

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**BLAKE CASE**

**PRELIMINARY OBJECTIONS**

**JUDGMENT OF JULY 2, 1996**

In the Blake Case,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President  
Hernán Salgado-Pesantes, Vice President  
Alejandro Montiel-Argüello, Judge  
Oliver Jackman, Judge  
Antônio A. Cançado Trindade, Judge  
Alfonso Novales-Aguirre, Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objections filed by the Government of Guatemala (hereinafter "the Government" or "Guatemala").

## I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") by petition of August 3, 1995. The case originated in a complaint (No. 11.219) against Guatemala lodged with the Secretariat of the Commission on November 18, 1993.

2. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 26 *et seq.* of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether there had been a violation of the following Articles of the Convention: 7 (Right to Personal Liberty), 4 (Right to Life), 25 (Right to Judicial Protection), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), and 22 (Freedom of Movement and Residence), all these in relation to Article 1(1) of the Convention, with the alleged "*violation of the rights to personal liberty, life and freedom of expression as well as for the denial of justice to the detriment of Mr. Nicholas Chapman Blake,*" and of Article 51(2) of the Convention for refusal to "*implement the recommendations made by the Commission.*" In addition, the Commission asked the Court to declare that the Government

must make full reparation to Nicholas Chapman Blake's next of kin for the grave material -and moral- damage suffered as a result of the multiple violations of rights protected by the Convention and the enormous expenses incurred by the victim's relatives to establish his whereabouts and identify those responsible for his disappearance and subsequent concealment.

Lastly, it asked the Court to order the Government to pay the costs "*of this case, including the fees of the professionals who served as the victim's representatives before the State authorities and in the processing of the case before the Commission and the Honorable Court.*"

3. The Inter-American Commission designated Claudio Grossman and John Donaldson to act as its Delegates, and Edith Márquez-Rodríguez, David J. Padilla and Domingo E. Acevedo to act as its Attorneys. It also

named the following persons to act as Assistants authorized to represent the victim: Janelle M. Diller, Margarita Gutiérrez, Joanne M. Hoeper, Felipe González, Diego Rodríguez, Arturo González and A. James Vázquez-Azpiri.

4. By note of August 18, 1995, after a preliminary review of the application by the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") notified the Government of the application and informed it that it had a period of three months in which to answer, two weeks to name an Agent and Alternate Agent, and thirty days to file preliminary objections, all those periods to commence on the date of notification of the application. By communication of the same date the Government was also invited to appoint a Judge *ad hoc*.

5. On September 1, 1995, the Government gave notice that it had designated Mr. Dennis Alonzo-Mazariegos as Agent and Mr. Vicente Arranz-Sanz as Alternate Agent. On September 22, 1995, the Government informed the Secretariat that it had appointed Mr. Alfonso Novales-Aguirre as Judge *ad hoc*.

6. On September 16, 1995, in accordance with Article 31 of the Rules of Procedure, the Government submitted a brief containing its preliminary objections (see *infra* para. 22).

7. That same day the Secretariat forwarded the Government's brief to the Commission and on October 16, 1995, the Commission presented its answer contesting the preliminary objections.

8. On November 9, 1995, the Government submitted its reply to the application.

9. By Order of December 9, 1995, the President decided to summon the parties to a public hearing so that their comments on the preliminary objections presented in this case could be heard.

10. The public hearing was held at the seat of the Court on January 28, 1996, at which there appeared:

for the Government of Guatemala:

Dennis Alonzo-Mazariegos, Agent

Fredy Gudiel-Samayoa, Advisor;

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate

John Donaldson, Delegate

Domingo Acevedo, Attorney

Felipe González, Assistant.

## II

11. The following paragraphs summarize the events, circumstances and processing of this case before the Commission as they were set forth in the application and its attachments submitted to the Court.

