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REPORT AND PROPOSALS OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, JUDGE ANTONIO A. CANÇADO TRINDADE, TO THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS OF THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES WITHIN THE FRAMEWORK OF THE DIALOGUE ON THE INTER-AMERICAN SYSTEM OF PROTECTION OF HUMAN RIGHTS:

BASIS FOR A DRAFT PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO STRENGTHEN ITS PROTECTION MECHANISM

(Washington, April 5, 2001)

Madame Chair of the Committee on Juridical and
Political Affairs of the OAS, Ambassadress Margarita Escobar,
Ambassadors and representatives of the member states of the OAS,

1. Just under a month ago, on March 9, I had the honor of appearing before this Committee on Juridical and Political Affairs (CAJP) of the Permanent Council of the Organization of American States (OAS), chaired by Ambassador Margarita Escobar, Permanent Representative of El Salvador to the OAS, in order to present the 2000 *Annual Report*, in my capacity as President of the Inter-American Court of Human Rights. At the end of my presentation I had occasion to hold a fruitful dialogue with the 12 Delegations attending, of which I have a very pleasant recollection. Today I am privileged again to appear, in that same capacity, before this same Committee, in the company of the Secretary of the Court, Manuel E. Ventura Robles, this time to take part in the Dialogue–opened last year before the CAJP–on the System of Protection of Human Rights, to which the Inter-American Court attributes the utmost importance.

I. Background and Preliminary Observations

2. At the XLIII Regular Session of the Inter-American Court of Human Rights, held at its seat in San José, Costa Rica, from January 18 to 29, 1999, the Court conducted deliberations "to review possible ways to strengthen the inter-American system for the protection of human rights." With that in mind, it appointed Judge Antônio A. Cançado Trindade as its rapporteur, and created a Follow-up Committee on the consultations that it would begin to hold, composed of the rapporteur Judge and three other Judges[1]. The Court, furthermore, decided to hold a large seminar in November 1999, as well as four meetings of high-level experts. In carrying out the task entrusted to me, since then, as rapporteur Judge, I have undertaken a series of activities and studies, organized the Seminar on *The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century* held in November 1999 (the first volume of proceedings of which was presented to this CAJP and distributed among the delegations attending at the end of my presentation of March 9 last), and chaired four meetings of experts, at the highest level, convened by the Court (cf. *infra*).

3. On February 10 and 11, 2000, I presented a report at the Meeting of the Ad Hoc Working Group made up of Representatives of the Ministers of Foreign Affairs of the Hemisphere, on the institutional development and the activities and jurisprudence of the Inter-American Court. Subsequently, on March 16, 2000, I presented a *Report* - my first *Report* - to this CAJP within the framework of the Dialogue on the Inter-American System for the Protection of Human Rights, in which I evaluated the results of the Seminar of November 1999 (on issues such as access to justice at the international level, ordering and assessment of evidence, friendly settlement, reparations, enforcement of the Court's judgments, and the role of NGOs in the inter-American system of protection), and of the four meetings of experts held at the seat of the Court from September 1999 to February 2000.[2]

4. It is not my intention to reiterate the considerations I developed on previous occasions before this CAJP but, rather, to address in greater depth a number of points that I regard as being of particular importance at the present phase of the ongoing Dialogue on the current state and directions of the inter-American system for the protection of human rights. In presenting today my new *Report* on what I have termed "*Basis for a Draft Protocol to the American Convention on Human Rights to Strengthen its Protection Mechanism*," I take the liberty to make some brief preliminary clarifications.

1 Inter-American Court of Human Rights, *Minutes of Session No. 15,* of January 27, 1999.

2 Cf. OAS, *Report of the President of the Inter-American Court of Human Rights, Judge Antônio A. Cançado Trindade, to the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States within the Framework of the Dialogue on the Inter-American System of Protection of Human Rights* (March 16, 2000), OEA/Ser.G/CP/CAJP-1627/00, March 17, 2000, pp.21-32 (also available in Portuguese, Spanish, and French).

5. The proposals I present below are the result of long and intense personal reflection on measures to strengthen the protection mechanism contained in the American Convention on Human Rights. To my mind they should be part of a *process* of collective reflection, to be carried out on a permanent basis with the participation of all players in the inter-American system of protection: states, international supervisory organs of the Convention (Inter-American Court of Human Rights and Inter-American Commission on Human Rights), the Inter-American Institute of Human Rights (IIHR), NGOs, and those targeted by the system in general. It is of the highest importance to hold the *broadest possible consultations* with all of these players (including through circulation of questionnaires), in order to reach consensus by means of constructive dialogue over the next few years, which are crucial to the success of the future presentation, at the moment deemed appropriate, of the above-mentioned Draft Protocol of broad reforms to the American Convention, with a view, concretely, to strengthening its protection mechanism.

6. I am aware that such consultations take time, in order to form the necessary consensus, and that the proposals I present below will not be taken up at the forthcoming OAS General Assembly, given that, in addition to lack of time, some OAS member states have already put forward constructive and detailed proposals covering very specific aspects of the reforms required, for consideration by the General Assembly to be held in San José, Costa Rica, this coming June. In my opinion, more important than the immediate results regarding the amendment of the protection mechanism contained in the Convention, is to *develop a conscience* among all players in the inter-American system of protection regarding the need for change without preconceived ideas.

7. As I mentioned following our exchange of ideas last March 9, here in the Simón Bolívar Room at the OAS headquarters in Washington, D.C., I am firmly convinced that *conscience* is the material source of all law and, together with its formal sources, is responsible for its progress and its evolution. If we do not *develop this conscience* we will make little headway in improving our system of protection. Other prerequisites for consolidation of our regional system of protection are, as I have long insisted, ratification of–or adherence to– the American Convention on Human Rights by the OAS member states, full acceptance of the binding jurisdiction of the Inter-American Court by all states parties to the Convention, and adoption under the domestic law of the states parties of the substantive standards contained in that Convention.[3]

8. The purpose of all the proposals that I allow myself to present to the delegations attending this meeting of the CAJP is to improve and strengthen the human rights protection mechanism, bearing in mind the increasing demands and needs for protection of the individual in our part of the world. I had occasion to present them, one by one, at the joint meeting between the

3 Cf. Section VII.1, *infra*.

Inter-American Court and Commission, held recently here in Washington, on March 8, 2001.[4] Today I have the privilege to submit them, individually, for consideration by the ambassadors and representatives of the OAS members states, and respectfully to invite them to reflect on the following points: a) the progressive evolution of the Rules of Procedure of the Court; b) significance of the changes introduced by the new (2000) Rules of Procedure of the Court for the workings of the protection mechanism contained in the American Convention; c) strengthening of the international procedural capacity of individuals under the American Convention; d) the amendments here proposed to procedures under the American Convention, and the corresponding amendments to the Statute of the Court; and e) evolution from *locus standi* to *jus standi* of individual complainants before the Court.

9. Having concluded the presentation of these points, and returning to four key aspects that were the subject of our fruitful exchange of ideas on March 9 last, I will present brief reflections of mine on four other points, namely: a) satisfaction of the basic prerequisites for the evolution of the inter-American system of protection; b) the role of the Inter-American Commission on Human Rights (IACHR) in contentious proceedings before the Inter-American Court; c) financial implications of the recent amendments introduced in the new (2000) Rules of Procedure of the Court; d) enhancement of the judicial nature of the protection mechanism under the American Convention and direct access of the individual to international judicial proceedings in the framework of the inter-American system of protection, as well as application of the collective guarantee by States Parties to the Convention.

II. The Progressive Evolution of the Rules of Procedure of the Court

1. The First Two Rules of Procedures of the Court (1980 and 1991).

10. To begin with, I feel it would be entirely timely and necessary, as I observed in my *Report* of last year to this CAJP,[5] briefly to recount the evolution of the Court's Rules of Procedure over the 21 years of its existence, in order better to appreciate the changes recently introduced in them by the Court, as it is currently composed. The Inter-American Court adopted its *first Rules of Procedure* in July 1980, based on the Rules then in force for the European Court of Human Rights, which, in turn were modeled on the Rules of the International Court of Justice (CJI). However, the European Court very soon realized that it would have to amend its

4 I also presented them on other recent occasions, for instance, at the last annual meeting of the Board of Directors of the IIHR, on March 16, 2001, as well as at the Seminar for NGOs engaged in the area of human rights throughout the Americas, organized by the IIHR in San José, Costa Rica, in September 2000.

5 OAS, *Report of the President of the Inter-American Court of Human Rights, Judge Antônio A. Cançado Trindade, to the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States within the Framework of the Dialogue on the Inter-American System of Protection of Human Rights* (March 16, 2000), OEA/Ser.G/CP/CAJP-1627/00, March 17, 2000, pp.17-21 (also available in Portuguese, Spanish, and French).

Rules in order to adjust them to the distinct nature of contentious human rights cases[6]. As for the Inter-American Court, its first *interna corporis* was in force from more than a decade ended July 31, 1991.

11. Due to the influence of the Rules of the CJI, proceedings, particularly in contentious cases were delayed[7]. Once a case was filed with the Inter-American Court, the President would summon a meeting of the representatives of the Inter-American Commission on Human Rights (IACHR) and the respondent state to hear their respective opinions on the sequence and time limits for filing the complainant's and respondent's briefs, the answer, and the reply thereto. Preliminary objections had to be presented before the expiration of the deadline for completing the first act of the written proceeding, namely the filing of the respondent's briefs. The first three contentious cases and the first 12 advisory opinions were processed within this legal framework.

