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ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

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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)

I. INTRODUCTION

Just four months ago, we were part of a large multinational gathering in San José, Costa Rica, with one common objective: to commemorate the twentieth anniversary of the Inter-American Court of Human rights (hereinafter "the Court" or "the Inter-American Court"), the thirtieth anniversary of the American Convention on Human rights (hereinafter "the Convention" or "the American Convention"), and the fortieth anniversary of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"). For those of us who had the privilege to attend the commemorative events, the days during which they were held gave us the opportunity to thoroughly review our inter-American system of human rights protection, the path we have trodden over the years and, more importantly, the journey ahead of us.

Today, I stand before you, in this important Dialogue organized by the Committee on Juridical and Political Affairs, to present a report on the Inter-American Court of Human Rights, its operations, evolution, and attributes. I am convinced that its strengthening is a task that concerns us all, not only those persons who are directly involved, but all the member states of the Hemisphere and their inhabitants, who are the ultimate beneficiaries of the rules of the inter-American system of protection.

As this document notes, the Court has come a long way in its first 20 years. During this period it has held 47 regular sessions, 23 special sessions; it has heard 35 contentious cases; has handed down 67 judgments of different kinds-on preliminary objections, jurisdiction, merits, reparations, and interpretation of judgments; it has issued 16 advisory opinions and has settled 25 requests for provisional measures. Similarly, the number of states parties who have recog-

nized its contentious jurisdiction has increased significantly. In 1980, one year after the Court was established, only one member state of the Organization of American States (hereinafter "the OAS" or "the Organization") was subject to its contentious jurisdiction. At its tenth anniversary, 10 states were in that position, and double that number today.

Similarly, over the years and as it has gained experience, the Inter-American Court has evolved. Its objective has always been to interpret and apply the American Convention in such a way as to safeguard the fundamental rights and freedoms enshrined therein in respect of persons subject to the authority of states having recognized the Court's jurisdiction. However, the needs of both the Court and its users have made it necessary for the Court to adjust to the current reality. And it is this reality that requires the Court to progressively develop the way in which it performs its functions, in conjunction with all the parties concerned, with a view to improving the system.

Protective jurisprudence is today the legal heritage of all the states parties to the American Convention. Now, on the threshold of the new century, we face current and future challenges. Bearing that in mind, it is important that the Court and the Inter-American Commission, as well as the Organization of American States and its member states, recognize the contemporary needs of the inter-American system of protection of human rights and work towards its strengthening. Our system was created for the welfare of all; its principles safeguard us all, thus its future depends on us all.

II. SUBSTANTIVE ASPECTS OF THE WORK OF THE COURT

The Inter-American Court of Human Rights began its activities on June 29, 1979. Over its 20 years of existence and through its judgments on the merits, the Court has referred to substantive rights protected in the American Convention, such as the right of recognition of legal personality¹ the right to life,² the right to integrity of person,³ the right to personal freedom,⁴ judicial guarantees,⁵ the principle of legality and retroactivity,⁶ the rights of the child,⁷ equality under the law,⁸ and judicial protection.⁹ Similarly, reference is made to the basic general

1 American Convention on Human Rights, Article 3.

2 *Ibidem*, Article 4.

3 *Ibidem*, Article 5.

4 *Ibidem*, Article 7.

5 *Ibidem*, Article 8.

6 *Ibidem*, Article 9.

7 *Ibidem*, Article 19.

8 *Ibidem*, Article 24.

9 *Ibidem*, Article 25.

obligations of states with regard to those rights: the obligation to respect rights¹⁰ and the duty to adopt provisions under domestic law.¹¹

This jurisprudence is a valuable contribution to any contemplation of the American Convention and the system in general. However, the Court has not yet had the opportunity to issue judgments on a wide range of rights¹² in respect of which judicial interpretation would be very worthwhile. These developments, which will take place in the coming years, will certainly enhance the system. Notwithstanding the fact that, strictly speaking, the judgments handed down by the Court apply only to the particular cases in which they are rendered, these judgments also provide a guide for all states, by giving specific content to the rights established in the Convention.

Status of Ratifications and Accessions to the Instruments of the System

American Convention on Human Rights

The Convention entered into force on July 18, 1978, after the eleventh instrument of ratification had been deposited by an OAS member state. To date, the following 25 member states have ratified or acceded to the Convention: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago,¹³ Uruguay, and Venezuela.

Acceptance of the Contentious Jurisdiction of the Court

Of the states ratifying the Convention, 21 have accepted the Court's jurisdiction: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago,¹⁴ Uruguay, and Venezuela.

10 *Ibidem*, Article 1.

11 *Ibidem*, Article 2.

12 Prohibition of slavery and servitude; right to compensation; protection of honor and dignity; freedom of conscience and religion; freedom of thought and expression; right of correction or reply; right of assembly; freedom of association; protection of the family; right to a name; right to nationality; right to private property; right of movement and residence; and political rights.

13 Trinidad and Tobago withdrew from the American Convention on May 26, 1998. In accordance with Article 78 of the Convention, said withdrawal became effective on May 26, 1999.

14 By withdrawing from the Convention, Trinidad and Tobago ceased to recognize the contentious jurisdiction of the Court in events occurring after May 26, 1999.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador)

The signing of the Additional Protocol in the Area of Economic, Social, and Cultural Rights on November 17, 1988, during the twenty-eighth regular session of the OAS General Assembly was a significant advance in respect of Article 26 of the American Convention, which establishes the following:

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

The Protocol protects a wide range of economic, social, and cultural rights¹⁵ and took effect when Costa Rica deposited its instrument of ratification on November 16, 1999. To date it has been signed by 15 countries¹⁶ and ratified by 11.¹⁷

Protocol to the American Convention on Human Rights to Abolish the Death Penalty

The Protocol to Abolish the Death Penalty was approved in Asunción, Paraguay, on June 8, 1990, at the twentieth regular session of the OAS General Assembly. The Protocol itself states that it shall enter into force "among the States that ratify or accede to it when they deposit their respective instruments of ratification or accession with the General Secretariat of the Organization of American States."¹⁸

To date, eight states have signed the Protocol¹⁹ and seven have deposited the instrument of ratification.²⁰ The importance of the Protocol is that it establishes that the states parties

15 The Right to Work; Just, Equitable, and Satisfactory Conditions of Work; Trade Union Rights; Right to Social Security; Right to Health; Right to a Healthy Environment; Right to Food; Right to Education; Right to the Benefits of Culture; Right to the Formation and the Protection of Families; Rights of Children; Protection of the Elderly; and Protection of the Handicapped.

16 Argentina, Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

17 Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru, Suriname, and Uruguay.

18 Article 4.

19 Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela.