12. According to the application, on March 26, 1985, Mr. Nicholas Chapman Blake, a United States citizen and journalist residing in Antigua, Guatemala, set off with Mr. Griffith Davis, a United States citizen and photographer, to the small village of El LLano in the Department of Huehuetenango, arriving there on March 28, 1985. The purpose of the trip was to collect information for an article on one of the Guatemalan guerrilla bands. That same day, the El Llano Civil Patrol, under the command of Mario Cano, questioned Mr. Blake and Mr. Davis "*on the purpose of their trip.*" Years later, it was established that after seeking instructions from officers of the Las Majadas military garrison, Mario Cano ordered three members of his patrol -identified as Epólito Ramos-García, Candelario Cano-Herrera and Vicente Cifuentes- to arrest Blake and Davis and take them to a place known as Los Campamentos on the border with the El Quiché Department, telling them, "*You can kill them if you wish.*" On arrival there, "*Epólito Ramos-García fired on one of them, killing him instantly*" and "*Vicente Cifuentes ... shot the second man, killing him also,*" whereupon the "*three civil patrolmen threw the bodies into very dense undergrowth at the side of the path*" and covered them with tree trunks "*to make them disappear.*"

13. The Commission in its application set forth the many measures Mr. Nicholas Chapman Blake's relatives took, to no avail, until Mr. Justo Martínez told them, in 1988, how Mr. Blake and Mr. Davis had been killed by the El Llano Civil Patrol. Mr. Martínez also claimed that the previ-

ous year (1987) the remains of the two victims had been burned to prevent discovery. The remains -first Mr. Davis's and later Mr. Blake's- were eventually discovered in 1992. Once Mr. Nicholas Chapman Blake's remains had been identified by a forensic expert, his death certificate was drawn up and the date of his death established as March 29, 1985.

14. The complaint was received by the Inter-American Commission on November 18, 1993, and on December 6, 1993, it was transmitted to the Government, which was asked to submit information on the case within 90 days. By note of March 7, 1994, the Government requested an extension of the deadline and on March 10, 1994, the Commission granted an extension of 30 days. The Government submitted its comments on the case on April 14, 1994.

15. The Commission convened a hearing attended by both parties at its headquarters on September 16, 1994, in order to reach a friendly settlement. At that hearing, the Government submitted a brief in which it formally raised the objection of non-exhaustion of domestic remedies and asked the Commission to consider its participation in the friendly settlement to be at an end.

16. At the plaintiff's request, a hearing was held on February 14, 1995, at which the Government's representative rejected the proposal of a friendly settlement of the case and "*once more raised the objection of non-exhaustion of remedies under domestic law.*"

17. On February 15, 1995, the Commission approved Report 5/95, and decided in its resolutory part:

**TO RECOMMEND**

1. That the State of Guatemala accept its objective responsibility for the murder of Mr. Nicholas Blake, his disappearance and the cover-up of his murder, and make the appropriate reparations to his successors;
2. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify, prosecute, detain and punish those responsible for the death of Mr. Nicholas Blake;
3. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify,

prosecute, detain and punish those responsible for the cover-up and obstruction of the judicial proceeding concerning the disappearance and death of Mr. Nicholas Blake;

4. That the State of Guatemala take such measures as are necessary to avoid a recurrence of such types of violation, including abuses by the Civil Patrols, cover-up by the civilian and military authorities, and the lack of effective judicial proceedings;

5. That this report drawn up in accordance with Article 50 be transmitted to the Government, which shall not be at liberty to publish it, and

6. That if within a period of sixty days from the transmittal of this Report, the Government has not implemented the above recommendations, the instant case be submitted to the Inter-American Court of Human Rights pursuant to Article 51 of the American Convention.

18. On May 4, 1995, the Commission transmitted Report 5/95 to the Government of Guatemala, informing it that if it failed to implement the recommendations contained therein, the Commission would submit the case for the consideration of the Inter-American Court as provided in Article 51 of the Convention.

19. On July 5, 1995, the Government transmitted its reply to the Commission, declaring that:

[t]he proceedings on the merits are currently at the investigation stage, the last procedural steps being the statements by witnesses in the instant case before the District Prosecutor of the Ministry of the Interior ["Ministerio Público"] of Huehuetenango ... As indicated by the statements made by the aforementioned persons, it is evident that the case is progressing.

20. On August 3, 1995, having not reached an agreement with the Government, the Commission submitted the case for the consideration and decision of the Court.

### III

21. The Court is competent to hear the instant case. Guatemala has been a State Party to the American Convention since May 25, 1978, and

accepted the contentious jurisdiction of the Court on March 9, 1987.