12. In light of the need to expedite proceedings, the Court approved the *second Rules of Procedure* in 1991, which entered into force on August 1 of that year. Unlike the mechanism established in the previous Rules of Procedure, the new Rules provided that the President would initially carry out a preliminary review of the application filed and, if he determined that the basic requirements for proceeding with the case had not been met, he would request that the complainant correct any deficiencies within no more than 20 days. In accordance with these Rules of Procedure, the respondent state had the right to answer in writing to the complaint within three months of notification thereof. The time limit for filing preliminary objections was set at 30 days following notification of the complaint, and an equal time limit was then established for submitting comments on those objections.

6 Thus, in keeping with its own opinion, expressed as early as 1974, the European Court, in the amendments of its Rules which entered into force on January 1, 1983, assured direct legal representation for individual complainants in proceedings before it, thus making more effective the individual right of petition. The amendments introduced in the new Rules affirmed the basic principle of equal treatment for all in international judicial procedure and ensured a fairer balance between opposing interests, while remaining faithful to the special nature of the procedure recognized in the European Convention. Furthermore, the amendments ended the ambiguity of the role of the old European Commission of Human Rights (which was conceived, rather, as a defender of public interests, as may be inferred from the arguments submitted by its former President, Sir Humphrey Waldock, to the European Court, in the *Lawless case v Ireland*, 1960). P. Mahoney, "Developments in the Procedure of the European Court of Human Rights: the Revised Rules of Court," 3 *Yearbook of European Law* (1983) pp.127-167.

7 It may be recalled that the Rules of the CJI, with their rigidly structured procedural stages, were originally conceived for *contentieux between states*, which are legally equal, (entirely different from the international human rights *contentieux*); A. A. Cançado Trindade, "Co-existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)," 202 *Recueil des Cours de l'Académie de Droit International de La Haye* (1987), Ch. XV, pp.383-394. On the Rules of the CJI, cf. S. Rosenne, *Procedure in the International Court - A Commentary on the 1978 Rules of the International Court of Justice*, The Hague, Nijhoff, 1983, pp.1-305; G. Guyomar, *Commentaire du Règlement de la Cour Internationale de Justice - Interprétation et pratique*, Paris, Pedone, 1973, pp.1-535.

13. It should be pointed out that, since the new Rules of Procedure have been in place, the parties have been obliged to submit their briefs within the time limits set in the Rules and not at their discretion (as had occurred under the previous standards), sometimes causing delays of up to one year in the filing of briefs. Bearing in mind the principles of procedural expediency and equity of the parties, the 1991 Rules of Procedure provided that the President would ask the representatives of the IACHR and the state whether they considered other briefs necessary in the written proceedings. It was the start of a process of streamlining and simplifying Court procedure, which was much improved after the adoption in 1996 of the third Rules of Procedure (cf. *infra*).

14. In respect of the processing of provisional measures, the first Rules of Procedure established that, when such a request was filed, if the Court was not in session, the President had to convene it forthwith. If a session was upcoming, the President would then require, in consultation with the Permanent Commission or the judges where possible, that the parties take the appropriate action, as needed, to enforce any decision the Court might make in relation to the request for provisional measures. Given the shortage of adequate human and material resources and the fact that the Court is not in permanent session, this procedure had to be revised with a view immediately to safeguarding effectively the rights to life and integrity of person enshrined in the American Convention.

15. Thus, on January 25, 1993, an amendment of the provisional measures was introduced, which remains in force. This amendment provided that, if the Court was not in session, the President had the power to request that the state concerned take the necessary emergency measures to prevent irreparable injury to the persons targeted by said measures. A decision by the President to that effect would be submitted to the plenary of the Court in the session immediately following. Different stages of the proceedings of 18 contentious cases and two advisory opinions were heard under the Rules of Procedure approved in 1991, and its subsequent amendments.

2. The Third (1996) Rules of Procedure of the Court

16. Five years after the adoption of the second Rules of Procedure, I was appointed by the Court to prepare a preliminary draft amendment thereof, based on the discussions on reform that had taken place in successive sessions of the Court. Several discussions in the Court ensued, after which the *third Rules of Procedure* in its history were adopted on September 16, 1996, and entered into force on January 1, 1997. The new (1996) Rules of Procedure introduced a number of changes.

17. As regards procedural stages, this *third Rules of Procedure* of the Court, following the same tendency as the previous Rules, provided that the parties could seek the permission of the President to enter additional briefs. The pertinence of that request would be assessed by the President, who, if he saw fit, would establish the respective time limits. In view of the repeated requests for extensions of the time limit for submission of the answer to the complaint and

preliminary objections in the cases before the Court, the third Rules of Procedure provided for an extension of these time limits to four and two months, respectively, in both cases from the date of notification of the complaint.

18. Unlike the two previous Rules of Procedures, the third Rules specified both the terminology and actual structure of Court procedure. Thanks to the combined efforts of all the Judges, the Court now had an *interna corporis* that set out the terminology and sequence of procedural steps as befits a genuine international code of procedure. The new (third) Rules of Procedure established, for the first time, the times during the process in which the parties may present evidence for the various stages of the proceedings, but did not exclude the possibility of presenting evidence at other times in cases of *force majeure*, serious impediment, or supervening events.

19. Furthermore, these Rules of Procedure broadened the Court's authority to request from the parties or obtain on its own any evidence at any stage of the proceedings that might contribute to the hearing of the cases before it. As regards early termination of cases, the 1996 Rules of Procedure include, in addition to friendly settlement and discontinuance, judicial settlement before the Court which, after hearing the views of the complainant, the Commission, and the representatives of the victims or their next of kin, determines their merits and establishes the legal effects flowing from the action (following discontinuance of the proceedings on the facts).

20. The main qualitative stride made by the third Rules of Procedure was provided by Article 23 thereof, which gave the representatives of the victims or of their next of kin the authority independently to submit their own arguments and evidence at the reparations stage. It is worth recalling the little-known background, extracted from the recent practice of the Court, behind this landmark decision. In contentious proceedings before the Inter-American Court, in recent years the legal representatives of the victims had been included in the delegation of the Inter-American Commission under the euphemistic label of "assistants" thereto.[8]

21. Rather than solve the problem, however, this *praxis* created ambiguities that have persisted to the present.[9] In the discussions on the draft 1996 Rules of Procedure, it was decided that the time had come to try to resolve those ambiguities, given that the roles of the Commission (as guardian of the Convention assisting the Court) and of individual petitioners (as the true complainant party) are patently different. It was shown in practice that progress toward the

8 This "pragmatic" solution was endorsed, with the best of intentions, by a joint meeting of the Court and the IACHR held in Miami, in January 1994.

9 The same occurred in the European system of protection until 1982, when the fiction of "assistants" to the European Commission was finally resolved by the amendments of the Rules of the European Court that entered into force on January 1, 1983; cf. P. Mahoney and S. Prebensen, "*The European Court of Human Rights," The European System for the Protection of Human Rights* (eds. R.St.J. Macdonald, F. Matscher and H. Petzold), Dordrecht, Nijhoff, 1993, p.630.

ultimate consecration of these different roles had to go *pari passu* with the gradual enhancement of the judicial nature of the protection mechanism under the American Convention.

22. There is no denying that judicial protection is indeed the most evolved way to protect human rights, and the one that best responds to the imperatives of the law and the pursuit of justice. The previous (1991) Rules of Procedure of the Court provided, in oblique terms, for tentative participation of victims or their representatives in Court proceedings, particularly at the reparations stage and when invited by the Court.[10] An important step, that cannot be overlooked, was taken in the *El Amparo* case (Reparations, 1996), concerning Venezuela, a real watershed in this area: in the public hearing held by the Inter-American Court on January 27, 1996, one of the judges, after expressly stating his understanding that at least at that stage of the proceedings there could be no doubt that the victims' representatives were "*the true complainant party before the Court*," at one point in the interrogatory, proceeded to address his questions to them, the victims representatives (and not to the delegates of the Commission or to the agents of the state), who submitted their replies.[11]

23. Shortly after this memorable hearing in the *El Amparo* case, the victims' representatives submitted two briefs to the Court (of May 13, 1996 and May 29, 1996). At the same time, with respect to compliance with the interpretation of the compensatory damages judgments in the earlier *Godínez Cruz* and *Velásquez Rodríguez* cases, the victims' representatives likewise submitted two briefs to the Court (of March 29, 1996 and May 2, 1996). The Court only decided to close the proceedings in these cases after having verified compliance, on the part of Honduras, with the reparations judgments and the interpretation thereof, and after having noting the views not only of the IACHR and the respondent state, but also of the petitioners and the legal representatives of the victims' next of kin.[12]

24. The way was paved to change the pertinent provisions in this regard contained in the Court's Rules of Procedure, especially following the developments in the proceedings in the *El Amparo* case. The next, decisive, step was taken in the Court's new Rules of Procedure, adopted on September 16, 1996 and in force from January 1, 1997, Article 23 of which provided that, "At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence." In addition to this fundamentally impor-

10 Cf. Articles 44(2) and 22(2), - and Articles 34(1) and 43(1) and (2), - of the 1991 Rules of Procedure. Previously, in the Godínez Cruz and Velásquez Rodríguez cases (Compensatory Damages, 1989) versus Honduras, the Court received briefs from the victims' next of kin and representatives, and took note thereof (Judgments of July 21, 1989).