20 Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Uruguay, and Venezuela.

"shall not apply the death penalty in their territory to any person subject to their jurisdiction"²¹ and that "[n]o reservations may be made to th[e] Protocol."²²

Inter-American Convention to Prevent and Punish Torture

Signed in Cartagena de Indias, Colombia, on December 9, 1985 at the twenty-fifth regular session of the General Assembly, the Inter-American Convention to Prevent and Punish Torture has been signed by 20 states,²³ of which 16 have ratified it.²⁴ This instrument entered into force on February 28, 1987.

Inter-American Convention on the Forced Disappearance of Persons

Adopted in Belém do Pará, Brazil, on June 9, 1994, the Inter-American Convention on the Forced Disappearance of Persons was signed by 14 OAS member states,²⁵ of which seven have ratified it.²⁶ This instrument entered into force on March 28, 1996.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará)

Adopted in Belém do Pará, Brazil, on June 9, 1994, the Convention on the Prevention, Punishment, and Eradication of Violence Against Women entered into force on March 5, 1995. At present, 29 states have ratified or acceded to it.²⁷

III. PROCEDURAL ASPECTS

In accordance with the American Convention,²⁸ the Court performs contentious and advisory functions. These functions differ in respect of the matters examined and the rules

21 Article 1.

22 Article 2. 1.

23 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

24 Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

25 Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela.

26 Argentina, Bolivia, Costa Rica, Panama, Paraguay, Uruguay, and Venezuela.

27 Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, St Vincent and the Grenadines, St Kitts and Nevis, Trinidad and Tobago, Uruguay, Venezuela.

28 Convention, Articles 61-64.

governing the respective proceedings. In exercising its contentious jurisdiction, the Court examines a specific application, determines the facts reported, and decides whether or not they constitute a violation of applicable international law. The exercise of contentious jurisdiction is different in scope and content. First, upon examining the application for an advisory opinion, there are no facts that clearly demonstrate a specific case.

Furthermore, the exercise of contentious jurisdiction takes the form of a judicial process in which opposing views are aired. This necessarily depends on prior acceptance of the Court's jurisdiction by the states parties,²⁹ which must abide by the judgment handed down.³⁰ In contrast, the Court's advisory jurisdiction does not depend on the consent of the states concerned.³¹

A final difference between the two functions is the legal character of the Court's decisions as opposed to an advisory opinion, which is not directly enforceable at the domestic level³² but is valid in law and serves as a guide for all states.

Contentious Procedure³³

In its capacity as jurisdictional organ of the system, the Court is hearing or has heard 35 contentious cases.³⁴ In these cases, 67 decisions have been handed down on preliminary objections, jurisdiction, the merits, reparations, and interpretation of decisions.

The Convention, the Statute and Rules of Procedure of the Inter-American Court of Human Rights provide for a number of stages in the proceeding before the Court, namely:

29 Ibidem, Article 62. 1.

30 Ibidem, Article 68.

31 The Inter-American Court has established the principle that the rules of contentious procedure are not applicable to advisory procedure. In the advisory opinion on restrictions to the death penalty, the Court said that in advisory procedures "[t]here are no parties in the sense that there are no complainants and respondents; no State is required to defend itself against formal charges, for the proceeding does not contemplate formal charges; no judicial sanctions are envisaged and none can be decreed." Court Advisory Opinion *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 of the American Convention on Human Rights)*, OC-3/83 of September 8, 1983, Series A, No. 3, para. 22. A related advisory opinion of the Court is *Reports of the Inter-American Commission on Human Rights (Art. 51 of the American Convention on Human Rights)*, OC-15/97 of November 14, 1997, Series A, No. 15, para. 25.

32 In accordance with Article 68.2 of the Convention, the Court's decisions "may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state."

33 An outline of contentious procedure in the Inter-American Court is annexed to this document (Annexes V, VI, and VII).

34 A list of these cases is included in the annexes (Annex 11).

1. Preliminary Objections Stage

This is a possible stage in the proceeding before the Court because the filing of preliminary objections is a defense that may not be used by the respondent state. However, in the majority of cases coming before the Court, the respondent has filed such objections. A point of clarification is necessary: the preliminary objection procedure does not suspend the procedure based on the merits of the case. However, the existence of a stage of preliminary objections delays settlement on the merits because the Court must hear allegations of the parties and deliberate on them before handing down its judgment on the merits. It should be borne in mind that Article 36.6 of the Rules of Procedure of the Court states that the Court "may, if it deems it appropriate, convene a special hearing on the preliminary objections, after with it shall rule on the objections." Such a hearing is therefore not obligatory.

2. Merits Stage

The merits stage begins with the filing of the application with the Court. If the application meets the requirements indicated by the Court's Rules of Procedure,³⁵ the President authorizes that the respondent be formally notified and given four months within which to answer the applications.³⁶

When the respondent state answers the application or if it fails to do so and the deadline lapses, prior to the opening of oral proceedings, the parties may request that the President admit other written pleadings.³⁷ If the parties so request, the President may accede to their request "if he sees fit" or may refuse to do so. Normally, if the President answers in the affirmative, he grants the complainant 30 days for the presentation of a written pleading and the respondent the same time frame within which to reply, after notification of the complainant's pleading.

Once the deadlines for filing the briefs of the written proceedings have elapsed, the President shall set the date for the opening of the oral proceedings. In accordance with Article 39 of the Rules of Procedure approved in 1996, "[t]he President shall announce the date for the opening of the oral proceedings and shall call such hearings as may be necessary." During the hearings, the Court shall hear the testimonies of witnesses, expert witnesses, and lastly, the final allegations that the parties wish to submit for consideration.

35 Rules of Procedure, Article 33.

36 Rules of Procedure, Article 37.

37 Rules of Procedure, Article 38.

Generally, hearings on the merits of a case are concentrated in one session but, for a number of reasons, the hearings may be extended to more than one session. On some occasions, the Court has delegated the receipt of evidence to a commission of judges.

At times, evidence has not been submitted directly to the Court in public hearings. In exceptional cases, for example, experts have been appointed to hear testimonies in the respondent state,³⁸ or one of the officers of the Court's secretariat has been commissioned to collect additional information.³⁹ These actions are derived from the broad powers the Court possesses in taking evidence, under Article 44 of its Rules of Procedure.

Lastly, the Court may draw from the opinions of individuals or nongovernmental organizations by the filing of *amici curiae*. *Amicus curiae* is a brief whereby an individual or nongovernmental organization submits information and views to the Court without having to be a party in the case.

Upon conclusion of the oral proceedings, the Court deliberates on the merits of the case. The deliberations may take place during the session immediately following the one in which the hearings on the merits were held, but there are no provisions that establish this. In most cases, the deliberations have been confined to a single session and the relevant judgment has been handed down and communicated to the parties at the end of that session.