22. The Government filed three preliminary objections, summarized as follows:

First. Incompetence of the Inter-American Court of Human Rights to try this case, inasmuch as recognition of the compulsory competence of the Court applies exclusively to cases that occurred after the date on which the declaration was deposited with the Secretariat of the Organization of American States.

Second. Incompetence of the Court to deal with this application by reason of its subject.

Third. Violation by the Commission of the American Convention by virtue of the restriction regarding interpretation contained in Article 29(d).

23. The first objection is that of "*incompetence of the Court to hear this case*" which the Government based on the fact that Guatemala accepted the jurisdiction of the Court on March 9, 1987, "*with the reservation that cases in which the Court's competence is accepted relate exclusively to events that occurred after the date on which the declaration is presented to the Secretariat of the Organization of American States*" and that the acts to which the application refers occurred in March 1985, prior to Guatemala's acceptance, so that the Court lacked competence to try the case. The Government maintains that despite the fact that the Commission "*accuses it ... of arbitrary and unlawful abduction of Mr. Nicholas Chapman Blake, of causing his forced disappearance and taking his life,*" those events clearly occurred in March 1985.

24. The Inter-American Commission requested that this objection be

dismissed because the application in the instant case "*refers to events that took place after that date.*" In support of its request, the Commission contends that lack of competence *ratione temporis* "*does not apply to continuous crimes,*" stating that from the time of Mr. Blake's arrest by the El Llano Civil Self-Defense Patrol on March 28, 1985, he had been disappeared until June 14, 1992, the date on which his remains were discovered. Accordingly, Mr. Blake's disappearance had been in effect "*for a period of time that exceeded by more than five years the acceptance of the compulsory jurisdiction of the Court -March 9, 1987- by the State of Guatemala.*" According to the Commission, the continuous effect of the disappearance is illustrated in the instant case by "*the concealment of Mr. Blake's remains, the cover-up of the perpetrators and accomplices, the authorities' total indifference and lack of information about the events, and the lasting consequences that this tragic situation has had on Mr. Blake's family.*"

## VI

25. The second objection is that of "*[i]ncompetence of the Inter-American Court of Human Rights by reason of the subject,*" claimed by the Government "*on the grounds that the events on which the application is based do not violate any of the human rights and freedoms recognized by the American Convention,*" inasmuch as they constitute an unlawful common criminal act for which the State cannot be held responsible on the grounds that members of the Civil Self-Defense Patrols are agents of the State. With regard to the links between the Civil Patrols and the Army, the Government contends that "*[i]t is natural for the Civil Patrols to have close ties to the National Army as far as the anti-subversion struggle is concerned ... but one may not blithely conclude from this that their members belong to, or have the same duties as, the Armed Forces and that they are Agents of the Guatemalan State.*" Consequently, if some of the members of those Patrols commit crimes, "*their responsibility is direct and individual!*" since their membership of a Civil Patrol "*grants them neither immunities nor privileges, nor exemptions of any kind.*"

26. The Commission asserts that the Government, in its second objection, raises a matter relating to the merits of the case before the Court; that establishing whether the alleged events constitute a violation of the



Convention will depend on the evidence supplied by the parties and that, therefore, "*it will be based on different objectives and criteria to those the Court should apply to determine its competence at this introductory or preliminary stage.*" The Commission reiterates that the Court is competent to try the instant case because the acts imputed to the State affect rights protected by the Convention, inasmuch as, under International Law, a state incurs responsibility when acts that constitute a violation are attributable to it; in other words, when "*[s]uch acts are committed by agents of the state or persons or groups of persons connected with it, or with its acquiescence.*" Likewise, the state is responsible "*if it does not investigate or repress acts that may constitute a violation of internationally protected rights.*" The Commission contends that Guatemala has not met its obligation to control paramilitary groups operating within its national territory, that the Statute of the Civil Self-Defense Patrols places them under the Ministry of Defense, and that they are armed, trained and supervised by the Army, so that "*they act as agents of the Guatemalan State.*"

## VII

27. Concerning the third preliminary objection, the Government maintains that the Inter-American Commission violates Article 29(d) of the Convention in its attempt to exclude or limit the effect of the American Declaration of the Rights and Duties of Man. It alleges a "*distorted interpretation*" of the human rights recognized in the Convention, one totally lacking in logic or even minimum legal grounds and without precedent in the international and regional protective systems.

