ANEXO 13.c.

VISITA DE LA CORTE EUROPEA DE DERECHOS HUMANOS
DISCURSO DE LA VICEPRESIDENTA DE LA CEDH, JUEZ ELIZABETH PALM
(JUNIO DE 2001)

Reflections on the implementation of the 11th Protocol

Mr. President Cançado Trindade, Members of the Court

Let me say immediately, that it is a great honour for me, to be here this morning in my capacity as Vice-President of the European Court of Human Rights to discuss the work of our Court, with judges of the Inter-American Court. I could not imagine, a more receptive audience, than this distinguished body, and I look forward immensely, to our discussion this morning, on matters of common concern. I am conscious, that my visit today, is part of a series, of exchanges of views, between our two Courts, which perpetuates the long established, tradition of contact, between our respective Convention institutions. This is of great value, because it provides us both, with an opportunity to address questions of human rights procedure and practice, in the light of our mutual experience, with the ambition, of not only increasing our knowledge about each others activities, but, more importantly, of listening to the advice of colleagues, who have an intimate understanding, of the very nature of our work, yet speak from an alternative or lateral perspective. For my part, I very much treasure, the synergy of exchanges, such as these, and express the wish, that they continue to flourish, in the future.

Let me turn to my subject this morning, which is the 11th Protocol to the European Convention of Human Rights.

It is useful, first of all, to recall the reasons underlying the 11th Protocol. Over the last 10-15 years there had developed increasing dissatisfaction, with the functioning of the two-tiered system, of the former Commission and Court. The fact that cases, were examined, by both institutions, involved a wasteful duplication, of procedures, and gave rise to substantial delays. Frequently it might take between 5 and 7 years for a case to be decided, by both the Commission and Court. This was obviously unacceptable. At the same time, the number of Contracting parties to the Convention, was constantly growing; following the fall of the Berlin wall in 1989, giving rise to the prospect, of a greatly increased number of applications, from all over Europe – a Europe which now encompassed, many central and eastern european countries. To give you and idea – in 1988 there were 22 Parties to the Convention. There are now 41 – and very soon

43 Contracting Parties, when Armenia and Azerbaijan, recently admitted to the Council of Europe, ratify the Convention. The central idea in the 11th Protocol, was to create a single European Court of Human Rights, to replace the former Commission and Court. A single Court, it was estimated, would be better positioned, to examine the admissibility, and merits of human rights, complaints within a reasonable time.

In addition, to creating a single Court, the opportunity was taken, to introduce various other improvements, in the Convention system. Thus, under the Protocol, the right of individual petition, ceased to be optional, bringing the situation, into line with the position under the American Convention. Perhaps more importantly, the decision making role, of the Committee of Ministers under former Article 32 – which was a much criticized feature, of the former system – was abolished, leaving the Committee of Ministers of the Council of Europe, with the sole function, of supervising the execution, of the Court´s judgments.

The text was opened for signature, on 11 May 1994 and required ratification, by all 41 Contracting Parties to the Convention. If finally entered into force, on 1 November 1998 with the setting up, of a permanent European Court of Human Rights, composed of 41 judges, working on a full-time basis in Strasbourg.

In parenthesis, I should explain that the Court works in three formations: Committees of three judges, to dispose of obviously inadmissible cases, Chambers of seven judges (and three substitutes) to examine cases raising *prima facie* issues, under the Convention and a Grand Chamber of 17 judges, reserved for the most important cases. The court is divided into four Sections, of 10 judges from which Chambers are composed each sitting independently of each other, and with its own President.

The new Court thus succeeded, to the old Court, with the dual objective of dealing with cases within a reasonable time, and consolidating, and building upon the Convention *acquis*, as well as retaining the confidence of the Convention community, in the Convention system. It was clear from the beginning, of this adventure in international adjudication, that the major challenge, facing the new body, was to develop its own distinctive personality, while at the same time harnessing, the strengths of the previous institutions, and building upon their established reputations.

Thirty-one months later, let me venture some remarks on how the new system has functioned so far.

With the benefit of hindsight, we can now see that the new system, suffered from two design faults. The first, as the immediate overburdening, of the Grand Chamber, with a such a large number of cases – 89 of them – inherited from the old Court which, under the transitional provisions, in the Protocol, had to be examined by the Grand chamber of 17 judges. The result has been, that a substantial amount, of judicial time, has been spent in a formation, which was meant to deal only with exceptional cases. Many of the inherited cases, did not fall into this

category at all. This has meant that the new Court has not been able, to be as productive, at Chamber level as one might have expected.

The second design problem, was the continuance of the Commission, for a year until 1 November 1999, to enable it to prepare Report, in cases which had been declared admissible. The problem resided in the fact, that 10 of the new judges had been members of the Commission, and were called on to participate in the work of the Commission, during this transitional year. As a result, these members of the Court were distracted from their judicial duties, during a difficult transitional period. In addition, many members of the legal registry, were also required to service the Commission, during this busy period. The end result involved, to some extent, a hampering of the new Court during the first year of its existence.