3. Reparations Stage

One of the Court's functions is to rule on the reparations it deems necessary in the event that it finds a violation of any provisions of the Convention.⁴⁰ These reparations may be ordered in the judgment on the merits, but are usually a matter reserved for a subsequent stage. The existence of this stage is justified by the need for proper criteria on the basis of which to order reparations.

Generally speaking, the Court, or its President, announces the opening of the reparations procedure, for which purpose it grants the parties a time frame within which to file their claims. After the 1996 amendment of the Rules of Procedure, Article 23 thereof establishes that "[a]t the reparations stage, the representatives of the victims or of their next of kin may independently submit their own

38 This occurred in the cases of Caballero Delgado and Santana and Loayza Tamayo.

39 In the case of Aloboetoe, for example, it was necessary for the Deputy Secretary to travel to that country to collect information on the economic, financial, and banking situation of the country.

40 American Convention, Article 63. 1.

arguments and evidence." Based on this amendment, the recent practice of the Court has consisted in providing an initial time limit for the victims, their representatives, or next of kin, then a time limit for the Inter-American Commission, and finally another for the respondent state. However, depending on the complexity of the case, these time limits, or some of them, may be the same.

Public hearings are held to determine reparations, which are also concentrated in a single session.

4. Supervision of Enforcement of Judgments

In its judgments, the Court generally reserves the right to supervise enforcement. The supervisory action taken by the Court depends on the reparations that have been ordered. The supervision of judgments requires careful study and thorough review because it constitutes a stage in which the Court's work reaches, in a material sense, those persons for whom the system of human rights protection was designed and for whom the benefits of its activities acquire their most palpable form.

5. Interpretation of Judgments

Article 67 of the American Convention establishes that "In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment."

This right has been exercised on three occasions by the Inter-American Commission⁴¹ and five times by the respondent states.⁴²

The Advisory Procedure⁴³

Article 64 of the Convention established the rules for exercising advisory functions with a particularly extensive list of criteria. In that connection, the Court stated in its advisory opinion OC1/82 that "Article 64 of the Convention confers on this Court an advisory jurisdiction

41 Cases of Velásquez Rodríguez, Godínez Cruz, and El Amparo (interpretation of judgment on reparations).

42 Cases of Neira Alegria *et al.* (interpretation of judgment on reparations); Loayza Tamayo (interpretation of judgment on reparations); Cesti Hurtado (interpretation of judgment on the merits); Blake (interpretation of judgment on reparations); and Suárez Rosero (interpretation of judgment on reparations).

43 A schema of the advisory procedure (Annex VIII) and a list of basic information on the advisory opinions handed down by the Court (Annexes IV and IX, respectively) are attached to this document as annexes.

that is more extensive than that enjoyed by any international tribunal in existence today." In accordance with that article, the following can request advisory opinions:

- OAS member states, whether or not they have ratified the American Convention .
- The organs listed in Chapter X of the OAS Charter. Of all these organs, the only one that has requested advisory opinions has been the Inter-American Commission, on five occasions.

In the advisory process, the Court generally invites all the states and competent organs to submit their written comments on the matter to be resolved.⁴⁶ Finally, academic institutions, nongovernmental organizations, and individuals have been deeply involved in the matter of *amici curiae*.

The Inter-American Court has the authority to give explanatory advice regarding "the interpretation of [the] Convention or of other treaties concerning the protection of human rights in the American states."⁴⁷ This sphere of action has been interpreted by the Court on a number of occasions. As the Court has stated, its advisory jurisdiction extends to the interpretation of "any treaty as long as it is directly related to the protection of human rights in a member state of the inter-American system."⁴⁸ This broad scope of interpretation may cover even those treaties concluded within different areas of the inter-American system, including the universal system of protection of human rights. It has also included the American Declaration on the Rights and Duties of Man which, although it is not a treaty, gives content to a number of provisions of the American Convention and the OAS Charter on the issue of human rights.⁴⁹

44 Court Advisory Opinion "*Other Treaties*" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights) OC-1/82 of September 24, 1982, Series A No. 1, para. 14.

45 The states that have used this opportunity are: Costa Rica (four times); Uruguay (three times, including a joint request with Argentina); and Colombia, Peru, Argentina, Chile, and Mexico (once).

46 However, the Court may make changes in the issuance of these invitations, if the situation so requires. This was the case in processing OC-4/84 requesting an opinion on proposed amendments to the Political Constitution of Costa Rica. The Court decided to request viewpoints from not only the states and organs of the inter-American system, but also from Costa Rican institutions that could help shape its perspective. On that occasion, the following submitted their views: the Supreme Electoral Court, one Congressman, the Director of the Civil Registry, and the Faculty of Law of the University of Costa Rica.

47 Convention, Article 64. 1.

48 Court Advisory Opinion "*Other Treaties*" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights) OC- 1/82 of September 24, 1982, Series A No. 1, para. 2 1.

49 Court Advisory Opinion, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, OC- 10/89 of July 14, 1989, Series A No. 10.

Similarly, "[t]he Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments."⁵⁰ This possibility is particularly helpful when the state requests an advisory opinion regarding draft legislation which has not yet been passed. This situation arose in the case of advisory opinion OC-4/84, when the Government of Costa Rica requested the Court's opinion on the compatibility of some prospective amendments to its Political Constitution.

In its advisory opinion OC-1/82, the Inter-American Court established that the scope of the terms of reference of its jurisdiction in advisory proceedings does not imply that there are no limits to this function.⁵¹ In addition, the Court has taken great care to examine whether or not it should resolve a particular advisory matter and the impact its action might have on the general framework of the inter-American system and, especially, on individuals. To that end, the Court has established that it will not exercise its advisory jurisdiction if it would have the effect of weakening or duplicating its contentious jurisdiction or "changing the system of protection provided for in the Convention to the detriment of the victim."⁵²

In general, advisory proceedings progress as follows: once the request is received, the President notifies the member states and OAS bodies of it, invites them to submit their observations on the points raised, and sets a time frame for these submissions. Once this period has elapsed, the Court proceeds to examine the observations submitted and schedules a public hearing of the observations of the member states and the OAS bodies.

After holding the hearing, the Court proceeds to formulate its opinion on the various matters involved in the application. First, it examines the admissibility of the application. The Court also studies any possible effects its opinion might have on the inter-American system and on the rights of any victims of human rights violations. Once it determines that the application is within the scope of its jurisdiction, it declares it admissible and then issues the advisory opinion.