28. According to the Commission, this alleged violation "*is not valid as a preliminary objection inasmuch as it concerns [the] Government's assessment of the legal arguments the Commission uses in the application,*" which the Court will have the opportunity to address when it examines the merits of the point raised by the Commission.

## VIII

29. The following is the Court's consideration of the preliminary objections presented by Guatemala. The first objection concerns the lack of

competence of this Court, on the grounds that the deprivation of liberty to which Mr. Nicholas Chapman Blake was subjected (on March 28, 1985) and his death (on March 29, 1985, according to the death certificate) occurred prior to Guatemala's acceptance of the jurisdiction of this Court (March 9, 1987), with the explicit clarification that such acceptance applied exclusively to events that "*occurred after the date on which the instrument of acceptance was deposited with the Secretariat of the Organization of American States.*"

30. There is no disagreement between the Government and the Commission on the fact that Mr. Blake's detention and death occurred during March 1985 or that those events took place before Guatemala had deposited the instrument of acceptance of the jurisdiction of this Court on March 9, 1987.

31. The disagreement between the parties concerns the effects of those events. The Government maintains that they ended in March 1985, while the Commission contends that the effects are continuous, since the deprivation of Mr. Blake's liberty and his death were discovered many years later and its consequences are still being felt, inasmuch as:

they derive from Mr. Blake's kidnapping and subsequent forced disappearance by agents of the Guatemalan State and comprise, in addition to that crime, a series of violations including the cover-up of the disappearance by high-level Government officials and the Guatemalan Armed Forces, as well as the delay and consequent denial of justice by the Guatemalan State.

32. At the public hearing on January 28, 1996, both parties further explained their arguments in response to questions from Judges Novales-Aguirre, Cançado Trindade, Jackman and Montiel-Argüello. The Government strongly urged its view that the events had all ended in March 1985, that is, prior to its acceptance of the jurisdiction of this Court. The Commission, for its part, reiterated that, in its view, there was continuity in Guatemala's violation of rights enshrined in the American Convention and that Mr. Blake's death should be considered to be a continuous crime since it was only discovered on June 14, 1992.

33. The Court is of the view that the acts of deprivation of Mr. Blake's liberty and his murder were indeed completed in March, 1985 -the murder on March 29 according to the death certificate, as Guatemala main-

tains- and that those events cannot be considered *per se* to be continuous. The Court therefore lacks competence to rule on the Government's liability. This is the only aspect of the preliminary objection which the Court considers to be well founded.

34. Conversely, since the question is one of forced disappearance, the consequences of those acts extended to June 14, 1992. As the Commission states in its application, government authorities or agents committed subsequent acts, and this, in the Commission's view, implies complicity in, and concealment of, Mr. Blake's arrest and murder. Although the victim's death was known to the authorities or agents, his relatives were not informed despite their unstinting efforts to discover his whereabouts, and because attempts had been made to dispose of the remains. The Commission also claims that there were further violations of the American Convention connected with these events.

35. In the first cases of disappearance of persons submitted to it this Court maintained that:

[t]he forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee ... The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, moreover, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, paras. 155 and 158, and *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, paras. 163 and 166.)

36. There is no treaty in force containing a legal definition of forced disappearance of persons which is applicable to the States Parties to the Convention. However, note should be taken of the texts of two instruments, the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, of December 18, 1992, and the Inter-American Convention on Forced Disappearance of Persons, of June 9, 1994. Although the latter has not yet entered into force for Guatemala, these instruments embody several principles of international law on the

subject and they may be invoked pursuant to Article 29(d) of the American Convention. In the terms of that article, no provision of this Convention shall be interpreted as "*excluding or limiting the effects that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.*"

37. Article 17(1) of the United Nations Declaration states that:

Acts constituting enforced disappearance shall be considered a continuing offense as long as its perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and as long as these facts remain unclarified.

Article III of the aforementioned Inter-American Convention provides that:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

38. In addition, in Guatemala's domestic legislation, Article 201 TER of the Penal Code -amending decree No. 33-96 of the Congress of the Republic approved on May 22, 1996 stipulates in the pertinent part that the crime of forced disappearance "*shall be deemed to be continuing until such time as the victim is freed.*"

39. The foregoing means that, in accordance with the aforementioned principles of international law which are also embodied in Guatemalan legislation, forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.

