

REVISTA IIDH

INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS
INSTITUT INTERAMERICAIN DES DROITS DE L'HOMME
INSTITUTO INTERAMERICANO DE DIREITOS HUMANOS
INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS



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THE INTER-AMERICAN HUMAN RIGHTS
SYSTEM PUT TO THE TEST:
THE INTERPRETATION JUDGMENTS
IN THE HONDURAN DISAPPEARANCE CASES

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ABSTRACT

In the first contested cases decided by the Inter-American Court of Human Rights, the Court awarded damages to the families of two victims of involuntary disappearances. The Government of Honduras has complied with part but not all of the Court's judgments. Pursuant to the American Convention on Human Rights, the Court has reported the non-compliance to the General Assembly of the Organization of American States, which has relevant responsibilities under both the Convention and the OAS Charter.

The following analysis principally concludes:

- The Court's judgments against Honduras are now final and non-appealable;
- The Court had power to issue the judgments;
- Honduras is legally obliged by the Convention, by *pacta sunt servanda*, and by the principles of the OAS Charter to comply with the Court's judgments; and
- The disposition of this matter by the General Assembly could have an important impact on the future protection of human rights in the Americas.

EXECUTIVE SUMMARY

Background:

Exercising its jurisdiction under the American Convention on Human Rights, the Inter-American Court of Human Rights in 1988 found the Government of Honduras responsible for the involuntary disappearances, and consequent deprivations of rights, of two of its citizens. In July 1989 the Court issued Damages Judgments, awarding 750,000 lempiras to the widows and children of the victim in one case, and 650,000 lempiras in the other, to be paid within ninety days. In August 1990, faced with the subsequent devaluation of the Honduran currency and the fact that Honduras had not yet paid any compensation, at the request of the Inter-American Commission on Human Rights, the Court issued Interpretation Judgments, interpreting and enforcing its Damages Judgments to require preservation of the original purchasing power, and payment of post-judgment interest.

The Government of Honduras ratified the American Convention on Human Rights without reservation in 1977. It accepted the jurisdiction of the Court, also without reservation, in 1981. It participated in all phases of the proceedings before the Court and, in late 1990, paid to the victims' families the sums of lempiras specified by the Court's Damages Judgments.

However, in October 1990 Honduras formally advised the Court that it would not comply with the Interpretation Judgments and it has to date failed to do so. Accordingly, pursuant to the Convention, the Court in April 1991 advised the General Assembly of the Organization of American States that Honduras has not complied with its Interpretation Judgments. The General Assembly next meets in Santiago, Chile, during the first week of June, 1991.

When actually paid in late 1990, the damages were worth substantially less than their original purchasing power. According to one estimate, they represented less than one third of their original value. Further significant devaluation is possible before the trust funds set up for the children are fully paid out when they reach age 25.

Analysis:

1. *Jurisdiction.* Under the Convention the Court has jurisdiction over these cases and power to award "fair compensation" for violations.
2. *The Damages Judgments.* Exercising this power, the Court in July 1989 issued its Damages Judgments, awarding damages, ordering payment within 90 days, and retaining jurisdiction to supervise compliance.

3. *Delay in Payment.* Honduras did not pay the damages within the time set by the Court. Approximately one year later, in October 1990, it paid the sums in lempiras originally awarded to the widows, and, apparently in December 1990, it paid the sums in lempiras originally awarded into a trust fund for the children. Honduras cited the need for a legislative budget amendment at a time of fiscal crisis as the reason for the delay.

4. *Interpretation Judgments.* In August 1990 the Court issued its Interpretation Judgments, interpreting and enforcing its Damages Judgments to require preservation of the original purchasing power and payment of post-judgment interest. The Court relied both on its authority under Article 67 of the Convention to interpret its own judgments, and on its expressly retained jurisdiction to supervise compliance with the Damages Judgments. Concurring in the result, one judge opined that Article 67 did not apply, but that the Court's retention of enforcement jurisdiction amply supported its ruling. There were no dissents.

5. *Honduras' Objections.* Honduras objected to the Interpretation Judgments on the ground that the Damages Judgments were clear, allowing no room for the Court to exercise its power of interpretation. Honduras did not directly address the Court's retention of enforcement jurisdiction.

6. *The Issues Now.* At the present, post-judgment stage of the proceedings, the issues under international law are not whether the Interpretation Judgments were "rightly" decided. Under Article 67 of the Convention, the Court's judgments are final and not subject to appeal. Instead the issues now are: (1) Did the Court have power to issue its Interpretation Judgments, and (2) If so, is Honduras legally obliged to comply with the Interpretation Judgments?

7. *The Court's Powers Under the Convention.* The Court had power to issue its Interpretation Judgments. Article 63.1 of the Convention, authorizing the Court to award "fair compensation" for violations, empowered the Court to issue the Damages Judgments, to retain jurisdiction to enforce the Judgments, and then to enforce them. The Court's power also derived in part from Article 67 of the Convention, authorizing the Court to interpret its prior judgments.

8. *Competence de la Competence.* The Court's power also derived from the longstanding, fundamental principle of international law that international courts have power, absent some agreement to the contrary, to decide on the limits of their own powers, and for that purpose to construe their governing instruments (here the Convention). This inherent power is known in international law as the competence de la competence. While there are exceptions, none is remotely applicable here.

9. *Honduras' Obligation Under the Convention.* Honduras was obligated to comply with the Court's judgments. Honduras ratified the Convention and accepted the Court's jurisdiction without reservation. Article 68.1 of the Convention provides, "The States Parties undertake to comply with the judgment of the Court in any case to which they are parties".

10. *Pacta Sunt Servanda.* Honduras' refusal to comply with the Court's Interpretation Judgments would violate one of the most fundamental principles of international law, *pacta sunt servanda*, which requires states to comply in good faith with their treaty obligations.

11. *Violations of OAS Charter Principles.* To the extent Honduras' refusal to comply with the Interpretation Judgments would violate principles of international law, it would also violate the principles of the OAS Charter, namely Article 3(a) which recognizes, "International law is the standard of conduct of States in their reciprocal relations", and Article 3(b) which demands of States "the faithful fulfillment of obligations derived from treaties and other sources of international law".