11 Cf. the intervention of Judge A.A. Cançado Trindade, and the replies of Mr. Walter Márquez and Mrs. Ligia Bolívar, as the victims' representatives, *in*: Inter-American Court of Human Rights, *Transcription of the Public Hearing on Reparations Held at the Seat of the Court on January 27, 1996 - El Amparo Case*, pp.72-76 (typewritten, internal circulation).

12 Cf. the two decisions of the Court, of September 10, 1996, *in* the above-mentioned cases, in: Inter-Am Ct. H.R., *Annual Report of the Inter-American Court of Human Rights - 1996*, pp.207-213.

tant provision, also worth highlighting are Articles 35(1), 36(3) and 37(1) of the 1996 Rules of Procedure, on notification (by the Secretary of the Court) of the application, preliminary objections, and the answer to the application, respectively, to the original claimant and the [alleged] victim or their next of kin.

25. It was clear that it was no longer possible to attempt to ignore or to diminish the position of individual petitioners as the true complainant party. However, it was, above all, the adoption of Article 23 (*supra*) of the 1996 Rules of Procedure that constituted a major stride in paving the way for subsequent progress in the same direction, in other words, with a view to ensuring that in the foreseeable future individuals would at last have *locus standi* in Court proceedings, not only at the reparations stage, but also at all stages of proceedings in cases referred by the Commission to the Court (cf. *infra*).

26. In the initial stage of the *travaux préparatoires* on the third (1996) Rules of Procedure, I took the liberty to recommend to the then-President of the Court that the aforesaid right be granted to the alleged victims, or their next of kin, or their legal representatives, at *all* stages of proceedings before the Court (*locus standi in judicio*.)[13] After consultation with the other

13 In the letter which I took the liberty to address to the then-President of the Inter-American Court (Judge Héctor Fix-Zamudio) on September 7, 1996, in the framework of the *travaux préparatoires* on the third Rules of Procedure of the Court, I mentioned, *inter alia*, the following: - "(...) Without wishing to get ahead of our future discussions, I take the liberty to summarize the arguments that, to my mind, support, in theory, the recognition, with due caution, of *locus standi* for victims in proceedings before the Inter-American Court in cases already referred thereto by the Inter-American Commission. In first place, protected rights include an entitlement to the procedural capacity to vindicate or exercise those rights. Procedural *locus standi* for victims should be included in the protection of rights, otherwise the procedure will deprived of part of the adversarial action element, essential in the pursuit of truth and justice. Adversarial action between victims of violations and respondent states is part of the very essence of international litigious procedure in the area of human rights. *Locus standi in judicio* for victims contributes to the hearing of the case. In second place, equality of arms is essential to any judicial system for protection of human rights; without *locus standi* for the victims that equality will be reduced. Furthermore, the victims' right to freedom of expression is an integral element of due process of law. In third place, *locus standi* for victims helps to enhance the judicial nature of the protection mechanism by ending the ambiguity of the role of the Commission, which is not, strictly speaking, a "party" in the proceeding but, rather, a guardian of the proper application of the Convention. In fourth place, in cases of proven human rights violations, the victims themselves receive reparation and indemnity. Since the victims are present at the start and at the end of the proceedings, there is no sense in preventing their presence during them. In fifth place, finally yet importantly, since, in my opinion, the historical reasons have been superseded that prompted the denial of *locus standi in judicio* for victims, recognition thereof is consistent with the international legal personality and capacity of the human person to uphold their rights. Ensuring progress in this direction at the current stage of evolution of the inter-American system of protection is the *joint* responsibility of the Inter-American Court of Human Rights and the IACHR. The Commission must always be prepared to express its points of view to the Court, even though they might not coincide with those of the victims' representatives; and the Court must be prepared to receive and evaluate the arguments of the Commission's delegates and the victims' representatives, even though they might be at variance. (...)."

Inter-American Court of Human Rights (Inter-Am. Ct. H.R.), *Letter from Judge Antônio Augusto Cançado Trindade to the President Héctor Fix-Zamudio*, September 7, 1996, pp.4-5 (original deposited in

judges, the majority of the Court opted to proceed by stages, and to grant that right at the reparations stage (once the existence of victims of human rights violations had been established). This decision was adopted without prejudice to the possibility in the future of extending the right to all individual petitioners at all stages of the proceedings, as I had proposed, thereby recognizing the individual as a legal person with full capacity to act as subject of international human rights law.

27. The new rule gave active legitimacy at the reparations stage to the representatives of the victims or their next of kin,[14] who had previously submitted their arguments through the IACHR, which adopted them as its own. As provided in Articles 23, 35, 37, and 57.6 of the 1996 Rules of Procedure, the Court transmits to the original claimant, the victims, or their representatives or next of kin, the main documents of the written proceeding filed with the Court and the judgments on the various stages of the case. This was the first concrete step toward providing direct access for individuals to the jurisdiction of the Inter-American Court and for ensuring their fuller participation in all stages of the proceedings.

28. Finally, it should be noted that the Rules of Procedure predating those of 1996, provided that the Court would convene a public hearing to read its judgments and notify the parties thereof. This procedure was eliminated in the third Rules with a view to expediting the work of the (nonpermanent) Tribunal, saving the expense of having the representatives of the parties appear before the Court, and making the best possible use of the limited time that the judges actually sit at the Court's seat during its sessions. Under the 1996 Rules of Procedure, as of March 2000, the Court has heard 17 contentious cases at various stages of their proceedings, and issued the two most recent (Nos. 15 and 16) advisory opinions.

III. The Broad Scope of the Changes Introduced by the Fourth and New (2000) Rules of Procedure of the Court

29. Next, I believe it is equally advisable and necessary to underscore, as I did in my last *Report*, of March 9, 2001, to this CAJP,[15] the significance of the changes introduced by the new

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the Court archives). For other proposals, cf. Inter-Am. Ct. H.R., *Letter from Judge Antônio Augusto Cançado Trindade to the President Héctor Fix-Zamudio*, December 6, 1995, p.2 (original deposited in the Court archives).

I put advanced these same arguments at *all* the annual joint meetings between the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights from 1995 to 1999 and in 2001 (as the transcriptions of those meetings show), as well as at the joint meeting of the officers of the two organs in 2000.

14 According to Article 23 of the 1996 Rules of Procedure, "At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence."

15 Cf. OAS, *Report of the President of the Inter-American Court of Human Rights, Judge Antônio A. Cançado Trindade, to the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States* (March 9, 2001), OEA/Ser.G/CP/CAJP-1770/01, March 16, 2001, pp.6-8 (also available in Portuguese, Spanish, and French).

(2000) Rules of Procedure of the Court for the workings of the protection mechanism contained in the American Convention. Indeed, the turn of the century has witnessed a fundamental qualitative stride in the evolution of international human rights law, as regards the workings of the above-mentioned protection mechanism contained in the American Convention: the adoption on November 24, 2000, of the fourth and new Rules of Procedure of the Inter-American Court, which will enter into force on June 1, 2001. In order to place in context the significant changes introduced in these new Rules of Procedure, it should be recalled that the 2000 OAS General Assembly (held in Windsor, Canada) adopted a resolutio/n[16] endorsing the recommendations of the Ad Hoc Working Group on Human Rights made up of Representatives of the Ministers of Foreign Affairs of the hemisphere (which met in San José, Costa Rica, in February 2000).[17]

30. That resolution of the OAS General Assembly, *inter alia*, recommended to the Inter-American Court, bearing in mind the *Reports* that I presented, in representation of the Court, to the organs of the OAS on March 16, April 13, and June 6, 2000/[18] to consider the possibility of: a) "allowing direct participation by the victim" in proceedings before the Court (from the time that the case is first submitted to its jurisdiction), "bearing in mind the need to maintain procedural equity and to redefine the role of the IACHR in such proceedings;" and b) "to prevent the duplication of procedures" (in cases submitted to its jurisdiction), in particular "the production of evidence, bearing in mind the differences in nature" between the Court and the IACHR. It can never be stressed enough that this resolution did not come about in a vacuum but, rather, in the context of a broad and lengthy process of reflection on the directions of the inter-American system for the protection of human rights. Accordingly, the Inter-American Court took the initiative of convening four meetings of experts at the highest level, held at the seat of the Court on September 20, 1999, November 24, 1999, February 5 to 6, 2000, and February 8 to 9, 2000, as well as the aforementioned international Seminar in November 1999.[19]

31. The adoption by the Court, of its *fourth* (2000) *Rules of Procedure*, must - I allow myself to insist on this point - be taken in context, since it occurred in the framework of the aforementioned process of reflection, in which the supervisory organs of the system of protection, the OAS itself, its member states, and civil society organizations all played an active part. The Court took the initiative not only of adopting its new Rules of Procedure, but also of formulating concrete proposals designed to improve and strengthen the protection mechanism under the

16 OEA/A.G., resolution AG/RES. 1701 (XXX-O/00), 2000.

17 I had occasion, as representative of the Inter-American Court of Human Rights, to be privy to, and to observe the positive tone of, the discussions at both the Meeting of the above-mentioned ad hoc Working Group, and the General Assembly of the OAS in Canada, with a view to the improvement and strengthening of procedures under the American Convention on Human Rights.