40. In the light of the above, as Mr. Blake's fate or whereabouts were not known to his family until June 14, 1992, that is, after the date on which Guatemala accepted the contentious jurisdiction of this Court, the

preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions.

## IX

41. The second preliminary objection is based on a claim of this Court's incompetence owing to the subject, inasmuch as Guatemala considers that the events on which the application is based do not constitute a violation of any of the human rights and freedoms recognized in the American Convention and that they are ordinary unlawful criminal acts which cannot be imputed to the State, since Civil Self-Defense Patrols cannot be presumed to be agents of the State. Accordingly, if the members of those patrols commit criminal acts, their liability is direct and individual.

42. The Commission, for its part, asserts that the objection refers to the merits of the case, inasmuch as establishing whether the alleged facts constitute violations of the Convention will depend on the evidence supplied by the parties.

43. The Court is of the view that this second objection is not preliminary; that it is, rather, essentially linked to the merits of the dispute. In order to establish whether the Civil Self-Defense Patrols ought or ought not to be deemed agents of the State and, therefore, whether the events indicated by the Inter-American Commission are attributable to the State or, on the contrary, are ordinary crimes, it will be necessary to examine the merits of the dispute and consider the evidence supplied by the parties. Consequently, this objection must be rejected on the grounds of inadmissibility.

## X

44. The third objection concerns the alleged violation by the Commission of Article 29(d) of the Convention, which the Government attributes to a "*distorted interpretation*" of the human rights recognized in the

Convention. The Commission maintains that this objection also concerns the merits, because only at that stage will the Court be able to establish whether or not the Commission has correctly interpreted the precepts of the Convention which the Government claims it has infringed.

45. This Court maintains that the Government's arguments are unclear, since the precept it invokes (*supra*, para. 36) has a different meaning to that attributed to it; moreover, the matter was not clarified at the public hearing held on January 28, 1996. The Government is apparently contending that the Commission's interpretation of the provisions of the Convention in which the human rights violated are enshrined is inaccurate. The objection evidently relates to the merits of the case; therefore this Court may consider whether the Commission's arguments regarding Guatemala's possible violation of those provisions of the Convention are well founded. Consequently, this objection should also be dismissed on the grounds of inadmissibility and the fact that it is not a preliminary objection.

46. As the first preliminary objection is only partially founded and the other two are inadmissible, the hearing of the case should proceed. Whereas the victim's detention and murder do not fall within the competence of the Court, it maintains its jurisdiction over the effects and actions subsequent to the date on which Guatemala accepted the competence of the Court.

## XI

Now, therefore,

**THE COURT,**

**DECIDES:**

unanimously

1. That the first objection is partially founded and to declare itself incompetent to decide on Guatemala's alleged responsibility for the detention and death of Mr. Nicholas Chapman Blake.

2. To continue to hear the case with regard to the effects and acts that occurred after the date on which Guatemala accepted the competence of the Court.
3. To dismiss the second and third objections on the grounds of inadmissibility.

Judge Cançado Trindade informed the Court of his Separate Opinion, and Judge Novales-Aguirre of his individual concurring opinion, both of which are attached hereto.

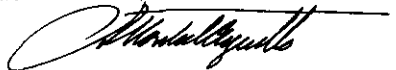
Done in Spanish and English, the Spanish text being authentic. Read at a public session at the seat of the Court in San José, Costa Rica, this second day of July, 1996.



Héctor Fix-Zamudio  
President



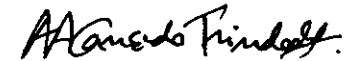
Hernán Salgado-Pesantes



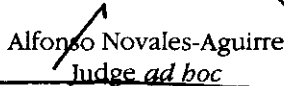
Alejandro Montiel-Argüello



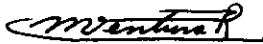
Oliver Jackman



Antônio A. Cançado Trindade



Alfonso Novales-Aguirre  
Judge *ad hoc*



Manuel E. Ventura-Robles  
Secretary

So ordered,



Manuel E. Ventura-Robles  
Secretary



Héctor Fix-Zamudio  
President