be unwise, then, to encourage the easy and optimistic conviction that because we have an American treaty, we have at our disposal an ideal instrument for the protection of human rights, of all human rights, in all their scope and depth; and we would be even less wise if we were to stimulate the legitimate impatience of those who suffer, allowing them to believe that all has been solved. That is not the case. And it is not the case not only because the rights specified in the Pact are the bare minimum that it was possible to obtain while conciliating differences among the nineteen states which have signed it (even though it proved impossible to conciliate the differences of all those who did not even sign the document), but also because, from the procedural point of view, it has not yet proven possible to establish speedy, agile mechanisms which would allow the Court to fulfill the ideal of prompt and efficient justice as it would wish. Nor has it been possible to obtain recognition for the true holder of those rights - man - as a full subject of international law, and consequently, with direct access to the Court, a condition which he had under the terms of the Central American Court of Justice.

As regards the political and juridical situation of the American continent, we cannot ignore the coexistence of cultures, traditions, races and languages, with differences which in some cases date back to centuries before the Columbus, and which are also deeply embedded in the people themselves as a result of the clash between, aboriginal and European civilizations and cultures; nor can we ignore, above all, the presence of very disparate political regimes, diverse socio-economic structures, complex geographical, geological and even climatic contrasts, etc. Ever since our Independence, all these factors have been conspiring so that antagonisms, diverging interest and mistrust have more force than the identity of ideals that gave us our political liberty. In this sense, the Pact of San José itself is an eloquent example of this great difficulty: of 28 member states of the OAS, one has been temporarily excluded from the inter-American system, another eight have not even signed the Pact, and of the nineteen which have, after ten years only fourteen have ratified it. Of these, only one - Costa Rica - has formally recognized the jurisdiction of the Court in general.

These limitations, which must be mentioned so as not to raise hopes unrealistically, have, nevertheless, encouraging possibilities which compensate for them. We have only to stop and consider that the Pact of San José also opens broad paths for those judges who wish to take them, as we indeed wish to do.

These compensations are, for example, the possibility of giving the human rights contemplated by the Pact a modern juridical interpretation, well-defined and firmly based on principles, rather than the narrow, grammatical and formalistic interpretation on the peddler; of giving a correct interpretation to the powers of the Court, without demanding the prior exhaustion of internal legal remedies when those remedies are irrationally slow or inappropriate, in light of the urgency and importance of the violation presented; of obtaining ever stronger cooperation and reciprocal understanding between the Court and the Inter-American Commission; or of courageously making use of the attributes of the Court to order provisional measures in urgent cases so as to avoid irreparable damage, at the outset of a case or even before, if the Commission should so request, as is authorized by the Pact. (This provision, a novel and original one for the inter-American system, is of great importance and owes its existence to the initiative of Ambassador José Luis Redondo Gómez, whom we have invited to share our platform today so that he may receive the recognition he so richly deserves).

Other compensations which offer great hope are: the possibility of making frequent use of the consultative jurisdiction of the Court, which is accessible to all the agencies of the OAS and to all its member states, even those which are not parties to the Convention or which have not accepted the binding contentious jurisdiction of the Court; or that of opening up by regulatory measures a way for individuals themselves to appear before the Court, through an indirect legalization of what the Pact does confer, at the initiative of the Commission before whom the individual is entitled to appear personally to present his complaint; or that of actively encouraging the case by case acceptance permitted by the Convention for each of the States which have not yet accepted the binding general jurisdiction of the Court.

There are many other excellent possibilities that basically depend on only two things: what the American states want the Court to be (perhaps the least important factor), and what we judges want to make of it, with the backing of the people themselves (the main point). The solution lies in deciding whether we are determined to act impartially and with justice, to abandon the comfortable but irresponsible position of the traditional judge, a mere spectator and passive participant, substituting it with that of a new judge, truly committed to justice, ready to go out and seek it valiantly and aggressively, and to grant it also valiantly and aggressively when his moral conviction so dictates, setting aside the petty trickery of grammar and procedures.

I have for a long time known that I am ready to accept this challenge and to devote myself to this commitment; and although I do not know my fellow judges as well, what I know of them has convinced me that they, too, are ready.