Provisional Measures

One area that merits careful study is the power of the Court to order, at the Commission's request, or *motu proprio*, the adoption of urgent or provisional measures, a power conferred upon it by Article 63.2 of the Convention, which states:

In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in

50 Convention, Article 64.2.

51 Court Advisory Opinion "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art 64 American Convention on Human Rights) OC- 1/82 of September 24, 1982, Series A No. 1, para. 18.

52 *Idem*, para. 24.

matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

The Court has reviewed applications for provisional measures in 10 cases brought before it and in 15 matters that have not yet been submitted to the Court.⁵³ The measures adopted have proven to be exceptionally important for protecting the lives and integrity of person of the victims and witnesses and for safeguarding evidence in the cases before the Court. A total of over 200 persons have benefited from the measures adopted by the Court.

The Court's extensive practice in the area of provisional measures has also made it possible to rule on certain problems in relation to the application of these mechanisms. A case in point is the situation that arises when provisional measures are requested in respect of matters not before the Court. This possibility has been described as a major stride in human rights procedural law.

Provisional measures are, in principle, designed to be temporary. If they are prolonged, they could undermine the effectiveness of a mechanism that is designed to be exceptional. However, circumstances have caused the Court to maintain some provisional measures in place for a number of years.⁵⁴

In its resolutions on provisional measures, the Court generally requires the state not only to adopt the measures but to periodically report on them. It also requires the Inter-American Commission to present to the Court its observations on state reform. The provisional measures, which can only be imposed on the states parties to the American Convention that have accepted the contentious jurisdiction of the Court, reflect the preventive dimension of international human rights protection.

IV. INSTITUTIONAL ASPECTS

Sessions of the Court

The Court carries out its work in regular and special sessions, usually held at its headquarters in San José, Costa Rica. At the time of preparation of this report, the Court has held 47 regular sessions and 23 special sessions. In recent years, the Court has met four times per year in two-week sessions.

53 A list of the provisional measures adopted by the Court can be found in the annexes to this document (Annex III).

54 Provisional measures in the case of *Caballero Delgado and Santana* have already lasted over five years. Provisional measures in the case of *Blake* have been in effect for four years. Provisional measures in the *Colotenango* matter have been in force for more than five years; those in the *Carpio Nicolle* matter for over four years; and those issued in respect of the *Giraldo Cardona* matter, were put in place over three years ago.

During its sessions, the Court carries out the following activities:

- Considers the Report of the President.
- Considers the Report of the Secretary.
- Considers administrative matters.
- Studies the procedural progress of the cases before it.
- Studies all the briefs and actions of the parties submitted to its Secretariat since the last session.
- Analyzes the status of the provisional measures it has adopted.
- Examines the status of compliance with the judgments it has issued.
- Hears testimonies and statements of witnesses and experts in public hearings.
- Hears the allegations of the parties in public hearings.
- Hands down interlocutory decisions.
- Conducts deliberations.
- Adopts and lifts provisional measures.
- Issues advisory opinions.
- Hands down judgments.
- Issues its annual report, as appropriate.
- Approves its budget, as appropriate.

However, the Secretariat finds it increasingly difficult to plan and organize the Court's sessions with the current resources. The growing number of matters before the Court; the large number of witnesses and experts testifying in the cases; the requirement that public hearings be held at certain stages of the process; and the need to plan sufficiently long continuous sessions for the Court's deliberations are factors which, combined, make it difficult for the Court to expedite proceedings.

Composition of the Court

Article 54 of the American Convention provides:

- 1 The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years. Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.
2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.
3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

This provision has created practical problems in terms of the Court's composition in hearing the matters before it. In effect, by reading item I in conjunction with the numeral 3 of the Article, one may infer that there are judges whose term has expired but who continue to hear those cases pending judgment. This has caused some juxtaposition in the composition of the Court, which may cause its composition to vary depending on the case being considered.

This problem has been partially solved by the Court by means of the following provision in its new Rules of Procedure.⁵⁵

All matters relating to reparations and indemnities, as well as supervision of the implementation of the judgments of this Court, shall be heard by the judges comprising it at that stage of the proceedings, unless a public hearing has already been held. In that event, they shall be heard by the judges who had attended that hearing.

However, the problem remains for cases that are still in the stages of preliminary objections, merits, or interpretation of judgment.

The question of the appointment of *ad hoc* judges by respondent states must also be considered. Indeed, for each case in which an *ad hoc* judge is appointed, the composition of the Court can be considered changed, which further complicates the planning of sessions.

Staff of the Secretariat

Evidently, as the Court does not meet in permanent session, its Secretariat is required to act promptly and efficiently. The staff of the Secretariat has the following tasks:

- Provide permanent assistance to judges in their work
- Assist the Court when it is in session
- Process cases submitted to the Court
- Keep and update the files on each case
- Prepare the material required for hearings
- Conduct investigations into the cases before the Court
- Assist judges with the material for preparing the drafts of judgments, resolutions, and advisory opinions
- Select, publish, and distribute the documents issued by the Court
- Supervise translation of the documents issued by the Court
- Handle requests for information and inquiries from the public and from other OAS organs about the system
- Handle requests for publications
- As far as possible, seek to publicize the system in national and international forums

55 Rules of Procedure, Article 16.

However, material and budgetary constraints prevent the Secretariat from performing all these functions more efficiently. The limited staff, particularly the fact that there are only four attorneys to process all the cases, provisional measures, and requests for advisory opinions, may have compromised the speed and quality of the above tasks.

One step toward greater independence, efficiency, and flexibility in the administrative management of the Court's Secretariat was made on January 1, 1998 when the President of the Court and the Secretary General of the OAS signed the "Agreement between the Secretary General of the OAS and the Inter-American Court of Human Rights on the administrative functioning of the Secretariat of the Court." By virtue of this agreement, the Court has enjoyed greater administrative and financial independence, and has taken a number of administrative, auditing, and staffing measures, which have been duly reported to the Organization.⁵⁶

V. PROGRESSIVE DEVELOPMENT OF THE RULES OF PROCEDURE OF THE INTER-AMERICAN COURT

As indicated in my presentation to the OAS Ad Hoc Working Group in San José, Costa Rica, February 10-11, 2000, the Court has always been concerned with developing its functions, as well as refining and strengthening the protection mechanism under the American Convention. This is reflected in the way in which its work has evolved as a result of the use of the regulatory authority granted under Article 60 of the Convention.

To date, the Court has issued three sets of Rules of Procedure, which have also been subject to partial amendment.⁵⁷ The Court approved its first Rules of Procedure in July 1980, based on the Rules in force for the European Court of Human Rights and the Rules of the International Court of Justice. This first set of rules was in effect for more than ten years ended July 31, 1991.