12. *Potential Impact of These Cases.* The Honduran disappearance cases are the first contested cases to be decided by the Court. Honduras' ultimate decision on whether to comply may significantly enhance or detract from the future effectiveness of the Inter-American Human Rights system, as well as respect for the principle of *pacta sunt servanda* in this hemisphere.

13. *The Role of the General Assembly.* The General Assembly has relevant responsibilities under both the Convention and the OAS Charter. Its decision on whether and how to enforce the Court's Interpretation Judgments may have an important impact on both the Inter-American Human Rights system and the principle of *pacta sunt servanda*. The Inter-American system is modeled on the European Human Rights system. The European Committee of Ministers has taken firm action in support of the European system. Damages judgments issued by the European Court of Human Rights are routinely complied with by governments.

II. THE VELASQUEZ RODRIGUEZ AND GODINEZ CRUZ CASES

A. History

From 1981 to 1984, between 100 and 150 people involuntarily "disappeared" in Honduras with at least the acquiescence of the Government.¹ The Inter-American Commission on Human Rights ("Commission"), concerned about the proliferation of desaparecidos, or involuntarily disappeared persons, in the Inter-American community of nations, submitted

three cases involving the Government of Honduras to the Inter-American Court of Human Rights ("Court") under the Court's contentious jurisdiction. Two of these three cases are now the subject of this paper.²

In the first case to reach the Court, the *Velásquez Rodríguez* case,³ Angel Manfredo *Velásquez Rodríguez*, a married Honduran student and labor activist with three children, disappeared after being abducted from his car by security force undercover agents in Tegucigalpa in September, 1981.⁴ In the second litigation, the *Godínez Cruz* case,⁵ Saul *Godínez Cruz*, a high school teacher and activist in the teachers' union, married with one daughter, was abducted in his home town of Choluteca, in July, 1982 when he reportedly was intercepted on his motorcycle by a soldier and two men in plain clothes as he left town for classes in a neighboring city.⁶

In its judgments on the merits in *Velásquez* in 1988 and *Godínez* in 1989, the Court sustained the Commission's petition and held the Honduran Government responsible for violating, through at least acquiescence in the practice of involuntary disappearance, the victims' right to life, right to humane treatment and right to personal liberty guaranteed by Articles 4, 5 and 7, respectively, of the American Convention on Human Rights ("Convention").⁷ The Court found that the disappearances were part of a systematic and selective practice of kidnappings and disappearances in Honduras from 1981 to 1984.⁸ The Court also found the Honduran Government in violation of Article 1.1 of the Convention which establishes generally the duty of governments to respect the human rights of individuals and to guarantee the enjoyment of those rights recognized in the Convention.⁹ As a consequence of this affirmative obligation, each Government has the concrete duty to prevent, investigate, punish, disclose and compensate (when restoration is impossible) victims or their relatives for human rights violations.¹⁰

The Court ordered the Honduran Government to compensate the widows and children of *Velásquez* and *Godínez* for the harm caused them as the result of the involuntary disappearances.¹¹ In both cases the Court retained jurisdiction to fix damages or approve a damages agreement.¹² In a subsequent Damages Judgment, issued in July 1989, the Court in *Velásquez* awarded compensatory damages of 750,000 lempiras¹³ (then worth over \$300,000) to be paid one-fourth to Velásquez's widow and three-fourths into a trust for his children "under the most favorable conditions permitted by Honduran banking practice."¹⁴ In addition the judgment provided that "the Court shall supervise the implementation of the compensatory damages at all of its stages. The case shall be closed when the Government has

fully complied with the instant judgment."¹⁵ The Court also stated that payment "must" be made within 90 days, unless the Honduran Government opts to pay in six monthly installments, with the first during the 90 day period.¹⁶ Similarly, in the Damages Judgment in the *Godínez* case, the Court awarded compensatory damages of 650,000 lempiras¹⁷ (then worth over \$300,000). The Court again ordered the best banking practice for the trust,¹⁸ Court supervision until the damages are paid¹⁹, and payment within 90 days.²⁰

Before the 90 days expired, the Commission requested clarification of the Damages Judgments in both cases, under Article 67 of the Convention and Article 48 of the Rules of the Court. The Commission asked the Court to provide some mechanism to protect the purchasing power of the trust fund to be set up for the children against the potential inflation of the Honduran currency.²¹ The Government of Honduras, in the meantime, had paid nothing by the expiration of the 90 day period. The Court, in August of 1990, issued Interpretation Judgments stating in both that the Commission's request was admissible.²² The Court interpreted the phrase "under the most favorable conditions permitted by Honduran banking practice" to require the trustee to take steps to protect the purchasing power of the trust funds, by selecting diverse types of investment, such as hard currency, real estate or other means.²³ The Court also ruled that Honduras should compensate for the losses, caused by its delay in payment, through payment in hard currency,²⁴ with interest,²⁵ and that it should pay immediately.²⁶

In a concurring opinion, Judge Piza Escalante disagreed with the Court's position that Article 67 applied. In Judge Piza's opinion, Article 67 would apply only to the judgments on the merits but not to the 1989 Damages Judgments. Nevertheless, Judge Piza agreed that the Court had power to grant the relief because it had expressly retained power to supervise compliance with the Damages Judgments.²⁷

Despite the Court's Interpretation Judgments, in October, 1990 the Government of Honduras paid the one fourth share of the Damages Judgments in the originally specified sums of Honduran currency to the widows of *Velásquez* and *Godínez*.²⁸ Similarly, apparently in December, 1990, the Government of Honduras paid the remaining three-fourths of the originally specified sums of Honduran currency to the children's trusts.²⁹

B. *The Objections of the Government of Honduras*

In a "Statement of the Government of the Republic of Honduras to the Inter-American Court of Human Rights regarding the Judgments of the Court of August 17, 1990",³⁰ delivered to the Court in October 17, 1990, the Government of Honduras expressed its surprise at the Court's Interpretation Judgments and deemed the Court's resolution "unacceptable". The Government's objections are summarized below.³¹

1. The Interpretation Judgments constitute a modification, not an interpretation, of the Damages Judgments.

By requiring the Government of Honduras to compensate the beneficiaries for the loss in real economic value suffered by the lempira, as well as for ordinary banking interest, the Court increased the nominal value of the original damages awards by over one hundred percent. The Damages Judgments fixed the amount of compensation in the official currency of Honduras without referring either to its value with respect to the dollar or any other foreign currency in the event of devaluation or to a loss of purchasing power.³²

2. The request of the Inter-American Commission on Human Rights for an interpretation of the Damages Judgments did not comply in form or substance with the requirements of Article 48(1) of the Rules of Procedure of the Court.