In these few short months, I have seen them face up to their duties with the sense of responsibility of true jurists, with unshakeable honesty and an independence and impartiality bordering on intransigence. In this regard, I believe I can state without a doubt, on behalf of us all, that just as we all share the conviction that any public office morally and legally obliges one to postpone all personal interests, even personal affections, so also, in our position as international judges, do we accept the additional sacrifice of likewise postponing the most sublime interests and affections of our own nationality.

It is for this motive, Mr. President, that I am addressing you and the highest officials of the Costa Rican government as «Your Excellencies», a form of address which is by law forbidden me as a Costa Rican, but which, as an Inter-American Judge it is my duty to utilize, for when acting as Inter-American Judge I am not permitted to act as a Costa Rican.

This, however, in no way inhibits me from expressing the deep satisfaction and pride that I feel, as a Costa Rican and as a judge (because in this case both aspects harmonize and unite), that my country should have been the one chosen to shelter the Inter-American Court of Human Rights; for I have the profound conviction -a conviction fully shared by my colleagues- that Costa Rica, better than any other nation in the Continent, can give it the prestige, the protection, the atmosphere of peace and liberty and, above all, the respect that the Court deserves and needs.

It is not that in Costa Rica human rights are not violated, or are violated less than elsewhere; as a judge I could only make this sort of statement on a case-by-case basis after considering the merits of each case and by

means of a judgment. However, it is true that the people of Costa Rica, who are the real rulers of this country, have given ample proof of their profound vocation for peace, justice, law, liberty and human rights. Here everyone, from the President down to the lowest public official, knows (or, if they don't know, they are very soon made to know) that they are but humble servants of their fellowmen; here, representative democracy, which in the inter-American system is formally linked to human rights, is fully exercised through a day-to-day discipline imposed by the people and respected by those in government; here, an order issued by the humblest of judges suffices to paralyze the arrogance of the most powerful of officials; here, Parliament knows that the least important of its functions is to legislate, and the most vital is to serve as a sounding board for public opinion and, above all, to act as an aggressive controller of the Administration; here, the judiciary in carrying out its Constitutional powers is truly the first branch of the Republic, and enjoys absolute economic independence so that it has to beg for nothing; here, the Supreme Electoral Tribunal is, *de facto* and *de jure*, an authentic electoral power, the fourth branch of the State, and also enjoys great functional and economic autonomy; six months before the elections, the President of the Republic visits the Electoral Tribunal in order to hand over the command of the police forces; which forces are, moreover, limited to keeping law and order, for in Costa Rica the Constitution expressly prohibits the existence of an army and because the people of Costa Rica will never permit the creation of such an army, either openly or under the cloak of a civil guard, even in cases of national danger.

There is much more that makes me proud both as a Costa Rican and as a judge of an international court being installed today in San José. I am also proud to have with us today the former presidents of the Republic who have governed this country under diverse ideologies and policies. And I am also proud that in 1969 Costa Rica was the seat of the specialized Conference which resulted in the American Convention on Human Rights, brilliantly chaired by our then Foreign Minister, Fernando Lara Bustamante, during the Administration of former President José Joaquín Trejos Fernández. On behalf of the Court, I pay homage to these two men, who with their signatures, enabled Costa Rica to be the first country to ratify the Convention; later, through the signatures of former President Daniel Oduber Quirós and his Foreign Minister, Gonzalo Facio Segreda, Costa Rica was also the first, and so far the only, country to recognize the binding jurisdiction of this Court; and that, finally, the initiative of Costa Rica should have played such a decisive role so that San José was chosen to be the seat of the Court whose installation we celebrate today, all of this during the current Administration of President Carazo, with the personal and most efficient support of his Foreign Minister, Rafael Angel Calderón Fournier, and of his Ambassador to the Organization of American States, José Rafael Echeverría Villafranca. Our deepest gratitude goes to them also, and I beg Ambassador Echeverría to transmit these feelings to his colleagues in the Mission to the OAS.

In concluding, I would, on behalf of the Court as well as in my own right, like to express our gratitude to our distinguished guests from overseas for making the effort to be here with us; to the Costa Rican authorities who honor us with their presence and who have given us their wholehearted collaboration to make this ceremony possible; and, finally, to the people of Costa Rica, the good and noble people who have offered us their trust in expectation of what this Court will offer, while at the same time warning us that they will never permit any weakness or backing down on our part in the fulfillment of our mission.