Due to the influence of the Rules of the International Court of Justice the proceedings, particularly in contentious cases were delayed. Once a case was filed with the Court, the President called a meeting of the representatives of the Commission and the respondent state to deliver his opinion 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

56 See Annual Report of the Inter-American Court of Human Rights 1998 (OEA/Ser.LN/111.43, Doc. H. 18 January 1999), pp. 37, 38, 51, and 52 (of the Spanish version) and Annex 1.

57 Rules of Procedure approved by the Court at its III Regular Session, July 30 to August 9, 1980 and amended at the IV Session, January 15-24, 1981. Rules of Procedure approved by the Court at its XXIII Session, January 9-18, 1991 and amended at subsequent sessions on January 25, 1993, July 16, 1993, and December 2, 1995. Rules of Procedure approved by the Court at its XXXIV Session, September 9-20, 1996 and amended at its XXXIX Regular Session, January 19-21, 1998.

filing of the respondent's briefs. The first three contentious cases⁵⁸ and the first 12 advisory opinions⁵⁹ were processed within this legal framework.

In light of the need to expedite proceedings, the Court approved new 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.⁶⁰ 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.

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 state and the Commission whether they considered other briefs necessary in the written proceedings. In the same spirit, the new Rules approved in 1996 provided that the parties could request that the President admit other pleadings in the written proceedings. Said request would then be assessed by the President, who would set the corresponding time limits, if the request was granted.

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 current

58 Cases of Velásquez Rodríguez, Godínez Cruz, and Fairén Garbi and Solís Corrales, all against Honduras.

59 Court advisory opinions on "*Other Treaties*" Subject to the Advisory Jurisdiction of the Court (OC-1/82); *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. (OC-2/82); *Restrictions to the Death Penalty* (OC-3/83); *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica* (OC-4/84); *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (OC-5/85); *The Word "Laws" in Article 30 of the American Convention on Human Rights* (OC-6/86); *Enforceability of the Right to Reply or Correction* (OC-7/86); *Habeas Corpus in Emergency Situations* (OC-8/87); *Judicial Guarantees in States of Emergency* (OC-9/87); *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights* (OC-10/89); *Exceptions to the Exhaustion of Domestic Remedies* (OC- 11/90); and *the Compatibility of Draft Legislation with Article 8.2. h of the American Convention on Human Rights* (OC- 12/91).

60 This procedure has been retained in the current Rules of Procedure (Article 34).

Rules of Procedure have provided for an extension of these time-limits by four and two months, respectively, from the date of notification of the complaint.

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 Standing Committee 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 lack of adequate economic resources and the fact that the Court is not in permanent session, this procedure had to be revised with a view to immediately and effectively safeguarding the rights to life and integrity of person enshrined in the American Convention. 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 involved take the necessary emergency measures to prevent irreparable injury to the persons targeted by said measures. A decision by the President to that effect is submitted to the plenary of the Court in the session immediately following.

Different stages of the proceedings of 18 contentious cases⁶¹ and two advisory opinions⁶² were heard under the Rules of Procedure approved in 1991, and its subsequent amendments.

Five years after approval 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 the Court. The new Rules of Procedure were adopted on September 16, 1996 and entered into force on January 1, 1997.

The new Rules of Procedure specified both the terminology and the structure of the procedure but, above all, they made a fundamental qualitative stride in the development of international human rights law by granting victims and their representatives or next of kin the authority to independently file their own arguments and evidence in the reparations stage.⁶³ This rule gave active legitimacy to the representatives of the victims or their next of kin, who had previously filed their allegations through the Commission, which adopted them as its own. As provided in Articles 23, 35, 37, and 57.6 of the current Rules of Procedure, the Court

61 Cases of Aloeboetoe; Gangaram Panday; Neira Alegría *et al.*; Cayara; Castillo Páez; Loayza Tamayo; Cantoral Benavides; Durand and Ugarte; Caballero Delgado and Santana; Maqueda; Garrido and Balgorria; El Amparo; Genie Lacayo; Paniagua Morales *et al.*; Blake; Bámaca Velásquez; Suárez Rosero; and Benavides Cevallos.

62 Advisory opinions on *Certain Attributes of the Inter-American Commission on Human Rights* (OC13/93) and on *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (OC- 14/94).

63 Article 23 of the current Rules of Procedure.

transmits to the original complainant, 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.

In addition to the progress indicated, the new 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 does not exclude the possibility of presenting evidence at other times in cases of *force majeure*, serious impediment, or supervening events. 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, which might contribute to the resolution of the cases before it.

Regarding the early termination of cases, these Rules of Procedure include, in addition to friendly settlement and discontinuance, judicial settlement before the Court which, after hearing the views of the complainant and the representatives of the victims or their next of kin, determines their merits and establishes the legal effects flowing from the action.

Finally, it should be noted that the Rules of Procedure predating those currently in force, provided that the Court would convene a public hearing to read and notify the parties of its judgments. This procedure has been eliminated in the current Rules with a view to expediting the process, saving the expense of having the representatives of the parties appear before the Court, and making optimum use of the limited time the judges actually sit at the Court's headquarters during its sessions.

Under the 1996 Rules of Procedure, 17 contentious cases at various stages of their proceedings⁶⁴ were heard and two advisory opinions⁶⁵ were issued.

VI. INITIATIVES TO STRENGTHEN THE INTER-AMERICAN SYSTEM OF PROTECTION

In recent years, a number of efforts have been made to identify and find ways to solve the operational problems of the inter-American system of protection of human rights with a

64 Cases also heard under the 1991 Rules of Procedure: Paniagua Morales *et al.*; Bámaca Velásquez; Cantoral Benavides; and Durand and Ugarte. Cases heard only under the 1996 Rules: Villagrán Morales *et al.*; Castillo Petruzzi *et al.*; Cesti Hurtado; Ivcher; Constitutional Court; Baena Ricardo *et al.*; Mayagna Awas Tingni Community; Las Palmeras; The Last Temptation of Christ; Cantos; Hilaire; Del Caracazo; and Trujillo Oroza.

65 Advisory opinions on *Reports of the Inter-American Commission on Human Rights* (OC- 15/97) and *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* (OC-16/99).

view to its strengthening. I have also referred to these efforts in my aforementioned presentation to the OAS Ad Hoc Working Group in San José, Costa Rica, February 10- 11, 2000.

Already in 1996, the OAS General Assembly, in resolution 1404 on the Annual Report of the Inter-American Commission on Human Rights,⁶⁶ had mandated the Permanent Council to conduct an evaluation of the workings of the inter-American system, to initiate a process "leading to its improvement, possibly by modifying the respective legal instruments as well as the methods and working procedures of the Inter-American Commission on Human Rights, for which it shall request the cooperation of the Commission and the Inter-American Court of Human Rights." It had also decided to promote "dialogue between member states, between those states and the Inter-American Commission on and Court of Human Rights, and with experts in the field, so as to contribute to a process of reflection leading to improvement of the inter-American human rights system."