18 Reproduced in: OAS, *Annual Report of the Inter-American Court of Human Rights - 2000*, doc. OEA/Ser.L/V/III.50-doc.4, San José, Costa Rica, 2001, pp.657-790.

19 Cf. proceedings in: Inter-American Court of Human Rights, *The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century - Report on the Seminar*, Vol. I, San José, Costa Rica, Inter-Am. Ct. H.R., 2001, pp.1-726.

American Convention on Human Rights. The regulatory changes helped to streamline procedure as regards evidentiary matters and provisional measures. However, the most significant amendment was to authorize the direct participation of the alleged victims, their next of kin, or their representatives, at all stages of the proceedings before the Court (cf. *infra*).

32. In its 2000 Rules of Procedure, the Court introduced a series of provisions, above all in relation to preliminary objections, the reply to the application, and reparations, with a view to ensuring greater expediency and flexibility in proceedings before it. The Court bore in mind the old adage that "justice delayed is justice denied." Furthermore, by ensuring a more expedite process, without detriment to legal certainty, unnecessary expense would be avoided, to the benefit of all concerned in contentious cases before the Court.

33. In that spirit, whereas the 1996 Rules of Procedure provided that preliminary objections had to be filed within two months of the date of the complaint's notification, the 2000 Rules of Procedure establish that such objections may only be filed in the reply brief (Article 36). Furthermore, despite the fact that the principle of *reus in excipiendo fit actor* might apply at the preliminary objections stage, the 2000 Rules of Procedure provide that the Court may convene a special hearing on preliminary objections when it considers it to be indispensable; in other words, it may, depending on the circumstances, dispense with the hearing (as may be inferred from Article 36(5)). While, to date, it has been the practice of the Court to pronounce first a judgment on preliminary objections, and then, if the latter are disallowed, a judgment on the merits, the 2000 Rules of Procedure provide, in accordance with the principle of procedural expediency, that the Court may rule in a single judgment on both preliminary objections and the merits (Article 36).

34. In turn, the answer to the application, which under the 1996 Rules of Procedure had to be filed within four months of notification thereof, must under the 2000 Rules of Procedure be filed within two months of notification (Article 37(1)). This and other reductions of time limits allow for greater expediency in proceedings, to the benefit of the parties thereto. Furthermore, the 2000 Rules of Procedure provide that in the answer to the application the respondent state shall say whether it accepts the complainant's allegations and claims, or whether it refutes them; in that way the, the Court may regard as accepted any allegations not expressly denied and any claims not expressly refuted (Article 37(2)).

35. As regards evidentiary procedure, in accordance with a recommendation of the OAS General Assembly (cf. *supra*), the Court introduced in its 2000 Rules of Procedure a provision whereby evidence rendered before the IACHR must be included in the dossier of the case before the Court, provided they have been received in adversary proceedings, unless the Court deems it essential to repeat that evidentiary process. With this change the Court seeks to avoid repetition of procedure, with a view to expediting proceedings and saving on costs. In that connection, it should be borne ever in mind that the alleged victims or their next of kin, or their legal representatives may independently submit their own requests, arguments, and evidence at any stage of the proceedings (Article 43).

36. According to the new (fourth) Rules of Procedure, the Court may, at any stage of the proceedings, order the joinder of interrelated cases, provided that the parties, the subject matter and the legal basis are the same in each case (Article 28). This provision is also designed to streamline proceedings before the Court. The 2000 Rules of Procedure also provide that notice of applications, as well as of requests for advisory opinions, shall be given, not only to the President and the Judges of the Court, but also to Permanent Council of the OAS, through its Chair; furthermore, notice of applications, shall also be given to the respondent state, the IACHR, the original claimant, and to the alleged victim, their next of kin, or their duly accredited representatives (Articles 35(2) and 62(1)).

37. As to provisional measures, while, to date, it has been the practice of the Court–when it deems it necessary–to hold public hearings on such measures, this possibility was not provided for in the 1996 Rules of Procedure. For its part, the new (2000) Rules of Procedure include a provision that establishes that the Court, or the President, if the Court is not in session, may, when deemed necessary, summon the parties to a public hearing on such provisional measures (Article 25).

38. As regards reparations, the 2000 Rules of Procedure provide that, the claims presented in the brief containing the application shall refer also to reparations and costs (Article 33(1)). In turn, the judgments of the Court must include, *inter alia*, a ruling on reparations and costs (Article 55(1)(h)). Here again, the Court seeks to shorten proceedings before it, bearing in mind the principles of procedural expediency and economy, as well as for the benefit of all the parties concerned.

39. In keeping with the recommendations of the OAS General Assembly (cf. *supra*), in its new (2000) Rules of Procedure the Court introduced a series of measures designed to allow the direct participation (*locus standi in judicio*) of the alleged victims, their next of kin, or their duly accredited representatives in all stages of the proceedings before the Tribunal. Historically, this is the most significant amendment contained in the fourth Rules of Procedure, as well as a veritable milestone in the evolution of the inter-American system for the protection of human rights in particular, and of international human rights law in general. Article 23 of the new (2000) Rules of Procedure, on "Participation of the Alleged Victims," provides that:

> "1. Once the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may independently submit their own requests, arguments and evidence at any stage of the proceedings.
>
> 2. If there is a plurality of alleged victims, next of kin, or duly accredited representatives, they shall appoint a common representative, who shall have sole authority to submit requests, arguments, and evidence during the proceedings, including public hearings.
>
> 3. In the event of disagreement, the Court shall rule as it sees fit."

40. As I mentioned, the previous (1996) Rules of Procedure had taken the first step in that direction by granting the alleged victims, their next of kin, or their representatives the right independently to submit their own arguments and evidence, specifically at the reparations stage. However, if the alleged victims are present at the *start* of the proceedings (as parties alleging violation of their rights), as well as at the *end* (as potential recipients of reparations), why prevent their presence *during* the proceedings, as the real complainant party? The 2000 Rules of Procedure corrected this incongruity in the inter-American system of protection, which lasted for more than two decades (from the time of entry into force of the American Convention).

41. Indeed, under the 2000 Rules of Procedure, the alleged victims, their next of kin, or their representatives may independently submit requests, arguments and evidence at any stage of the proceedings before the Tribunal (Article 23). Thus, when giving notice of the application to the alleged victim, their next of kin, or their legal representatives the Court grants them 30 days in which independently to present briefs containing their requests, arguments and evidence (Article 35(4)). Furthermore, their status as true parties to the proceedings makes them eligible to take the floor in public hearings in order to submit their arguments and evidence (Article 40(2))[20] With this significant stride, it is finally made clear that the true parties in a contentious case before the Court are the individual complainants and the respondent state, while the IACHR is only a party procedurally (Article 2(23)).

42. The granting of *locus standi in judicio* to the alleged victims, their next of kin or their legal representatives, at all stages of the proceedings enabled them to enjoy all the procedural rights and obligations that prior to the entry into force of the 1996 Rules of Procedure, were reserved only for the IACHR and the respondent state (except in the reparations stage). This implies that three different positions may exist or coexist in proceedings before the Court:[21] that of the alleged victim (or their next of kin or legal representatives),[22] as subject of international human rights law; that of the IACHR, as supervisory organ of the Convention and assistant to the Court; and that of the respondent state.

20 Requests for interpretation shall be transmitted by the Secretary of the Court to the parties to the case – including, naturally, the alleged victims, their next of kin, or their representatives - in order for them to submit any written arguments they deem relevant, within a time limit established by the President of the Court (Article 58(2)).

21 For proceedings in cases *pending* before the Court, *prior* to the entry into force of the new Rules of Procedure on June 1, de 2001, the Inter-American Court adopted a *Resolution on Transitory Provisions* (on March 13, 2001), whereby it decided that: 1) cases that are proceeding at the moment of entry into force of the new (2000) Rules of Procedure shall continue to be processed in accordance with the standards contained in the previous (1996) Rules of Procedure, until the procedural stage they are at concludes; 2) the alleged victims will participate in the stage begun following the entry into force of the new (2000) Rules of Procedure, in accordance with Article 23 thereof.

22 Arguments submitted independently by the alleged victims (or their representatives or next of kin), must, naturally, be formulated bearing in mind the terms of the application (in other words, the rights alleged to have been violated in the application), because - as procedural experts never tire of repeating (invoking the teachings of the Italian masters, in particular) - what is not in the dossier is not in the world.

43. This historic amendment to the Court's Rules of Procedure puts the position of the different players in the proper perspective; improves the hearing of the case; ensures the principle of adversarial action, essential in the pursuit of truth and justice under the American Convention; acknowledges that direct opposition between individual complainants and respondent states is an essential part of contentious human rights cases; recognizes the alleged victims' right to freedom of expression, which is essential for procedural equity and transparency; and, last but not least, guarantees equality of arms for the parties throughout the proceedings before the Court.[23]

IV. Strengthening of the International Procedural Capacity of Individuals under the American Convention on Human Rights

44. Progress in strengthening the procedural capacity of individuals in proceedings under the American Convention on Human Rights is gradually being achieved in a variety of ways in connection with the contentious and advisory functions exercised by the Inter-American Court of Human Rights, as well as provisional measures. The progress made in the area of *contentious cases* can be appreciated by examining, as seen above, both the evolution of the *Rules of Procedure* of the Inter-American Court (cf. *supra*), and the interpretation of certain provisions contained in the American Convention on Human Rights and in the Statute of the Court. I have already covered the direct participation of victims or their next of kin, or of their legal representatives in contentious proceedings before the Court, as well as the evolution of the Court's Rules of Procedure in general (cf. *supra*).