The Court's Interpretation Judgments did not arise out of any dispute between the parties regarding the scope or meaning of the Damages Judgments. Rather, they were delivered in response to concerns expressed by the Commission in its notes dated September 29, 1989 "requesting clarification of the compensatory damages judgments, despite the fact that the operative parts are sufficiently clear and precise."³³ While the Court declared that it shared the concern expressed by the Commission, apparently before delivering its Damages Judgments, such judgments did not address the concern. Even the Commission, in its notes, stated that the Damages Judgments did not contemplate any protective mechanism "to preserve the current purchasing owner of the award(s) in the face of inflation or possible devaluation of the lempira..."³⁴

3. The Court's interpretation of the fiduciary role of the trust fund is an exaggeration.

In relying on the phrase "under the most favorable conditions permitted by Honduras banking practice", the Court "equates a trust with a secure business for the preservation of the real value of the compensations against a possible loss of purchasing power by the lempira in relation to the dollar brought about by inflation or devaluation". The Court's Interpretation

Judgments incorrectly attribute management of the trust to the trustee, who in no way is involved in the administration of the trust. Under Honduran legislation, that function belongs to the fiduciary agent; that is, the banking institution where the trust has been created.³⁵

4. The 90 days term was insufficient in light of Honduran domestic law and economic conditions.

The term set by the Court for complying with its Damages Judgments did not allow for all the legal actions and decisions required under Honduran domestic law for the Government of Honduras to comply; most importantly, the allocation and approval of the appropriations required for the payment of the awards, which normally must be included in the country's annual budget. Nor was it possible within the 90 day time frame to obtain the approval of a special allocation outside the budget process due to declining revenues resulting from the economic crisis faced by Honduras.³⁶

5. The Damages and Interpretation Judgments are without precedent among similar judgments delivered by the European Court of Human Rights insofar as the amount of the awards, the terms of execution and the interpretation thereof are concerned.

In the compensatory damages and interpretative judgments rendered by the European Court of Human Rights in the Ringeisen Case on June 22, 1972 and June 23, 1973, respectively, the amount of the damages assessed against the Austrian Government was not significant, nor was a term specified for such payment.³⁷

C. The Court's Response

In a letter dated November 12, 1990³⁸ the President of the Court, after conferring with the other judges, issued a reply to the Government of Honduras' October 17 letter. The points in the reply are summarized below:

1. The Court's interpretation is not "an exaggeration". In the Interpretation Judgments, the Court was of the opinion that the expression "under the most favorable conditions permitted by Honduran banking practices" means that the trustee must "faithfully perform his task as would a good head of family, so as to ensure that the amount assigned maintains its purchasing power and generates sufficient earnings or dividends to increase it."³⁹ This provision cannot be deemed to be an "exaggeration" unless it is believed that the fiduciary agent, the Central Bank of Honduras, is not qualified to carry out its functions "under the most favorable conditions permitted by Honduran banking practices". If such were the case, in the exercise of the power to "supervise" compliance with its judgments which the Court

assumed and continues to enjoy, the Court would have to look into the matter.⁴⁰

2. The Government of Honduras, not the beneficiaries, bears the responsibility for damages caused by delays in payments. The Government's argument that the Court's Interpretation Judgments result in an increase in the nominal value of the original award by over one hundred percent only serves to confirm the Court's reasons for reaching the decision it did. Given the loss in nominal value that occurred in just one year, by the time payment is eventually made, the amount could be merely symbolic, and the effect sought by the judgment would be lost.⁴¹

3. The Government of Honduras still had not paid despite completing its internal procedures. As of November 12, 1990, the Court had not received confirmation that the Government of Honduras had paid the original damages award. Given that the Government of Honduras approved such damages by its Decree N° 55-90, thereby completing its internal procedures, that explanation given for the original delay cannot explain the further delay.⁴²

4. States must comply in good faith with treaties in effect. Under the terms of Article 26 of the Vienna Convention on the Law of Treaties, States must comply "in good faith" with treaties in effect. Under the terms of Article 68.1 of the American Convention on Human Rights, "(t)he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The failure of Honduras to respect the decisions of the Court in good faith would violate "the rule of *pacta sunt servanda*" a norm essential to the survival of the international community.⁴³

III. COMMENT AND ANALYSIS

Under international law, the objections raised by Honduras in its October 1990 letter to the Court must be considered in view of the present, post-judgment stage of the proceedings. The Court has issued not only its judgment on the merits, but also its Damages Judgments and its Interpretation Judgments. Honduras has formally communicated to the Court its intention to comply with the Damages Judgments (as construed by Honduras), but states that it will not comply with the Interpretation Judgments. Despite a formal reply from the President of the Court urging it to comply fully, Honduras has neither done so nor indicated any intention to do so. On the contrary, its most recent formal position (October 1990) states that it will not comply fully.

Accordingly, pursuant to Article 65.1 of the Convention, the Court has specified these cases in its 1990 Annual Report to the General Assembly

of the Organization of American States as cases "in which a state has not complied with its judgment." Moreover, the Court has submitted to the General Assembly a draft resolution on its Annual Report, proposing that the Assembly resolve "[t]o call upon the Government of the Republic of Honduras to comply with the judgments of August 17, 1990 in the 'Velásquez Rodríguez' and 'Godínez Cruz' cases." (See discussion in Part IV below.)

Given the post-judgment stage of the case, the present questions under international law are not whether the Interpretation Judgments were correctly decided, i.e., whether they "correctly" interpreted and enforced the Damages Judgments. Under Article 67 of the Convention, the Court's Judgments are final and not appealable. Rather, the two central questions of international law are as follows:

- (1) Did the Court have the power to render its Interpretation Judgments, regardless of whether they were "rightly" or "wrongly" decided?
- (2) If the Court did have the power to render the Interpretation Judgments, is Honduras legally obligated to comply with them?

As will presently be shown, the answer to both questions is in the affirmative: The Court was empowered to render its Interpretation Judgments, and Honduras is obliged to comply with them.