In November of that year, the Secretary General of the Organization presented to the Permanent Council a report entitled "Toward a New Vision of the Inter-American System of Human Rights,"⁶⁷ to discuss important issues for the future of the system of protection, with a view to enhancing the dialogue initiated in the Hemisphere. To that effect, representatives of states, academics, members of nongovernmental organizations, judges, legislators, and representatives of other human rights systems were invited to participate.

The following year, in its resolution 1488 on the evaluation and improvement of the workings of the inter-American system for the promotion and protection of human rights⁶⁸ the General Assembly, while acknowledging "the achievements of the inter-American human rights system and ... its ... contribution to the observance of human rights in the Hemisphere," instructed the Permanent Council, this time through the Committee on Juridical and Political Affairs, to continue "its comprehensive consideration of the various aspects of that system, formulating recommendations, as appropriate and through the corresponding organs, concerning possible reforms of the applicable Legal instruments," and to continue to promote this dialogue with the cooperation of the agencies and entities of the inter-American system, the Inter-American Institute of Human Rights, and other governmental and nongovernmental organizations.

Resolution 1546 of 1998⁶⁹ reiterated the objectives of previous resolutions and resolved to promote concrete initiatives and measures to strengthen and improve the inter-American system for the promotion and protection of human rights, in order to strengthen its institutional structure and promote its ties with national systems and regional bodies that promote and

66 Resolution AG/RES. 1404 (XXVI-0/96).

67 OEA/Ser/G/CP/doc.2828/96.

68 Resolution AG/RES. 1488 (XXVII-0/97).

69 Resolution AG/RES. 1546 (XXVIII-0/98).

protect human rights." At the same time, by Resolution 1547,⁷⁰ the General Assembly took measures for the international promotion of human rights in the inter-American system.

Finally, resolution 1633 of 1999⁷¹ again instructed the Permanent Council to continue its comprehensive consideration of the various aspects related to the inter-American system and to promote dialogue and cooperation among the organs, agencies, and entities of the inter-American system, including the Inter-American Institute of Human Rights and other governmental and nongovernmental organizations.

Based on this mandate, the Committee of Juridical and Political Affairs, commissioned by the Permanent Council, agreed on an "annotated agenda of the Dialogue" at its session on September 13, 1999. This agenda has been developed formally at a number of subsequent meetings of the Committee.

As a result of the Meeting of Ministers of Foreign Affairs of OAS Member States, held in San José, Costa Rica on November 22, 1999, and Ad Hoc Working Group on Human Rights was formed. This Working Group met in the same city in which it was created on February 10 and 11, 2000, arriving at certain recommendations. I attended this first meeting in my capacity as President of the Inter-American Court of Human Rights and I made a presentation on the workings and prospects of the Court, which I have already cited.

As I affirmed in my intervention at the meeting of the Ad Hoc Working Group, the Court has played an active role in the inter-American system review process. At its joint Court-IACHR meetings, views have been exchanged on the proceedings used by both organs and on the ways to expedite their work and improve efficiency.

But, in particular, in recent months, the Court has given impetus to the review process, in the commemorative spirit of the previous year. Indeed, as part of the preparations for the festivities for the twentieth anniversary of the Inter-American Court of Human Rights, the thirtieth anniversary of the American Convention on Human Rights, and the fortieth anniversary of the Inter-American Commission on Human Rights, the Court organized a seminar entitled "The Inter-American System of Protection of Human Rights on the Threshold of the Twenty-first Century," held in San José, Costa Rica, November 23-24, 1999. Before and after that seminar, the Court convened experts at the highest level to discuss the key issues relating to that system of protection.

70 Resolution AG/RES. 1547 (XXVIII-0/98).

71 Resolution AG/RES. 1633 (XXIX-0/99).

Seminar "The Inter-American System of Protection of Human Rights on the Threshold of the Twenty-first Century"⁷²

At the seminar, the following important items for discussion were covered and a number of conclusions reached, namely:

1. Contentious Jurisdiction of the Inter-American Court of Human Rights

The following sub-items were covered under this heading:

1.a Ordering and Assessment of Evidence

The participants indicated that the evidence should not only be assessed using logical and formal criteria but also by estimating how they could be most useful for the protection of human rights, without losing sight of the rights of states, of course.

To that end, it was suggested that the Rules of Procedure of the Court and the Commission be amended and that the efforts of those organs be coordinated with a view to streamlining the evidentiary process, preventing duplication, and safeguarding the guarantee of the parties' right to defense during the proceedings.

1.b Friendly Settlement: Experience of the Court

It was noted that the Court cannot sponsor or take the initiative in friendly settlements, but cannot refuse to consider that course of action should it be initiated. Its admissibility requires that the respondent state acknowledge the facts and accept its international responsibility.

1.c Reparations: Experience of the Court

The participants affirmed that the Court has made great progress in this area, developing principles and devising efficient practice for granting pecuniary reparations. They also stated that the Court should supervise the enforcement of its decisions by the states. In that connection, they affirmed that execution is governed by three key defining principles: a) the Court's rulings shall be final and unappealable; b) the states parties to the Convention agree to adhere to the decisions of the Court in any case to which they are parties; and c) enforcement of the Court's decisions is subject to the Court's supervision of the judgments on both the merits and on reparations.

72 The program of the Seminar has been attached as an annex to this report (Annex XI).

1.d Enforcement of the Court's Judgments

The need to adopt national measures critical to the implementation of the Convention was stressed, in order to ensure the direct applicability of its rules to the domestic law of the states parties. The states parties to the Convention were urged to put in place domestic mechanisms for enforcement of the judgments of the Inter-American Court. Failure to enforce a judgment of the Court shall constitute a further violation of the Convention by the state in question.

2. Functions of the Inter-American Commission on Human Rights

Three related topics were addressed at the seminar:

2.a Study of Communications: Experience of the Commission

In that connection, the following points were raised: the need to improve the treatment of evidence to prevent duplication in that area between the Court and the Commission; the advisability of having the victims participate directly in the process before the Court; and the mandatory enforcement of the Court's judgments and observance in good faith of the Commission's recommendations. In addition, all the OAS member states were urged to ratify the American Convention on Human Rights, as well as the other human rights treaties within the inter-American system, and to accept the Court's contentious jurisdiction.

2.b On-site Observations and Reports on Human Rights Situations

On-site observations are, sometimes, the only possible response to massive and serious violations affecting a large number of persons. Reports made of such events generally seek to clarify the facts. At the same time, dialogue with the government involved is used as a means of preventing situations in which human rights are violated.