45. I could mention a number of relevant conventional provisions, including the following: a) Articles 44 and 48(1)(f) of the American Convention clearly support the interpretation in favor of individual petitioners as the complainant party; b) Article 63(1) of the Convention refers to the "injured party," which can only mean the individuals (and never the IACHR);

23 In defense of this position (which has managed to overcome resistance, especially from those who yearn for the past, even within the inter-American system of protection itself), cf. my briefs: A.A. Cançado Trindade, "El Sistema Interamericano de Protección de los Derechos Humanos (1948-1995): Evolución, Estado Actual y Perspectivas," in *Derecho Internacional y Derechos Humanos/Droit international et droits de l'homme* (Commemorative Book of the Twenty-Fourth Session of the External Program of the Academy of International Law, The Hague, San José, Costa Rica, April/May 1995), The Hague/San José, IIHR/Academy of International Law, The Hague, 1996, pp.47-95; A.A. Cançado Trindade, "The Consolidation of the Procedural Capacity of Individuals in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the Turn of the Century," 30 *Columbia Human Rights Law Review* - New York (1998) n. 1, pp.1-27; A.A. Cançado Trindade, "The Procedural Capacity of the Individual as Subject of International Human Rights Law: Recent Developments," *in Karel Vasak Amicorum Liber - Les droits de l'homme à l'aube du XXIe siècle,* Brussels, Bruylant, 1999, pp.521-544; A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos," *in The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century – Report on the Seminar* (November 1999), Vol. I, San José, Costa Rica, Inter-American Court of Human Rights, 2001, pp.3-68.

c) Article 57 of the Convention mentions that the IACHR "shall appear in all cases before the Court," but does not specify in what capacity, and does not say that the IACHR is a party; d) even Article 61 of the Convention, in establishing that only states parties and the Commission may submit a case to the Court, makes no mention of "parties";[24] e) Article 28 of the Statute of the Court says that the IACHR "shall appear as a party before the Court" (in other words, party in a purely procedural sense), but does not actually establish that it "is a party."

46. As for *Provisional Measures* (under Article 63(2) of the Convention), recent developments have strengthened the position of individuals seeking protection. In the *Constitutional Court* Case (2000), Judge Delia Revoredo Marsano de Mur, who was dismissed from the Constitutional Court of Peru,[25] submitted a request for provisional measures directly to the Inter-American Court on April 3, 2000. Since this concerned a case that was pending before the Inter-American Court, and because the Court was not then in session, the President of the Court, for the first time in the Court's history, issued a decision, of April 7, 2000, in which he ordered, *ex officio*, emergency measures, given the elements of extreme gravity and urgency and to avoid irreparable damage to the petitioner.

47. The same situation subsequently arose in the *Loayza Tamayo Case v Peru* (2000), in which the Court had already ruled on the merits and reparations: in a brief of November 30, 2000, Mrs. Michelangela Scalabrino directly submitted a request for provisional measures on behalf of the victim, Mrs. María Elena Loayza Tamayo. (This request was endorsed by the victim's sister, Mrs. Carolina Loayza Tamayo). Since the case is at the supervision stage of enforcement of the Judgment (on reparations), and because the Court was not in session, the President, for the second time, issued a Decision, of December 13, 2000, in which he ordered, *ex officio*, emergency measures, in light of the extreme gravity and urgency and to avoid irreparable damage to the victim.

48. In both cases *(Constitutional Court* and *Loayza Tamayo)*, the plenary of the Court, at the next session thereof, ratified the aforesaid emergency measures ordered by its President (Decisions of the Court on Provisional Measures, of August 14, 2000, and February 3, 2001, respectively). Both of these two recent episodes, which cannot be overlooked, demonstrate not only the viability, but also the importance, of direct access for the individual, without intermediaries, to the Inter-American Court of Human Rights, particularly in situations of extreme gravity and urgency.

49. As for *Advisory Opinions*, the participation should not be overlooked of individuals in proceedings before the Court, either as natural persons or as representatives of nongovernmental organizations (NGOs). Although the majority of advisory proceedings to date have not

24 In the future, when jus standi for individuals before the Court is recognized - as I hope -, this article of the Convention will have been amended.

25 And more recently reinstated therein.

featured such participation,[26] in some cases individuals have made their presence felt. Thus, in the proceedings connected with the fourth (1984) and fifth (1985) Advisory Opinions some individuals submitted their views at the respective hearings in representation of institutions (public and of the press, respectively); four representatives of three NGOs took part in the proceedings relating to the thirteenth Advisory Opinion; two members of two NGOs participated in the proceedings connected with the fourteenth Advisory Opinion; and two representatives of two NGOs took part in the proceedings concerning the fifteenth Advisory Opinion.

50. However, it was in connection with Advisory Opinion 16, historically of transcendental importance, that there were extraordinarily rich proceedings, in which, together with the eight states that took part,[27] at the public hearings the floor was taken by seven individuals representing four (national and international) human rights NGOs; two individuals from an NGO in favor of abolition of the death penalty; two representatives of a (national) lawyers association; four university professors in an individual capacity; and three individuals in representation of a man under sentence of death. These little-known data also show the access of the individual to the international jurisdiction in the inter-American system of protection, in the framework of advisory proceedings under the American Convention; they demonstrate, furthermore, the *ordre public* nature of such proceedings.

V. The next Step: Protocol of Amendment to the American Convention on Human Rights, to Strengthen its Protection Mechanism.

51. The new Rules of Procedure of the Court, adopted on November 24, 2000, and due to enter into force on June 1, 2001, not only take into consideration the recommendations made by the OAS General Assembly (cf. *supra*), but also introduce amendments, mentioned above, that target all parties to proceedings before the Tribunal, with a view to accomplishing the object and purpose of the American Convention, materialized as the effective protection of human rights. Significantly, they unequivocally recognize for the first time in the history of the Court and of the inter-American system of protection the individual complainant as subject of international human rights law with full international legal and procedural capacity.

52. With its fourth and new (2000) Rules of Procedure, the Court indisputably moves to the forefront of the international protection of human rights in our hemisphere (as well as in the framework of human rights overall), by unquestionably establishing the individual as the true complainant party at all stages of contentious proceedings under the American Convention on Human Rights. The implications of this legally revolutionary change are considerable, not only

26 That is, the proceedings in connection with the first (1982), second (1982), third (1983), sixth (1986), seventh (1986), eighth (1986), ninth (1987), tenth (1989), eleventh (1990), and twelfth (1991) Advisory Opinions.

27 Mexico, Costa Rica, El Salvador, Guatemala, Honduras, Paraguay, Dominican Republic, and the United States.

on the conceptual, procedural, and–why not say so?–philosophical planes, but also on the material plane: the Court will need considerable additional human and material resources to tackle this new conquest.[28]

53. This great qualitative stride made by the new Rules of Procedure of the Inter-American Court toward enhancing the judicial nature of the regional system of protection represents, then, one of the most significant advances in the evolution of that system (cf. *infra*). It comes, furthermore, at a moment in history when the ideal of the realization of justice at the international level is increasingly breaking new ground.[29] The improvement and strengthening of the inter-American system for the protection of human rights is a dynamic - not static- and ongoing process. It should be continuously pursued, since institutions that resist the changes of time tend to stagnate.

54. Institutions (including those that promote and protect human rights)–as well as being represented, in the final analysis, by the individuals that act in their name–operate *in time*, and must, therefore, undergo renewal, in order to deal with the new dimension of the protection needs of the individual.[30] That being the case, the new Rules of Procedure of the Court (coupled with those of the Commission) are part of a process of improvement and strengthening of the protection system. As I have long maintained, the next step in this evolution should, in my opinion, consist of a Protocol of Amendment to the American Convention on Human Rights, preceded by broad consultations with the states parties, civil society organizations, and those targeted by the system in general.

55. The future protocol, of necessity the fruit of consensus, should initially *include the regulatory strides* recently made (both by the Court - cf. *supra* - and by the Commission). It should always be borne in mind that Rules of Procedure are subject to amendment at any time (even retrograde changes); however, a protocol, once it enters into force, constitutes the surest way to secure genuine commitments on the part of states, without the possibility of backtracking, as regards a more effective protection mechanism for human rights.

28 Cf. section VII.3, *infra*.

29 With the notable strengthening of the European Court of Human Rights, the decision to create the African Court of Human and People's Rights, the creation by the United Nations of the *ad hoc* Tribunals for former Yugoslavia and Rwanda, the adoption of the 1998 Rome Statute of the International Criminal Court, among other recent initiatives. For background on the ideal of realization of justice at the international level, cf. A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos," *in The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-First Century – Report on the Seminar* (November 1999), Vol. I, San José, Costa Rica, Inter-American Court of Human Rights, 2001, pp.3-68.

30 Cf., in this connection, recently, A.A. Cançado Trindade y Jaime Ruiz de Santiago, *La Nueva Dimensión de las Necesidades de Protección del Ser Humano en el Inicio del Siglo XXI*, San José, Costa Rica, UNHCR, 2001, pp.19-119.