A. Did The Court Have The Power To Render Its Interpretation Judgments?

The Court's jurisdiction and powers in these cases are governed by the Convention, the instrument creating the Court. Article 62.1 of the Convention grants the Court jurisdiction over "all matters relating to the interpretation and application of this Convention." Article 62.3 specifically grants the Court jurisdiction over all cases concerning the "interpretation and application" of the Convention that are submitted to it, provided the States Parties have recognized the Court's jurisdiction (as Honduras has; see question (2) below).

These cases, involving the involuntary disappearances of persons in Honduras, concern the interpretation and application of provisions of the Convention, namely Articles 1.1, 4, 5 and 7, which respectively require States Parties to ensure free exercise of rights under the Convention, and which protect the rights to life, humane treatment and personal liberty. As the Court has repeatedly found, these cases thus fall plainly within its jurisdiction.⁴⁴

When, as here, violations are found in such cases, Article 63.1 of the Convention empowers the Court to rule that "fair compensation" be paid to the injured parties.

Once the Court reaches a judgment, Article 67 provides that its judgment "shall be final and not subject to appeal." Article 67 also grants the Court the right to interpret its judgments in cases of disagreement.⁴⁵

Perhaps because these provisions are so clear, Honduras has not expressly contested either the Court's jurisdiction or its power to include post-judgment interest and protection of purchasing power in awards of "fair compensation."

Honduras' arguments instead appear narrower. In essence Honduras argues that the Court, having once issued its Damages Judgments in terms of Honduran currency and without express provision for post-judgment interest, "boxed itself in." Thereafter the Court was no longer free, argues Honduras, to invoke its power of interpretation under Article 67 of the Convention to interpret its Damages Judgments to provide for interest and preservation of purchasing power.

The arguments of Honduras prior to the Court's issuance of its Interpretation Judgments, although hardly compelling, were not frivolous at the time. However, while Honduras' objections, viewed from a pre-judgment perspective, were not entirely without support in international law, the Court's Interpretation Judgments are amply and persuasively supported.⁴⁶

In any event, at the post-judgment stage, the nature of Honduras' arguments is critical. Honduras essentially disputes the correctness of the Court's interpretations and enforcement, of its own prior Damages Judgments, as well as of Articles 63.1 and 67 of the Convention (authorizing the Court to award fair compensation and to interpret its judgments). But under Article 67 the Court's Interpretation Judgments on these points are final and not appealable.

Moreover, under a long-established principle of international law the correctness of such interpretations and application is a matter to be decided by the Court, not by one of the parties before it.

The principle is referred to by the French phrase as the *competence de la compétence* - the power of an international tribunal to determine the limits of its own jurisdictional and other powers, and for that purpose to interpret its governing instruments.⁴⁷ The principle has been described by the respected international jurist, Sir Hersch Lauterpacht of Great Britain, as

"one of the most firmly established principles of international arbitral and judicial practice"⁴⁸ and "one of the most fundamental principles of international, and national jurisprudence..."⁴⁹

The competence de la competence has been recognized in bilateral arbitrations by eminent United States arbitrators since at least 1797;⁵⁰ by United States Secretary of State Daniel Webster as early as 1839;⁵¹ in bilateral arbitrations involving Paraguay in 1860, Costa Rica in 1862, and Chile in 1892⁵² and by multinational conventions since the Hague Conference of 1899⁵³. By 1911 it was described in the Walfish Bay Boundary case as a "constant doctrine of public international law."⁵⁴

The World Court has continuously found the doctrine applicable to international courts as well. In a 1928 Advisory Opinion, the Permanent Court of International Justice declared, "As a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction."⁵⁵

In construing its own competence de la competence in the 1953 *Nottebohm Case* (Preliminary objection), the International Court of Justice ("ICJ") made clear that international courts inherently possess this power, absent any agreement to the contrary by the parties to the treaties governing them, even without any provision expressly conferring the power. Referring to the express provision in the ICJ's statute (Article 36.6), the ICJ pointed out that it:

merely adopted, in respect of the Court, a rule consistently accepted by international law in the matter of international arbitration. Since the *Alabama* case [in 1872], it has been generally recognized following the earlier precedents, that, in the absence of any agreement to the contrary, an international tribunal has the right to decide its own jurisdiction and has the power to interpret for this purpose the instruments which govern that jurisdiction.

This principle (...) assumes particular force when the international tribunal is no longer an arbitral tribunal constituted by virtue of a special agreement..., but is an institution which has been pre-established by an international instrument defining its jurisdiction and regulating its operation...

... The judicial character of the Court and the rule of international law referred to above are sufficient to establish that the Court is competent to adjudicate on its own jurisdiction in the present case.

[I.C.J. Rep. (1953), 111, 119, 120.]

The ICJ thus found the power inherent in an international court created by an international instrument defining its jurisdiction and regulating

its operation, absent some agreement to the contrary. This description fits the Inter-American Court of Human Rights, created by the American Convention on Human Rights. Thus, the Inter-American Court inherently possesses the competence de la competence.⁵⁶

The competence de la competence empowers a court to construe its governing instrument not only as to its jurisdiction, but also as to all issues incident to that jurisdiction.⁵⁷ It authorizes an international court to adjudicate the limits of interpretation of its own judgments under treaty provisions authorizing such interpretation -the very power exercised by the Inter-American Court in the *Honduras cases*.⁵⁸ And the World Court has exercised its competence de la competence to imply powers to award reparations even where none were expressly authorized⁵⁹ and to assess the amount of damages even when a special agreement conferring jurisdiction referred only to whether damages ought to be paid.⁶⁰ Both interpretations arguably go well beyond the Inter-American Court's decision to allow post-judgment interest and to require protection of purchasing power as part of "fair compensation".

The competence de la competence is not absolute.⁶¹ Where states reserve controversies of a certain nature from those they agree to submit to the tribunal's jurisdiction, international tribunals do not have undisputed power to rule with finality on the nature of the controversy -e.g., whether it is justiciable or political, international or domestic.⁶² However, this limitation "only occurs when the parties reserve certain areas of disputes to be decided by themselves, and it does not, ... , preclude the tribunal's exercise of its competence de la competence beyond this primary question".⁶³ It thus has no application here.

The power also may not be exercised in an arbitrary manner.⁶⁴ This exception, however, is not remotely applicable here. (See note 46 above.)

In short, both the Convention and the fundamental international law principle of the competence de la competence make clear that the Court, and not one of the parties before it, has the power to decide on the correct interpretation of the Convention and of its own prior judgments. Accordingly the Court had the power to issue its Interpretation Judgments.