2.c Friendly Settlement

It was noted that when human rights protection became a state policy, recognition of international liability for violations and settlements on the merits of a case helps improve and strengthen the system. It was indicated that friendly settlement represented a joint effort to find the truth in the facts of the case which, when found, contributes to the strengthening of the system.

3. Commitment of the International Community to the Effective International Protection of Human Rights and the Financial Implications of Strengthening the Inter-American System

The participants stated that it was necessary, for the improvement and dynamism of the system, to establish a permanent Court and to strengthen the Secretariat accordingly. The pri-

mary responsibility for this falls on the shoulders of the member states, which have created the system of protection and which must therefore provide it with the resources it needs to operate effectively. In that connection, it was noted that the success or failure of international instruments depends, in the final analysis, on the political will of the states involved. If the OAS is not in a position to adequately finance the inter-American system of protection, the organs it comprises must raise the additional funds they need by submitting proposals to international funding agencies. For this purpose, it would be necessary to draw up a joint strategic plan explaining to the various donor agencies where the system wants to go, how it hopes to get there, and what resources it will need for the purpose. To that end, the unity, cooperation, and goodwill of the various organs of the system is needed.

4. Advisory Function of the Inter-American Court of Human Rights

Emphasis was placed on the importance the Court's advisory function, which has produced international jurisprudence and constitutes a mechanism for tackling the new challenges facing the inter-American system of protection.

5. Application of the American Convention vis-à-vis the Caribbean

The necessity and importance of greater participation by the Caribbean in the inter-American system of protection, as well as the views of the countries in the region in that regard, were expressed.

6. Access to Justice at the International Level

A consensus seems to have emerged on the establishment of the Inter-American Court as the jurisdictional organ that should embrace broader participation by individuals. Naturally, the Commission should continue its function as guardian of the Convention and develop the noncontentious functions it has exercised very effectively, especially its on-site observations.

There is a clear linear evolution whereby individuals have become true subjects of international human rights law, with full legal capacity to act. In that connection, it was indicated that the recognition of rights should be matched by the procedural capacity to exercise them. The individual must have the status of *locus standi in judicio* at all stages of the proceeding before the Court. The very essence of international protection lies in the holding of proceedings in which the alleged victims or their representatives confront the respondent states.

7. Strengthening of the Role of NGOs in the Inter-American System of Protection of Human Rights

NGOs were found to have a very important role to play, not only by participating in the processing of cases but also by providing training and education in international law on human rights. A new challenge for these organizations is the need for the victims themselves to partic-

ipate in the inter-American system of protection. Another major responsibility of NGOs noted was the follow-up of decisions of the human rights supervisory bodies at the national level.

8. Other Aspects of Protection of the Human Person

The relationship between international law on human rights, international humanitarian law, and international law on refugees was highlighted. It was also noted that the actual universalization of human rights today depends largely on the capacity for a moral turnabout in the developed countries that would make it possible to alter the structures that keep so many people extremely marginalized.

9. Conclusions

Among the main conclusions drawn from the discussions held during the course of the seminar, the following are noteworthy:

1. Need for efficient use of economic resources and for additional resources.
2. Expediting of procedures without compromising legal security, while avoiding delays and duplications in the current machinery of our protection system.
3. Direct applicability of the standards of the American Convention in the domestic law of the states parties, as well as the adoption of the national measures to that end.
4. Direct participation by individuals in proceedings before the Inter-American Court, as an avenue to access to justice at the international level and its complementarity with access to justice at the national level.
5. The need to universalize the system, namely by ratification of the Convention or accession thereto by all the states in the region, as well as acceptance of the Court's contentious jurisdiction by all the states parties to the Convention, accompanied by provisions for the automaticity of the Court's unrestricted, binding jurisdiction in all the states parties.

Meetings of Experts Convened by the Court

Before holding the seminar, the Court convened experts in human rights and international law and, in general, agents of the system of protection, to discuss key issues about the system. Similarly, immediately after the seminar, and in the following months, the Court continued to hold other activities of this type.

All in all, the Court held four meetings of experts at its headquarters in San José, Costa Rica on September 20, 1999, November 24, 1999, February 5-6, 2000, and February 8-9, 2000.

At the last meeting, the recommendations transcribed below were adopted. They reflect the topics that were also discussed at the previous meetings, and which I covered in my presentation to the participants at the recent meeting of the Ad Hoc Working Group.

1. Participation of Individuals in Proceedings Before the Court

The participants expressed the desire for more broad-based, effective, and independent participation by individuals in proceedings before the Court, particularly in such acts as the submission and ventilation of evidence and the formulation of allegations. They indicated that this could be achieved initially by amending the regulations, before considering an appropriate Protocol to the Convention.

They also commented on the role that individuals appearing before the Commission should play, by being consulted on the referral of cases to the Court, where appropriate.

2. Specificity of the Role of the Inter-American Commission

The participants pointed out the increase, in practice, in the effective participation of individuals in proceedings before the Court, which has been reflected in a number of contractual and regulatory provisions. In that regard, all shared the common view that the protection of the rights of individuals and their participation in the system should be strengthened, without compromising the Commission's role, which may not always coincide with that of the victim, given its capacity as guardian of the Convention.

However, two positions were expressed on the Commission's role in proceedings before the Court, which are presented below:

On the one hand, some participants stressed procedural aspects, asserting that, as long as the Convention provided that only the Commission and the states could submit cases to the Court, the role of the Commission could not be changed without jeopardizing increased participation by alleged victims in the proceedings.

On the other hand, a number of those present stressed the issue of entitlement to rights, asserting that because individuals are entitled to the substantive rights, they must have the ability to exercise those rights, meaning that they must have the same procedural rights as the parties.

3. Assessment of the Evidence

The participants affirmed that if the evidence submitted to the Commission is introduced, in a timely manner and with the proper guarantees, during the stage of the proceedings when the parties confront each other, it need not be reproduced before the Court. In that event, the burden of proof is reversed and the state, *inter alia*, must dispute whether the proper proce-

ture was followed or whether unreasonable conclusions were derived from the facts. In all events, assessment of the evidence is always reserved for the Court. Participants agreed that the principle of timeliness in the submission of evidence is important to its assessment. They also indicated that the Court was free to obtain any other type of evidence, at any time and at any stage of the proceedings, safeguarding the parties' control of that evidence, while bearing in mind the differences in the facts between the sides.

4. Preliminary Objections

Proposals were made to expedite the preliminary objections procedure.

5. Enforcement and Supervision

5.a Enforcement of Judgments of the Inter-American Court of Human Rights

Those present stated that the Court should continue to report to the General Assembly in accordance with the provisions of Article 65 of the Convention, on the cases of non-enforcement of its judgments, thereby directly informing the Assembly of such situations, with a view to making the mechanism effective.