56. To my mind, the aforementioned protocol should–based always on consensus–go further. The substantive part of the Convention - regarding the rights protected - should be duly preserved unchanged, since the jurisprudence of the Court and the practice of the Commission in that regard, are part of the legal heritage of all the states parties to the Convention and all the peoples in our region. Moreover, in any event, Article 77(1) of the American Convention leaves opens the permanent possibility of broadening the collection of conventionally protected rights. However, the part concerning the protection mechanism and procedures under the American Convention certainly require amendment, and there is no reason to fear it.

57. In my opinion, the most urgent amendments, apart from ensuring full participation for alleged victims (*locus standi*) in all - appropriately streamlined - procedures under American Convention (cf. *supra*), are *de lege ferenda* and are as follows. *Article 50(2)* of the Convention, according to which the report of the IACHR under that Article "shall be transmitted to the states concerned, which shall not be at liberty to publish it," has generated excessive controversy since the initial application of the American Convention. Furthermore, its compatibility with the principle of equality of arms has to be demonstrated. In my opinion, the imperative of procedural equity requires that it be amended with the following possible wording:

> "The report [under Article 50 of the Convention] shall be transmitted to the states concerned and to the individual petitioners, which shall not be at liberty to make it public."

The same additional reference, also to "the individual petitioners," should be inserted in Article *51(1)* of the Convention, after the reference to "the states concerned."

58. The second sentence of Article 59 of the Convention, which authorizes the Secretary General of the OAS to appoint the staff of the Court's Secretariat, in consultation with the Secretary of the Court no longer has any basis, bearing in mind the agreement on the independence of the Court, as the highest judicial organ of the American Convention. That sentence ought to be reworded as follows:

> "The staff of the Court's Secretariat shall be appointed by the Court."[31]

31 By the same token, Article 14(4) of the (1979) Statute of the Inter-American Court of Human Rights, according to which, "the Staff of the Secretariat shall be appointed by the Secretary General of the OAS, in consultation with the Secretary of the Court," should be amended and replaced, *tout court,* with the following provision: "The Staff of the Secretariat shall be appointed by the Court." - With respect to the autonomy of the Court as an international human rights tribunal, Article 18 of the Statute of the Court, on incompatibilities, also requires attention. Article 18(1)(a) of the Statute, in establishing the incompatibility, with the position of Judge of the Court, of the positions and activities of "members or high-ranking officials of the executive branch of government," makes an exception "for those who hold positions that do not place them under the direct control of the executive branch and those of diplomatic agents who are not Chiefs of Missions to the OAS or to any of its member states." The latter addition is casuistic and is in direct and irremediable conflict with the most elementary canons of diplomatic law. Accordingly, the reference to "diplomatic agents who are not Chiefs of Missions to the OAS or to any of its member states" should be eliminated. A Chief of a Diplomatic Mission is an agent of the state, a high-ranking official

Furthermore the following should be appended at the end of the first sentence of Article 59 of the Convention:

> "(...), and with the Agreement between the Secretary General of the OAS and the Court on the Administrative Functioning of the Secretariat of the Court, in force since January 1, 1998."

59. The clause establishing the binding jurisdiction of the Court, contained in Article *62* of the American Convention, is an historical anachronism, as I mentioned in my study recently published in Volume I of the Proceedings of the Seminar of November 1999 organized by the Court.[32] Based on the lengthy discussions held there, I propose that Article 62 recognize the *automatism* of the binding jurisdiction of the Court for all the states parties to the Convention, by replacing all the existing paragraphs, *tout court*, with the following:

> "All states parties to the Convention recognize as fully and unconditionally binding, *ipso jure* and without requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the American Convention on Human Rights."

60. In order to ensure *continuous monitoring* of faithful compliance with all the conventional obligations of protection, and with the judgments of the Court in particular, in my opinion, the following sentence should be added at the end of Article 65 of the Convention:

> "The General Assembly shall convey them to the Permanent Council, which shall study and prepare a report on the matter, in order for the General Assembly to adopt a decision thereon."[33]

In that way, a need is filled as regards a mechanism to operate on a *permanent basis* (and not once a year at the OAS General Assembly) for supervising faithful execution of the Court's judgments by respondent states.

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under the permanent and direct control of the most senior officer of the executive branch of government, regardless of where he happens to discharge his duties, whether it be Thailand or China, Uganda or Austria, Egypt or Finland, or any other country in the world, or any inter-governmental international organization.

32 Cf. A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos," in *The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-First Century – Report on the Seminar* (November 1999), Vol. I, San José, Costa Rica, Inter-American Court of Human Rights, 2001, pp.3-68.

33 Article 30 of the Statute of the Inter-American Court should be amended, *a fortiori*, in order to make it compatible with the new wording here proposed of Article 65 of the American Convention.

61. Continuing in that vein, and with a view to ensuring faithful compliance with the Court's judgments, regarding the domestic law of the states parties, a third paragraph should be added at the end of Article *68* of the Convention, with the following wording:

> "In the event that said domestic procedure does not yet exist, the states parties undertake to adopt it, in accordance with the general obligations stipulated in Articles 1(1) and 2 herein."

62. In prescribing reservations to provisions contained in the American Convention, *Article 75* refers to the system of reservations enshrined in the (1969) Vienna Convention on the Law of Treaties. In my view, the developments of recent years, relating both to the doctrine and to the practice of international human rights supervisory organs–as I mention in a recent extensive study [34]–have demonstrated the unsuitability of the system of reservations recognized in the two (1969 and 1986) Vienna Conventions on the Law of Treaties as regards the application of international human rights treaties.

63. Therefore, based on broad experience accumulated over the years in the application of the American Convention on Human Rights, in the interests of legal security and of the necessary establishment of an international *ordre public* in the area of human rights, I propose that Article 75 of the American Convention be worded, *tout court,* as follows:

> "This Convention is not subject to reservations."

64. *Article 77* should, in my opinion, be amended, so as to enable not only any state party and the IACHR, but also the Court, to submit proposed protocols to the American Convention - as naturally befits the highest supervisory organ of that Convention -, with a view to broadening the collection of rights protected thereby and to strengthening the protection mechanism established by the Convention. In sum, the (1979) Statute of the Inter-American Court (of 1979) also requires a series of amendments.[35]

VI. The Next Step: From *Locus Standi* to *Jus Standi* for Individual Complainants before the Court

65. In addition to the above-proposed changes, perhaps in the more distant future (which I hope will not be too distant) another step forward should be taken as regards the evolution of

34 A.A. Cançado Trindade, "The International Law of Human Rights at the Dawn of the XXIst Century," *in Cursos Euromediterráneos Bancaja de Derecho Internacional,* Vol. III (1999), Castellón/España, Aranzadi Ed., 2000, pp.145-221.

35 Such as those mentioned in footnotes 28 and 30 supra. - Furthermore, Articles 24(3) and 28 of the Statute require amendment: in Article 24(3), the sentence "the decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof" should be amended to read, "the parties shall be given written notification of the decisions, judgments and opinions of the Court; and in Article 28, the phrase "as a party" should be eliminated.

locus standi in judicio to *jus standi* for individuals before the Court, - as I have held in my Separate Opinions in the Judgments of the Court (Preliminary Objections) in the *Castillo Páez* (January 30, 1996), *Loayza Tamayo* (January 30, 1996), and *Castillo Petruzzi* (April 4, 1998) cases, and in my Concurring Opinion in the Advisory Opinion (16) of the Court on "*The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*" (October 1, 1999). If this proposal were accepted - as I believe it should be - Article *61(1)* of the Convention would be reworded as follows:

> "The States Parties, the Commission, and the alleged victims shall have the right to submit a case to the Court."

66. In my view, a careful study of all the proposals submitted hereinabove should be conducted by means of broad consultations with all the players - which I have already mentioned - in the inter-American system of protection, and with independent experts. These consultations should be carried out in an atmosphere of calm and reflection for as long as is deemed necessary. The task of follow-up on the above-mentioned study, once the next OAS General Assembly (in San José, Costa Rica, in June 2001) has concluded, could be entrusted to a group of high-level legal experts appointed by the states parties to the American Convention that have recognized the binding jurisdiction of the Inter-American Court; once set up, this group, would carry out the consultations and process the results, with a view to presenting them immediately thereafter, together with their observations, to this CAJP of the Permanent Council of the OAS, for further consideration and discussion.

VII. Final Observations

67. These are, in synthesis, the proposals that I take the liberty to present, as President and rapporteur of the Inter-American Court, to this CAJP–with a view to stimulating the constructive Dialogue opened last year before this legal and political body of the OAS–on the current status of and ways to strengthen the inter-American system for the protection of human rights. These proposals are not intended to be exhaustive; rather, they are the proposals that, in my opinion, should first be submitted for consideration by the delegations of the states parties to the Convention here present. I cannot conclude this *Report* without adding some final thoughts, by returning briefly to four of the key issues that were the subject of our fruitful exchange of ideas on March 9 last, to wit: a) satisfaction of the basic prerequisites for the progressive evolution of the inter-American system of protection; b) the role of the IACHR in contentious proceedings before the Court; c) financial implications of the recent amendments introduced in the new (2000) Rules of Procedure of the Court; d) enhancement of the judicial nature of the protection mechanism under the American Convention and direct access of the individual to international judicial proceedings in the framework of the inter-American system of protection, as well as application of the collective guarantee by states parties to the Convention.