B. *Is Honduras obliged to comply with the Court's Interpretation Judgments?*

Honduras' obligation to comply with the Court's Interpretation Judgments derives from the Convention, from Honduras' acceptance of the

Court's jurisdiction, from the fundamental international law principle of *pacta sunt servanda*, and from the principles of the Charter of the Organization of American States.

Article 68.1 of the Convention provides: "1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."

By ratifying the Convention and accepting the Court's jurisdiction without reservation,⁶⁵ Honduras committed itself to comply with Article 68.1. As a party to the *Velásquez* and *Godínez* cases, Honduras is bound "to comply with the judgment of the Court".

Honduras' failure to comply with these treaty commitments would violate *pacta sunt servanda*. This general principle of international law provides that a treaty in force "is binding upon the parties and must be performed by them in good faith."⁶⁶ *Pacta sunt servanda* "lies at the core of the law of international agreements and is perhaps the most important principle of international law."⁶⁷

Because Honduras' noncompliance with the Court's Interpretation Judgments would violate its treaty commitment under Article 68.1 of the Convention, as well as the general principle, of international law of *pacta sunt servanda*, Honduras' noncompliance would also violate the principles of the OAS Charter. In Article 3 of the Charter the member States reaffirm the following principles:

"(a) International law is the standard of conduct of States in their reciprocal relations;"

and

"(b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law. (Emphasis added.)

Honduras' noncompliance with the Interpretation Judgments would neither comply with international law as a standard of conduct, nor faithfully fulfill its treaty obligations; accordingly, it would violate these Charter principles.

In short, Honduras is bound not only by the Convention, but also by one of the most fundamental principles of international law, and thus by the principles of the OAS Charter as well, to undertake to comply in good faith with the Interpretation Judgments.

IV. The Role of the General Assembly

The Honduran disappearance cases are not only the first contested cases decided by the Court; they also present the first occasion on which the General Assembly of the OAS has been requested to exercise its responsibilities under the Convention and the OAS Charter in a case of noncompliance. Following an unsuccessful effort to persuade Honduras to comply with its Interpretation Judgments,⁶⁸ the Court in April, 1991, reported Honduras' noncompliance to the General Assembly pursuant to Article 65 of the Convention. The draft resolution submitted by the Court (para. 7) asks the General Assembly to "call upon the Government of the Republic of Honduras to comply with the judgments of August 17, 1990 in the '*Velásquez Rodríguez*' and '*Godínez Cruz*' cases."

A. Legal Basis for Action

Article 65 requires the Court to submit an annual report on its work to the General Assembly and, in addition, directs: "It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations."

This provision of Article 65 resulted from a proposal by Guatemala at the 1969 San Jose Conference, at which the drafting of the Convention was completed and the Convention was signed. Guatemala proposed that the Court report cases of noncompliance to the Permanent Council of the OAS. However, the drafters believed that this would seem to involve powers beyond those of the Permanent Council. Consequently "the formula for reporting and making recommendations to the General Assembly was agreed upon as a means of applying pressure upon a delinquent state to comply with a judgment of the Court."⁶⁹

The General Assembly's responsibilities flow not only from Article 65 of the Convention, but also from the Charter of the OAS. Article 52 of the Charter makes the General Assembly the "supreme organ" of the OAS. Under Article 52(a), the General Assembly is empowered to "decide the general action and policy" of the OAS. And under Article 2(d) of the Charter, one of the "essential purposes" of the OAS is to "seek the solution of..., juridical..., problems that may arise" among its members.

Under the Charter, then, the General Assembly is charged with seeking a solution to the juridical problem of Honduras' noncompliance with the Interpretation Judgments of the Court. The Charter would impose this

responsibility on the General Assembly even if the Convention did not because the matter is plainly a "juridical" problem.

Moreover, as noted in the preceding section, Honduras' noncompliance would also violate the OAS Charter principles of compliance with international law and with treaty commitments, stated in Article 3(a) and (b). This additional juridical problem further brings the matter within the cognizance of the General Assembly.

B. The European Experience

In evaluating what action the General Assembly might take, it may be useful to consider the experience of the European Human Rights system, upon which the Inter-American system was modeled. The Council of Europe, like the OAS, faced the problem of non compliance by a member state during a formative period in the development of the European system. In a case involving noncompliance by the military government of Greece, the Committee of Ministers of the Council of Europe made clear that it was prepared if necessary, to use sanctions to enforce compliance with human rights.⁷⁰

Since then, the European Human Rights System has functioned effectively, especially in damages cases. Through 1987, the European Court of Human Rights handed down approximately thirty cases awarding some form of compensatory damages. Damages judgments issued by the Court are routinely complied with by governments. Moreover, according to the Senior Legal Officer at the Registry of the European Court of Human Rights, "if a [s]tate were to refuse to apply a judgment given against it... the Committee of Ministers would doubtless adopt a recommendation" even though the conflict might "result in the withdrawal or exclusion of the offending state from the Council of Europe."⁷¹

V. Conclusion

The *Velásquez* and *Godínez* cases are the first contested cases to be heard and decided by the Court. A refusal by the Government of Honduras to comply fully with the Court's Interpretation Judgments would pose a fundamental challenge to the future vitality of the system of protection of international human rights in the Americas.

Within that system, the Court stands as the judicial organ of last resort with respect to human rights questions that are subject to its jurisdic-

tion. If a state does not comply fully with a judgment of the Court, the Court must inform and make recommendations to the OAS General Assembly. Under both the OAS Charter and the Convention, the General Assembly then has the responsibility to determine appropriate action. Regardless of the Government of Honduras' disagreement with the Court's Interpretation Judgments in the *Velásquez* and *Godínez* cases, and notwithstanding its partial compliance with the Damages Judgments to date, Honduras' compliance with the Court's Interpretation Judgments is the critical issue now facing the General Assembly. The response of the General Assembly may determine the effectiveness of the Court—and the system of human rights protection it is designed to enforce—for years or decades to come.