Again with the benefit of hindsight, we can see that the new Court, has had to deal with four specific problems of transition. It has had to integrate 21 new judges – many of whom had no previous of little Convention experience – into the working culture of the Convention system. Fortunately, alongside these judges are 20 others with substantial previous experience, of the system either as members of the Commission or the old Court. This combination, has been a great asset, to the Court and has greatly facilitated the process of integration. In addition, the Court has had to develop new working procedures, associated with the work of the chambers and the Grand Chamber and at the same time develop new working methods to come to terms with its increasing docket. Thirdly, the Court was immediately confronted with a steadily increasing number of registered cases. The Court had inherited 6,750 cases from the Commission. By the end of 1999 this figure had increased to more than 12,000 applications. Part of its inheritance concerned 26 cases where fact-finding had been carried out by the Commission which had not been able to complete its report. Finally the Court has had to manage the fusion of two legal secretariats, those of the former Commission and Court, each with a different managerial structure, working methods and working culture.

Against this complex background the Court has managed to achieve much since it came into being and can, I believe, be proud of its accomplishments. Perhaps its most significant achievement has been to succeed what we may call the challenge of continuity. By this I mean that it has adopted into its practice the law of the previous institutions and built upon it. It has accepted the law on questions of admissibility – for example the domestic remedies rule – which had been developed primarily by the Commission, as well as the substantive law which had been developed by the old Court in more than 600 judgments. In one of its early judgments. –*Fressos and Roire v France* – it affirmed the old Court's attachment to a strong and progressive notion of freedom of expression which had been carefully constructed by the old Court in a large body of leading judgments – Handyside, Sunday Times and Observer, Lingens to mention but a few – with which this Court will certainly be familiar. It is now clear from the case law of the Court that it sees itself as the successor body to the former institutions and applies with surprisingly little difficulty the legal principles and methods of interpretation contained in the corpus of Convention case law which predated it. While this might appear to be an obvious development today, at the moment of the entry into force of the 11th Protocol there was some

anxiety that a new institution with a different composition might view its inheritance with a less friendly disposition.

The new Court has also succeeded in streamlining its procedures significantly to enable it to deal more effectively with an increasing number of registered cases and to try to devote its main attention to deserving cases raising serious or important human rights problems. Let me recall that up to the end of April 2001, the new Court has handed down more than 1,200 judgments on the merits and declared more than 12,000 cases inadmissible. The Committees of three judges enable large numbers of inadmissible cases to be disposed of with an economy of procedure and the four Sections of ten judges have become, in a short space of time, the main engine of the Court's work handing down judgments of their own and referring important issues of law which merit and authoritative ruling to the Grand Chamber.

With the Conventions's regime extending to more than 800 million Europeans, it will come as no surprise to learn that the Court's biggest problem is coping with the ever expanding volume of cases. As of 25 May this year the Court has on its docket 17,920 registered cases as opposed to 6,750 when it began its work in November 1998. 2,185 of these concern Italy – mainly problems of length of civil and criminal proceedings – 2,615 concern Turkey – many of these cases will raise serious human rights questions – 1,594 cases against Russia, 1,516 against France and 1,340 against Poland – to mention only the countries with the greatest number of cases. You can imagine the huge amount of work involved in examining such a large body of applications with a view to identifying those which merit closer scrutiny. Needless to say the Court's budget has not grown in proportion to these developments although recently the Committee of Ministers of the Council of Europe has provided money for the recruitment over a two year period of 42 young temporary lawyers to assist the Court in dealing with the increased numbers. I should mention in passing that the Court's constant clamour for more resources to enable it to cope has created a certain friction with the other parts of the Council of Europe subjected unfairly to a policy of zero-growth and has spurred the Committee of Ministers to examine seriously the Court's predicament with a view to reform of the system and a return to budgetary stability and predictability.

As you will have understood, the central preoccupation of the Court today is with the question of reform – or reform of the reform. The Court has set up a Working Party on the future structural reform of the Convention and the Committee of Ministers has also established an Evaluation Group to make proposals. In a sense after thirty-one months the Court has come full circle and finds itself grappling with the same problems of delay in dealing with cases that lay at the root of the 11th Protocol. Paradoxically there is a certain nostalgia in Strasbourg for the working conditions of the old Court which was spared the tyranny of numbers by the Commissions's filtering of cases and where judges had the opportunity to concentrate on a limited number of important contentious cases. While time does not permit me to dwell in depth on the various options that are open to the Court and the States in reforming the system, it is clear that the structure of the Convention and our procedures must be amended in such a way that judicial time is not wasted on the examination of hopeless cases and a much greater opportunity is

afforded for the examination of important issues of law. This will inevitably involve a much greater degree of discretion for the Court to choose those cases it wishes to examine and the creation of efficient procedures for filtering hopeless applications and dealing with large numbers of repetitive cases which clog the system – such as length of proceedings – where the relevant legal principles are already well established. In a large international Court of 41 judges there exists a wide variety of opinions on what needs to be done but all would agree that the situation is dramatic and needs urgent attention.

Members of the Court, it will be clear to you from what I have been saying that the 11th Protocol has been only the first major step in a reform process which can only increase in pace over the coming years as our problems intensify. To a large exent the Convention system is the continuing victim of its own success. But our experience over the last period is most instructive, to any international judicial institution, contemplating major structural reform.