1. Satisfaction of the Basic Prerequisites for the Progressive Evolution of the Inter-American System of Protection

68. First, allow me to refer to my report to this CAJP of March 9 last, in which I again called–as I did on previous occasions before different organs of the OAS–on those OAS member states that have yet to do so to meet the prerequisites essential to any real progress in the inter-American system for the protection of human rights. There are three such basic prerequisites, which I allow myself to repeat: a) ratification of the American Convention on Human Rights by all the OAS member states, or accession thereto; b) full and unconditional acceptance by all the OAS member states of the - automatic - binding jurisdiction of the Inter-American Court of Human Rights; and c) adoption by the states parties under domestic law of the substantive provisions (relating to the protected rights) contained in the American Convention.

69. In the aforementioned report that I recently presented at the Headquarters of the OAS, I expressed my conviction that "the real commitment of a country to internationally protected human rights is measured by its initiative and determination to become a Party to human rights treaties, thus assuming the conventional obligations of protection enshrined therein. In the present domain of protection, the same criteria, principles and norms ought to be valid for all states, which are legally equal, as well as to operate to the benefit of all human beings, irrespective of their nationality or any other circumstances." And I added:

> "Those states that have remained outside of the legal system of the American Convention on Human Rights have a historic debt to the inter-American system of protection, which must be redeemed. While all OAS member states have not ratified the American Convention, do not fully accept the jurisdiction of the Inter-American Court to hear disputes, and do not incorporate the substantive standards of the American Convention into their internal law, very little progress will be made in the genuine strengthening of the inter-American protection system. The international protection agencies can do little if the conventional standards for safeguarding human rights do not reach the bases of national societies. Consequently, I wish today to repeat my call, which respectful but resounding and which I hope will duly touch the juridical conscience of all OAS member states."[36]

70. I know that some states that are not yet party to the American Convention are at present seriously considering the possibility of ratifying the Convention, or acceding thereto.[37] These

36 OEA/CAJP, *Report of the President of the Inter-American Court of Human Rights, Judge Antônio A. Cançado Trindade, to the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States*, OEA/Ser.G/CP/CAJP-1770/01, March 16, 2001, p.3. - Also cf., previously, A.A. Cançado Trindade, "Reflexiones sobre el Futuro del Sistema Interamericano de Protección de los Derechos Humanos," *in El Futuro del Sistema Interamericano de Protección de los Derechos Humanos* (eds. J.E. Méndez y F. Cox), San José, Costa Rica, IIHR, 1998, pp.573-603.

37 As is the case, according to official sources, of Canada, where, with that in mind, the Central government resumed consultations with the Provinces in 1999.

efforts deserve to be encouraged, so that those states can too become parties to the American Convention, in that way ensuring that the spirit of hemispheric solidarity outweighs considerations of *raison d'État*, and thereby contributing their share to making human rights the *lingua franca* of all peoples in our region of the world. Only then will be able to construct an inter-American *ordre public* based on full respect for human rights.

71. As I mentioned in the dialogue of March 9 last before this CAJP, the above-mentioned adoption under domestic law by the states parties of the substantive provisions contained in the American Convention is in no way affected by the principle of subsidiarity of the international machinery for protection of human rights. In my view the two coexist in harmony, inasmuch as that adoption takes place on the substantive plane (that is, that of the rights protected), whereas the principle of subsidiarity applies specifically to the machinery and procedures of international protection; in other words, on the procedural plane.

72. In conclusion, allow me to repeat here what I said to the delegations present at our dialogue of March 9 last - in reply to one of the questions raised on that occasion -: to my understanding, the pursuit of universal acceptance of human rights treaties (already achieved in Europe), is not confined to a mere bargaining strategy or tactic in the framework of the inter-American system of protection, since it has become a genuinely universal cry, expressed, for instance, eight years ago at the Second World Conference on Human Rights (Vienna, June 1993), and given substance in its main final document, the Vienna Declaration and Programme of Action.[38] In the domain of international human rights law that universal acceptance is essential to the struggle to ensure the primacy of the law for the pursuit of justice.

2. Role of the IACHR in Contentious Proceedings before the Court

73. A recurring issue in the ongoing discussions on the directions of the inter-American system of human rights, particularly latterly with the adoption by the Inter-American Court of its new (2000) Rules of Procedure, has to do with the role of the IACHR in contentious proceedings in individual cases before the Court. In reality, this was the central issue of the discussions at the third and fourth Meetings of Experts convened by the Court at its seat in San José, Costa Rica, on February 5 to 6, and 8 to 9, 2000. These meetings of independent experts, which I had the honor to chair, were attended not only Judges of the Court and members of the IACHR, but also by eminent jurists from the Americas and Europe.

74. At the third Meeting of Experts, one of the surviving participants of the Inter-American Specialized Conference on Human Rights in San José, Costa Rica - which adopted the American Convention on Human Rights of 1969 -, recalled that in the course of the discussions at that

38 For an account by someone who took part in the preparatory work of the Drafting Committee of the World Conference of Vienna, cf. A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, Vol. I, Porto Alegre, S.A. Fabris Ed., 1997, pp.119-268.

historic conference[39] opinions were put forward in favor of direct access for individual petitioners to the Inter-American Court, but that a concrete proposal was not presented in that respect. The experts meetings at the Inter-American Court on February 5 to 6, 2000 expressed three positions in that regard, namely: a) the alleged victims as the "material" or "substantive" party, and the IACHR as the "litigant or formal" party; b) the IACHR as the "principal party" and the alleged victims as the "assisting party"; and c) individual petitioners as the "complainant party," and the IACHR as guardian of the American Convention (akin to a special attorney-general's office).

75. The discussions on the foregoing went into greater depth at the Fourth Meeting of Experts on February 8 to 9, 2000. On that occasion the experts expressed the following standpoints on the same issue: a) the individual petitioners as the "substantive party," who may even decide, once the case has been examined by the IACHR, whether or not they wish it to be referred to the Court; b) the individual petitioners as the "assisting party" and the IACHR as "principal litigant" (with the problem of the latter having initially assumed the defense of the alleged victims, and the matter to be resolved of the right of the individual to submit evidence); and c) the coexistence of "three parties," namely, the individual complainant, the respondent state, and the IACHR as good-faith, independent, and impartial litigant.

76. By the end of these discussions the experts taking part had formed two bodies of opinion around two opposed theses, namely:

a. the *procedural law thesis,* according to which, as long as the American Convention provides that only the states parties and the IACHR may submit a case to the Court (Article 61(1)), the role of the IACHR cannot be changed without jeopardizing increased participation by alleged victims in the proceedings as "assisting party "; and

b. the *substantive law thesis* - to which I personally staunchly subscribe with every conviction -, according to which, it is necessary to start from the premise of entitlement to the rights protected by the Convention, which clearly provides that individuals, the true complainant substantive party, are entitled to those rights, while the IACHR is the guardian of the American Convention and assists the Court in contentious cases under the Convention as defender of public interests.

77. The immediate implication of the substantive law thesis is that, since individuals are entitled to the rights protected by the Convention, as they unquestionably are, they should be have the *capacity* to vindicate those rights before the supervisory organs of the Convention. The Court bore these considerations in mind when it adopted its new (2000) Rules of

39 Whose single volume of Proceedings I consider unsatisfactory, particularly when compared with the eight original, well-detailed volumes, of the *travaux préparatoires* on the European Convention for Protection of Rights and Fundamental Freedoms (1950 Treaty of Rome).

Procedure. Accordingly, Article 2 of the Rules of Procedure, which contains the definitions of the terms used, provides (in paragraph 23) that "the expression 'parties to the case' refers to the victim or alleged victim, the state, and, only procedurally, the Commission."[40]

78. Furthermore, it should not be overlooked that Article 23 of the new Rules of Procedure of the Court, on "Participation of the alleged victims" at all stage of the proceedings before the Court (cf. *supra*), at the very beginning of its first paragraph, provides for that participation "once the application has been admitted (...)." This reveals that, while the Court recognized, once and for all, the individual as a legal person with full capacity to act in international proceedings as subject of international human rights law, it also acted with prudence at the present stage of the progressive evolution of the inter-American system of protection, by preserving the current powers of the IACHR and by helping at the same time to clarify the different roles of individual complainants and the IACHR, thus ending the ambiguity of the role of the latter in proceedings before the Court.[41]

3. Financial Implications of the Recent Changes in the New (2000) Rules of Procedure of the Court

79. The Inter-American Court has reached its institutional coming of age as we stand on the threshold of the twenty-first century. For the benefit of those who still yearn for the past, allow me to mention just one fact: the Court's 1991 *Annual Report* contains 127 pages; a decade later, the Court's 2000 *Annual Report* contains 818 pages; and, even more significant than the volume of activities is the quality of the work that the Court does today. It does so in adverse conditions, with the bare minimum of human and material resources, and thanks to the dedication of all of its Judges, and the unflagging support of its Secretariat (in particular, the Secretary, Deputy Secretary, and the attorneys and assistants who comprise its legal area).