Endnotes

- 1 *Velásquez*, Judgment on the Merits, Case N° 7920, Inter-Am Ct. H.R., (Ser. C), N°4 (June 29, 1988) at para 147a-d, 148, 178-82, and 185; Observations of the Inter-Am. Comm'n H.R. on Preliminary Objections of the Government of Honduras, March 20, 1987.
- 2 The third disappearance case, *Fairen Garbi and Solis Corrales* Judgment, Case 7951, Inter-Am. Ct. H.R. (Series C) N°6 (1989), is not at issue since the Court found that Honduras had not been proved responsible for the disappearances.
- 3 *Velásquez*, Judgment on the Merits, Case N°7920, Inter-Am. Ct. H.R., (Ser. C), N°4 (June 29, 1988).
- 4 *Id.* at para. 147e-h.
- 5 *Godínez*, Judgment on the Merits, Case N°8097, Inter-Am Ct. H.R. (Ser. C), N°5 (January 20, 1989).
- 6 *Id.* at para. 154.
- 7 The American Convention on Human Rights, Nov. 22, 1969, arts. 4, 5 and 7, O.A.S.T.S. N°36, OAS/ser. L./v/II.23, doc. 2, rev. 6 reprinted in 9 I.L.M. 673 (1970); See also N. Deodhar, *First Contentious Case Before the Inter-American Court of Human Rights*, 3 Am. U.L. & Pol'y 283-297 (1988).
- 8 *Velásquez* Judgment on the Merits, at para. 147(a)-(d).
- 9 *Velásquez* Judgment on the Merits, at para. 162.
- 10 *Id.* at para 166.
- 11 *Velásquez*, Judgment on the Merits, at para. 194.5; *Godínez*, Judgment on the Merits, at para. 203.5.

- 12 *Velásquez*, Judgment on the Merits, at para. 191; *Godínez* Judgment on the Merits, at para. 201.
- 13 *Velásquez*, Compensatory Damages Judgment, Case N°7920 (July 21, 1989), at para. 60-1.
- 14 *Id.*, at para. 58.
- 15 *Id.*, at para. 59. Paragraph 60-5 reiterated that the Court "shall supervise the indemnification ordered and shall close the file only when the compensation has been paid." *Id.* at para. 60-5.
- 16 *Id.*, at para. 57.
- 17 *Godínez*, Compensatory Damages Judgment, Case N°8097 (July 21, 1989), at para. 55-1.
- 18 *Id.*, at para. 53.
- 19 *Id.*, at paras. 54 and 55-5.
- 20 *Id.*, at para. 52.
- 21 Request for interpretation, filed by the Inter-American Commission, dated Sept. 29, 1990, Appendix V to the Court's 1990 Annual Report. Except for requiring payment within 90 days (or in six monthly installments to begin within 90 days), the Damages Judgments contained no protection with respect to the effect of devaluation of the local currency which is especially relevant in a continent plagued by inflation and loss of buying power. Between 1983 and 1988, Latin America suffered an average inflation of 721 percent, an annual average of 144 percent. *Id.* at 48, citing Report of the Inter-American Economic and Social Council, OEA/ser. H-X/47/CIES-4455 (1989). This issue is of particular importance in the case of the victims' children whose damage awards are to be administered through a trust until they reach the age of twenty-five. Without some preventive measures against devaluation, not only is the children's right to fair compensation subject to sudden peril, but the reparatory value of the Court's judgment is weakened. *See id.*
- 22 However, the Commission's request of July 6, 1990 to broaden its original request to take into account that Honduras still had not paid anything, was considered by the Court to be inadmissible. *Velásquez*, Interpretation of Compensatory Damages Judgment, Case N°7920 (August 17, 1990) at para. 15 and ordering para. 2 (hereafter, "Interpretation Judgment") (Appendix VIII to the Court's 1990 Annual Report); *Godínez*, Interpretation of Compensatory Damages Judgment Case N°8097 (August 17, 1990) at para. 15 and ordering para. 2 (hereafter "Interpretation Judgment") (Appendix IX to the Court's 1990 Annual Report).
- 23 *Velásquez*, Interpretation Judgment, at para. 31; *Godínez*, Interpretation Judgment, at para. 31.
- 24 *Velásquez*, Interpretation Judgment, at para. 43; *Godínez*, Interpretation Judgment, at para. 43.

- 25 *Velásquez*, Interpretation Judgment, at para. 40; *Godínez*, Interpretation Judgment, at para. 40.
- 26 *Velásquez*, Interpretation Judgment, at para. 43; *Godínez*, Interpretation Judgment, at para. 43.
- 27 *Velásquez*, Interpretation Judgment, Concurring Opinion of Judge Piza Escalante; *Godínez*, Interpretation Judgment, Concurring Opinion of Judge Piza Escalante.
- 28 *See* Letter from widows of *Velásquez* and *Godínez* to President of Honduras, dated December 21, 1990.
- 29 *See* Letter from Attorney General of Honduras to the President of Honduras, dated December 26, 1990; Letter from Ambassador of Honduras to Secretary of Court, dated January 17, 1991.
- 30 Letter from the Government of the Republic of Honduras to the Secretary of the Inter-American Court (October 17, 1990) (Appendix X to the Court's 1990 Annual Report).
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *Id.*
- 35 *Id.*
- 36 *Id.*
- 37 *Id.*
- 38 Letter from the President of the Inter-American Court to the Government of the Republic of Honduras (November 12, 1990) (Appendix XI to the Court's 1990 Annual Report).
- 39 *Id.*
- 40 *Id.*
- 41 *Id.*
- 42 *Id.*
- 43 *Id.*
- 44 In *Velásquez Rodríguez*, the Court affirmed its jurisdiction in the Judgment of June 26, 1987 on Preliminary Objections at para. 27; in the Judgment of July 29, 1988 on the merits at para. 11; and in the Damages Judgment of July 21, 1989 at para. 3 (where it specifically found jurisdiction "to order the payment of fair compensation to the injured party in the instant case"). The same findings appear in the corresponding opinions in the *Godínez Cruz* case. None of these findings was disputed by Honduras.
- 45 Article 67 provides: "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 that the

request is made within ninety days from the date of notification of the judgment." In the Honduran cases, the Commission's request for interpretation was filed with the Court well within the requisite 90 days.

- 46 Perhaps the most significant weakness in Honduras' argument is that it ignores the Court's expressly retained jurisdiction to enforce its Damages Judgments. Paragraph 37 and ordering paragraph 4, in both Interpretation Judgments, as well as the concurring opinion of Judge Piza-Escalante, rely on the Court's expressly retained powers to supervise compliance. Exercise of these powers was arguably necessitated by Honduras' delay in making payment. Whatever force Honduras' argument might have had if the Court had not retained jurisdiction to supervise compliance, is thus largely vitiated.