The attendees underscored the obligation of states to enforce the decisions of the Court, as provided in Article 68 of the Convention, in accordance with the principle of *pacta sunt servanda* and because said obligation is also established in the domestic law of the states.

The participants submitted the following proposals to promote enforcement of the judgments of the Inter-American Court.

* To promote mechanisms to enforce judgments, as provided in Article 27 of the Headquarters Agreement between the Government of Costa Rica and the Inter-American Court of Human Rights, cognizant of the general duty set forth in Article 1. 1 of the Convention and the related duty established in Article 2 thereof. The relevant Article of the Headquarters Agreement provides the following:

Upon notification of the decisions of the Court and, where appropriate, its President, to the relevant administrative or judicial authorities of the Republic, said decisions shall have the same executive and executory effect as those handed down by the Costa Rican courts.

* To consider the possibility that, independent of proceedings to enforce the corresponding judgment, the Commission should file a complaint or individuals should file an application with the Commission requesting the Court to find an additional violation of the Convention by the state for failure to enforce the Court's rulings.

* Application by the states parties of the collective guarantee, in support of the supervisory duty of the organs of the inter-American system of protection for the enforcement of its decisions.

5.b Enforcement of the Recommendations made in the Reports of the Inter-American Commission on Human Rights

The participants shared the view that states should adhere to and enforce in good faith the recommendations of the Inter-American Commission and that, by having signed and ratified the American Convention, they have the obligation to make every effort to implement those recommendations, particularly because they emanate from a principal organ of the OAS whose task it is to "promote the observance and defense of human rights" in the Hemisphere.

The participants agreed that the states parties should apply the collective guarantee, in support of the supervisory duty of the organs of the inter-American system regarding protection for the enforcement of their decisions.

The participants agreed that it would be advisable for states that were not in agreement with the Commission's recommendations to have recourse to the Court for a definitive interpretation.

6. Additional Resources for Strengthening the inter-American System of Protection of Human Rights

The participants stated that, in order to implement the recommendations made by the experts, to enable the protective organs in the system to perform their functions properly, the states needed to provide them with adequate economic resources required for the task.

The participants entrusted the Secretariat of the Court with the task of preparing a study on the matter.

VII. CRITICAL IMPORTANCE OF THE AVAILABILITY OF ADEQUATE RESOURCES

The Inter-American Court conducts its work in regular and special sessions, held at its headquarters in San José, Costa Rica. For this purpose, the judges must travel from their respective countries on the dates when these sessions are held. Over the past five years, the Court has experienced a marked increase in the number of cases, advisory opinions, and provisional measures submitted to it for consideration, which has also increased the number of sessions it has held—now up to four a year.

Notwithstanding, the Court's budget has remained unchanged for the last three years at US\$1,114,900.00, which has not allowed it to adequately cover the steady year-to-year increase in its operating costs, as well as the additional cost of accumulated inflation over the period.

As I pointed out in my presentation to the recent Meeting of the Ad Hoc Working Group, this budget allows the Court to operate with only minimal resources, resulting in a deterioration in the services it can provide for its proper functioning. Normally, cuts are made or major activities eliminated so as not to close or end the fiscal year with a budget deficit.

For this reason, the Court has prepared a draft budget of US\$1,521,682.27 for 2001,⁷³ to be submitted to the OAS General Assembly. This represents a reasonable amount that would enable the Court to carry out its functions more smoothly, albeit not on a permanent basis, over the coming year. This draft budget, which represents a 50% increase⁷⁴ over the 2000 budget, seeks to improve the availability of human resources for the Court's operation, and to improve the running of the four sessions scheduled for this year, visits to OAS headquarters, and the general operation of the Secretariat, including publications of the Court's judgments, etc.

In addition, a draft budget for US\$6,116,530.57 was prepared. This would enable the Court to function, modestly, on a permanent basis, with judges sitting at its headquarters, and the necessary support to defray the expenses involved in the activities carried out during the year. This amount covers the payment of judges and the staff of the Secretariat who work on processing the cases, and on the Court's routine operations, as appropriate. Also taken into account are the necessary arrangements for the public hearings the Court conducts annually, the presentation of the Court's Annual Report to the Committee on Juridical and Political Affairs of the Permanent Council of the OAS, participation in the OAS General Assembly, and all the Court's operating expenses, which have been increased by the rising volume of work, including the payment of more in-house attorneys to work for the Court.

VIII. CONCLUSION

The inter-American system of protection of human rights has come a long way since its foundation stones were laid by the adoption of the American Declaration on the Rights and Duties of Man and the OAS Charter over half a century ago. With the passage of time, a number of instruments have given greater substance to the system, which today includes, in addition to the two mentioned, the American Convention on Human Rights-the backbone of the system-, its two protocols, and several sectoral agreements on protection. The entry into force of the Additional Protocol on Economic, Social, and Cultural Rights (Protocol of San Salvador) last November, promises to fill substantive lacuna in the system, which prioritized the enforcement of civil and political rights over economic, social, and cultural rights.

73 A general report on budget projections for the current year and for 2001 are included in the annexes (Annex X).

74 In actual fact, given that the Court's budget has remained unchanged for the last three years and the number of cases has increased, this is really an increase of less than 50%.

While making substantive progress, the system has improved through the action of its organs, by means of the development of better and more efficient procedures. One example of this is the evolution of regulatory standards, which I recounted in this report, whereby the Court has adapted its procedure to the changing times.

Of course, there is still much to be done. Review and coordination efforts must be stepped up' to troubleshoot and solve problems so that women and men in the Hemisphere may enjoy a strengthened system of protection, which meets their expectations for justice and efficacy. As the jurisdictional organ of the system, the Court continues its commitment to assist in this effort. To that end, it has taken recent initiatives, holding a seminar in November 1999 and four meetings of experts, and it places great importance on this dialogue, which has been organized by the Committee on Juridical and Political Affairs and to which I have the honor of presenting this report.

Strengthening the system is a task for us all: for its organs, for the various entities that work together to give individuals access to the system; for those individuals, who are its beneficiaries and should participate fully and directly in these organs; and for the states who created them.

Lastly, the broad scope of the contractual obligations to protection under human rights treaties should always be borne in mind. They link all the branches of power in the state (executive, legislative, judicial). By creating obligations for the states parties toward all human beings under their jurisdiction, these treaties require the exercise of the collective guarantee for full implementation of their aims and objectives. The Inter-American Court of Human Rights trusts that, through the permanent exercise of this collective guarantee, it will contribute to the strengthening of the inter-American system of protection of human rights on this threshold of the new century.