80. Never, as the Court's *Annual Reports* of recent years comprehensively bear out, has a generation of judges had so much demanded of it as the current one. However, in order to meet the increasing needs of protection, the Court needs considerable additional - human and material - resources. In the last biennium, the Court has mentioned, in the two last proposed budgets transmitted (in 2000-2001) to the Committee on Administrative and Budgetary Affairs of

40 For the definition of "victim" and "alleged victim," cf. paragraphs 31 and 30, respectively, of Article 2 of the Rules of Procedure.

41 It is important to recall, in this connection, the historical background behind Protocol No. 9 to the Convention for Protection of Rights and Fundamental Freedoms. That Protocol, as mentioned in its *Explanatory Report* (Council of Europe, ISBN 92-871-2007-2, pp.1-13), was prompted by the need to prevent disparities between the treatment of individuals and states, and to allow individuals to take their cases directly before the Court, once the old Commission had rendered a prior decision thereon. It was also prompted by the recognition that access for individuals to the European Court had to be ensured, as did equality of arms. That said, it is also important to mention that the adoption of that Protocol to the Convention for Protection of Rights and Fundamental Freedoms was a stage in a broad, ongoing process of enhancement of the aforementioned protection mechanism, and not the crowning moment of that process.

the OAS (for fiscal years 2001 and 2002), the urgent need for such additional resources - in reality, for a budget at least five times larger than at present. And following the entry into force, on June 1 next, of its new (2000) Rules of Procedure, such resources will be essential to the workings or *mise-en-oeuvre* of the protection mechanism contained in American Convention on Human Rights.

81. Insofar as the Court is concerned, the impending entry into force of its new Rules of Procedure, in particular, heralds a sharp increase in case processing costs, since those Rules they have granted the alleged victims or their next of kin, and their legal representatives *locus standi in judicio*, as the true complainant party, in conjunction with the participation of the IACHR and the respondent state. Accordingly, the Court will have to hear and process the arguments of all three (petitioners, IACHR, and state), which will entail higher costs. Moreover, with the inevitable increase in the Court's docket under the new Rules of Procedure, the current system of three or four regular sessions a year will become patently insufficient and inadequate for the Court faithfully to perform its remit under the Convention.

82. The rise in the volume and complexity of the work, as a result of the amendments introduced in the new Rules of Procedure of the Court, in accordance with the recommendations contained in resolution AG/RES. 1701(XXX-O/00) adopted by the OAS General Assembly, necessitates a personnel increase in the Court's legal area - which currently operates with a skeleton staff -, together with the attendant salary adjustments for its members. The foregoing does not take into account that the Judges of the Inter-American Court–unlike those of other international tribunals in existence–continue to work without receiving any salary whatever, which means that their efforts remain more than anything else a vocation.

83. In light of the foregoing, Costa Rica is to be congratulated for its timely proposal for a staggered increase of the budget of the Court and the IACHR of at least 1% per annum, from the present 5.7% of the Regular Fund of the OAS to 10% of that Fund by 2006. That proposal has the firm support of the Court, and, in my opinion, merits the backing of all the OAS member states.[42] Human rights have become a key item on the international agenda on the threshold of twenty-first century (on both the regional and the international plane), and, if we wish to be consistent with the official rhetoric, we must give concrete demonstrations of our professed aims. Furthermore, as regards the inter-American system of human rights, with the changes recently made to the (2000) Rules of Procedure of both the Court and the IACHR, in accordance with the recommendations of the OAS General Assembly, if the aforementioned additional appropriations to the Court and the IACHR are not gradually increased the regional system of protection runs a real risk of collapse in the near future.

42 Cf. OAS, OEA/Ser.G-CP/doc.3407/01, January 23, 2001, p.3.

4. Enhancement of the Judicial Nature of the Conventional Protection Mechanism, Direct Access for the Individual to Justice at the International Level, and Collective Guarantee.

84. Finally, as I did at the end of the dialogue on my address of March 9 last before this CAJP, allow me to conclude my presentation today by underscoring the importance of the enhancement of the judicial nature of procedures under the American Convention, since the judicial process is the most developed form of protection of the rights of the human person. By the same token, it is necessary to address the urgent need also to ensure access for individuals to justice on the international plane, to which end, as mentioned, the adoption by the Inter-American Court of its new (2000) Rules of Procedure has contributed decisively.

85. *Locus standi* for individual petitioners throughout proceedings before the Court, therefore, is now assured by the new Rules of Procedure of the Court, due to enter into force on June 1, 2001. This procedural stride ought to be enshrined in a convention, rather than a set of rules, so as to ensure a real commitment by all the states parties to the American Convention to the unequivocal recognition of individuals as legal persons with full procedural capacity to act as subjects of international human rights law.

86. The day that we manage to progress from *locus standi* to *jus standi* for individuals before the Court we will have reached the culmination of a long evolution of the law toward the emancipation of the human person as the bearer of inalienable rights that are inherent in them as such, and that emanate directly from international law. The progression, following the full participation of individual complainants throughout proceedings (*locus standi*) before the Court, toward the right of direct access to the Court for individuals (*jus standi*) is, in my opinion, a logical upshot of the progressive evolution of the protection mechanism under the American Convention. The day that we attain that degree of evolution, the ideal will be realized of full legal equality before the Inter-American Court between the individual as true complainant party, and the state as respondent party. Every true international jurist in our hemisphere has the unavoidable duty to contribute to this evolution.

87. In my view, strengthening the protection mechanism under the American Convention requires the recognition by all states parties to the American Convention of the binding jurisdiction of the Court, which, of necessity, would be automatic and unconditional. It is important to persevere in the pursuit of the old ideal of international justice, which is latterly making increasing strides in different parts of the world. Our regional system of protection as a whole should be placed above the interests of any given state, or of either supervisory organ of the American Convention, or of any of the other players in the system. Of necessity, sectarian interests must yield to considerations of principle, the protection needs of alleged victims of human rights violations, and the imperative of improving and strengthening the mechanism for protection of the rights enshrined in the American Convention.

88. Permit me again to express, on this occasion before the CAJP, the trust that the Inter-American Court deposits in the states parties as *guarantors* of the American Convention. Each

state party individually assumes the duty to comply with the decisions of the Court, as provided by Article 68 of the Convention, in accordance with the principle of *pacta sunt servanda*, and because, moreover, it is an obligation under their domestic law. All the states parties also assume the obligation to ensure the integrity of the American Convention, as guarantors thereof. Ensuring faithful compliance with the judgments of the Court is the duty of all the states parties to the Convention.

89. The application by the aforementioned states of the *collective guarante*– which underlies the American Convention and all treaties on human rights–is crucial for faithful execution or compliance with the judgments and decisions of the Court, as well as for abidance with the recommendations of the IACHR. In addressing the issue of application of the collective guarantee by the states parties to the Convention, it is important to bear in mind the two fundamental pillars of the protection mechanism contained in the American Convention,[43] namely, the individual right of petition at the international level and the unassailability of the binding jurisdiction of the Inter-American Court: as I have always held, these core elements constitute real fundamental clauses (*cláusulas pétreas*) of the international protection of human rights.[44]

90. Upon considering the application of the collective guarantee by the states parties to the Convention, it is also necessary to bear in mind the time element–since it covers both monitoring and prevention measures–of the workings of the protection mechanism contained in the American Convention. Measures for *monitoring* compliance with the decisions of both organs of supervision of the American Convention are crucially important, as are *prevention* measures, as is eloquently demonstrated by the increasing and effective use of provisional measures by the Inter-American Court. The pursuit of full protection and prevalence of the rights inherent in the individual, in all circumstances regardless, corresponds to the new *ethos* of the present times, and is a clear expression in our part of the world of the *universal juridical conscience* at the outset of the twenty-first century.

91. Developing this conscience–the material source of all law–entails unequivocal acceptance that no State can consider itself above the law, the ultimate beneficiary of whose norms are individuals. It should never be forgotten that the state itself was originally conceived to ensure the general welfare. The state exists for the individual, not vice versa. Accordingly, *so-called raison d'État is limited* by respect for the rights inherent in all individuals, by the satisfaction of the needs and aspirations of the public, and by the impartial treatment of the matters that affect the whole of humanity.

43 And of other human rights treaties that also recognize the petition system.

44 Cf. A.A. Cançado Trindade, "Las Cláusulas Pétreas de la Protección Internacional del Ser Humano: El Acceso Directo de los Individuos a la Justicia a Nivel Internacional y la Intangibilidad de la Jurisdicción Obligatoria de los Tribunales Internacionales de Derechos Humanos," *in The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-First Century - Report on the Seminar* (November 1999), Vol. I, San José, Costa Rica, Inter-American Court of Human Rights, 2001, pp.3-68; also cf. the other references cited in footnote 23, *supra*.

92. In recognizing this primacy of the interests of humanity over *raison d'État*, states become parties to human rights treaties and exercise the collective guarantee of such treaties by protecting their integrity. Unquestionably, the need is acknowledged nowadays to restore the human person to their rightful central position as *subject of domestic as well as international law*. The monopoly of the State of the condition of being subject of rights is no longer sustainable, nor are the excesses of an archaic and degenerated legal positivism. The international legal personality of the human being is in our days a reality, and all that remains is to consolidate their full legal and procedural capacity at the international level. We all have the unavoidable duty to contribute to that aim, particularly since the acknowledgement of the centrality of human rights ultimately corresponds to the new *ethos* of our times.

Washington D.C.
April 5, 2001