On the other hand, the principle of law urged by Honduras—that requests for interpretation of judgments by international courts must be limited to an interpretation of what the court actually decided, and not to obtain an answer to questions not so decided—was set forth and relied upon in *Request For Interpretation of the Judgment of November 20th, 1950 in the Asylum Case (Columbia/Peru)*, I.C.J. Rep. (1950), p. 395, at pp. 402-03. The issue here, of course, is how that acknowledged principle applies to these cases.

Nor is Honduras patently wrong in arguing that the Court's interpretation of the phrase, "under the most favorable conditions permitted by Honduran banking practice," is an "exaggeration." Letter of Oct. 17, 1990, Appendix X to the Court's 1990 Annual Report, p.3. Honduran banking practice is not specifically set forth by evidence recited either in the Interpretation Judgments or in the Commission's requests for interpretation (Appendices V and VI to the Court's 1990 Annual Report).

Both the Commission's request for clarification (Appendix V to the Court's 1990 Annual Report, at p.46) and the objections by Honduras (Appendix X to the 1990 Annual Report, at p.87) rely on the European Court of Human Rights decisions in *Ringeisen*, Judgment on the Merits, 1972 Y.B. Eur. Conv. H.Rts. 678 (1972), and Interpretation of Judgment, 1973 Y.B. Eur. Conv. H. Rts. 468 (1973). In *Ringeisen* the European Court originally ordered Austria to pay damages in German currency. Upon a request for interpretation, the Court ruled that payment must be in German currency, not in Austrian currency. However, the basis for the interpretation was not that German currency had been specified in the original judgment, but rather that the Court's purpose in the judgment, namely to secure expeditious relief for a claimant then living in Germany, was best met by payment in German currency. Here, a similar rationale—effective compensation for the victim's families—would support the Court's interpretation of its original judgment to require payment in a manner designed to protect the purchasing power of the damages award.

- 47 See generally, Ibrahim F. I. Shihata, THE POWER OF THE INTERNATIONAL COURT TO DETERMINE ITS OWN JURISDICTION: COMPETENCE DE LA COMPETENCE (The Hague: Martinus Nijhoff, 1965) (hereafter "Shihata").
- 48 *Interhandel Case* (Prel. Obj.) I.C.J. Rep. (1959) pp.6, 104 (Diss. Op. of Judge Lauterpacht).

- 49 *Certain Norwegian Loans* I.C.J. Rep (1957), pp. 9, 44 (Diss. Op. of Judge Lauterpacht). The national jurisprudence of the United States has repeatedly recognized the power of courts, and not litigants before them, to determine the validity of judicial orders. E.g., *Walker V. Birmingham*, 388 U.S. 307, 313-14, 316-17, 320-21 (1967) (no right to disobey a court order granting temporary injunction, even though unquestionably subject to substantial constitutional question, unless and until reversed by issuing or reviewing court). The Court explained that this rule of law "reflects a belief that in the fair administration of justice no man can be judge in his own case, ... [R]espect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." *Id.* at 320-21; accord, *United States v. United Mine Workers*, 330 U.S. 258, 293-94 (majority), 307-10 (Frankfurter, J., concurring) (1947).

Exceptions are extremely limited. As phrased by Mr. Justice Frankfurter: "Only when a court is so obviously traveling outside its orbit as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper." *Id.* at 309-10.

- 50 See Opinions of United States Commissioners Gore and Pinckney in the *Betsey* arbitration, discussed in Shihata at pp. 12-14. Indeed, the founders of modern international law, beginning with arbitrators were final on all matters, including the extent of their own powers. See W. M. Reisman, NULLITY AND REVISION: THE REVIEW AND ENFORCEMENT OF INTERNATIONAL JUDGMENTS AND AWARDS (New Haven and London: Yale Univ. Press, 1971), pp. 22-29.
- 51 See Shihata at p.15. Secretary Webster wrote to the Mexican Commissioners of the United States and Mexican Claims Commission that the Commission's rights and duties, "like those of other judicial bodies, are to determine upon the nature and extent of its own jurisdiction..." *Id.*
- 52 Shihata at 16, discussing, respectively, *Claim of the U.S. and the Paraguay Navigation Co.*, (1860), 2 Moore, ARBITRATIONS, 1485, 1504; the *Isaac Harrington* case (1862), *Id.* at 1551, 1564-65; and the *Didier* case (1892), *Id.* at 4329, 4331.
- 53 Article 48 of the Hague Convention Nº1 for the Pacific Settlement of International Disputes provided, "The Tribunal is authorized to declare its competence in interpreting the compromise as well as the other treaties which may be invoked in the case, and in applying the principles of international law." See Shihata at 20-21.
- 54 9 U.N. Rep. Int'l Arb. Awards, 263, 294 (1911), quoted in Shihata at p.22.
- 55 *Interpretation of the Greco-Turkish Agreement of December 1st. 1920*, P.C.I.J., ser. B, Nº16 at 20 (1928) (Adv. Op.), quoted in Shihata at 35.
- 56 The Convention neither expressly grants nor denies to the Court the competence de la competence. Indeed, Articles 67, which makes the Court's judgment "final and not subject to appeal", and 68.1, by which States Parties "undertake to comply with the Judgment of the Court in any case to which they are parties," might be construed to imply the power. Their general terms arguably embrace all final judgments of the Court, including those in which it adjudicates the limits of its own powers.

Until as late as September 1969, two months before the final text was signed, the draft Convention contained a provision (draft Art. 51), the same in substance as Art. 36.6 of the Statute of the International Court of Justice, expressly granting the Court power to rule on its own jurisdiction in cases of dispute. HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM, note 69 *infra*, Binder 2, Booklet 14, p.102. Unfortunately, the legislative history, extensively compiled in this source, does not explain why this proposed Article was removed.

In any event, under the principle recognized in *Nottebohm*, the absence of any provision denying the power means that the Court inherently possesses it.

57 Shihata at pp. 41-43.

58 See Shihata at 41-42. As examples, he cites *Interpretation of Judgment N°3 Case*, P.C.I.J., ser. A, N°4 (1925); *Interpretation of Judgments N°7 and 8 Case*, Ser. A. N°13 (1927); *Asylum Case* (Interpretation), I.C.J. Rep. (1950), p. 395.

59 *Chorzow Factory Case*, P.C.I.J., Ser. A, N°9 at 21 (1927). The Court stated, "Reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the Convention itself." Therefore, jurisdiction over whether there had been a breach entailed "a more important jurisdiction as to the nature or extent of reparation due for a breach of an international engagement, the existence of which is already established." *Id.* at 23.

60 Shihata at pp. 26-28. *Corfu Channel Case*, I.C.J. Rep. (1949), pp. 4, 24-6.

61 Shihata at 12. See also W.M. Reisman, "Has the International Court Exceeded its Jurisdiction?", 80 *American Journal Int'l Law* 128, 128-30 (1986); see generally W.M. Reisman, NULLITY AND REVISION, *supra* note 50.

62 Shihata at pp. 26-28. The "reserved area" exception describes in significant part the position asserted by the United States in the Nicaragua case. Central to the United States' argument that the ICJ lacked jurisdiction was its multilateral treaty reservation. *Military and Paramilitary Activities in and against Nicaragua*, I.C.J. Rep. (1986), p.31; see Dissenting opinion of Judge Schwebel, *id.* at pp. 296-306.

But the ICJ rejected it even there. The Court made clear that the validity of its judgment did not "depend on the acceptance of that judgment by one party. The fact that a State purports to 'reserve its rights' in respect of a future decision of the Court, after the Court has determined that it has jurisdiction, is clearly of no effect on the validity of that decision. Under Article 36, paragraph 6, of its Statute, the Court has jurisdiction to determine any dispute as to its own jurisdiction, and its judgment on that matter, as on the merits, is final and binding on the parties..." I.C.J. Rep. (1986), pp. 23-24.

The United States Judge, Judge Schwebel, who issued a lengthy and vigorous dissent from the Court's jurisdictional and other findings, did not dispute its power to decide upon its jurisdiction. See I.C.J. Rep. 1986, pp. 259, 284-320 (Diss. Op. of Judge Schwebel). The United Kingdom judge, Judge Jennings, who was sympathetic with some of the United States' arguments, pointedly supported the Court's declaration of its competence *de la competencia*. *Id.* at 528. Not one judge dissented from the Court's

assertion of its competence *de la competencia*. But see W. M. Reisman, *International Court*, *supra* n. 61 at 128, citing the Roman law maxim, "arbiter nihil extra comprisum facere potest..."

63 Shihata at 28.

64 Shihata at 12, 68-73; see, generally, W.M. Reisman, *International Court*, *supra*, note 61, and W.M. Reisman NULLITY AND REVISION, *supra* note 50. Professor Reisman argues that the world Court's holding that Nicaragua had accepted its jurisdiction was "so ill-founded in the facts, in the law and in the Court's own jurisprudence as to constitute a ground for nullity". *International Court*, *supra* note 61, 80 *Am. J. Int'l Law* at 132.

65 See HUMAN RIGHTS; THE INTER-AMERICAN SYSTEM, note 69 *infra*, Binder 1, Booklet 3, pp. 42-44.

66 Ian Brownlie, PUBLIC INTERNATIONAL LAW (4th. ed. 1990) (Oxford, England: Clarendon Press), p. 616 (footnote omitted); accord, Vienna Convention on Treaties, Article 26; Restatement of the Foreign Relations Law of the United States (3d ed. 1986), section 321.

67 Restatement, *supra* note 66, Comment to section 321. In cases where a state party to a multilateral agreement commits a material breach, another state specially affected by the breach can suspend the operation of the agreement in whole or in part as between itself and the defaulting state. Vienna Convention, Articles 6/0(2) (b); Restatement section 335(2) (b). But even if the Inter-American Court could be analogized to a state party for this purpose, Honduras would have to establish that the Court committed a material breach of the Convention. In view of the discussion under question (1) above, no such breach could be shown.

68 See the letter from the President of the Court to the Honduran Ambassador, dated November 12, 1990, Appendix XI to the Court's 1990 annual Report.

69 Report of the United States delegation on the Conference, reprinted in Thomas Buerghenthal and Robert Norris, HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1982-90), Binder 3, booklet 15, at 1, 54-55.

70 The case was brought by the governments of Denmark, Norway, Sweden and the Netherlands. *Denmark, Norway, Sweden, Netherlands v. Greece*, Nos. 3321/67 and 3344/67, 1968 Y.B. Eur. Conv. on H.R. 690 (January 24, 1968) (decisions of the Eur. Comm'n H.R. on the admissibility of the applications). See also *Denmark, Norway, Sweden, Netherlands v. Greece*, Nos. 3321/67 and 3344/67, 1968 Y.B. Eur. Conv. on H.R. 730 (May 31, 1968) (decision of the Eur. Comm'n H.R. on the admissibility of certain new allegations). The applicant governments petitioned the European Commission charging that the Greek government violated the Convention in 1967 by declaring a state of emergency and suspending various provisions of the Greek Constitution. 1968 Y.B. Eur. Conv. on H.R. 690 (January 24, 1968). After investigation, the European Commission reported to the committee of Ministers of the Council of Europe that the Greek government had violated the European Convention. The Report of the European Comm'n on H.R., The Greek Case, Council of Europe, Doc. 15.701/1, vol. 1, pt.

- I. (1969). There was also a pending motion to suspend Greece from the Council of Europe for violating Article 3 of the Statute of the Council of Europe, which requires member states to "accept its principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms". L. Sohn and T. Buergenthal, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973) at 1074 *citing* the Statute of the Council of Europe, art. 3. The Commission's report supplied more than sufficient evidence to sustain a suspension. *Id.* When the Greek government saw that the Committee of Ministers was going to act to stand behind the Commission, it announced its withdrawal from the Council of Europe. *Id.*; *See* "Note Verbale dated 12 December 1969 from the Government of Greece informing the Secretary General of Greece's denunciation of the Statute and of its withdrawal from the council of Europe", Council of Europe, Doc. CM (69) 217 (December 12, 1969), 9 ILM 408-10 (1970). Despite Greece's withdrawal, the Committee of Ministers also rendered its opinion supporting the Commission's report. L. Sohn and T. Buergenthal, *supra*, at 1078-1099.
- 71 V. Berger, *CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS* Vo. I: 1960-1987 (1989) at 409.