Inter-American System

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On the implications of the European Security and Defence Policy (ESDP) for the OSCE Region, the Assembly proposes that consideration be given to the possibility of the European Union’s ESDP being available to OSCE and the United Nations for crisis management, peacemaking and peacekeeping activities.

The Paris Declaration urges the OSCE to raise awareness by making delegations and capitals more sensitive to the interplay between environmental and/or economic factors and the security of the OSCE region.

On national minorities the Assembly strongly recommends to those participating States that have not yet done so that they bring their legislation on citizenship into conformity with international standards for the protection of persons belonging to national minorities, particularly as regards the procedures for the acquisition or loss of citizenship.

The Assembly furthermore calls upon the participating States to reinvigorate their efforts to implement their commitments regarding freedom of expression and free media, and to actively support media independence and pluralism.

The Resolution on South Eastern Europe opposes ethnic Albanian groups in the former Yugoslav Republic of Macedonia, Kosovo and southern Serbia who have instigated violence this past year, condemns repeated acts of terrorism in the former Yugoslav Republic of Macedonia, and calls upon the legitimate political representatives of Macedonians, Albanians and other ethnic groups in the former Yugoslav Republic of Macedonia, to focus on continued political dialogue - and not violence - to resolve pressing issues and grievances of ethnic minorities.

On developments in the North Caucasus the Assembly once again calls upon all parties in the conflict to observe assiduously and conscientiously the territorial integrity of all sovereign States in the region and to refrain from any actions that might contravene that territorial integrity or undermine regional security. The resolution welcomes the return of the OSCE Assistance Group to Chechnya and expresses its expectation that the Assistance Group – on the basis of its 1995 mandate – will be able to promote the peaceful settlement of the crisis and stabilisation of the situation in the Chechen Republic.

Regarding the situation in Ukraine the Assembly expresses concern about the potential loss of momentum in undertaking critical economic and political reforms in Ukraine as a result of the dismissal of the reformist government of Viktor Yushchenko. The Assembly is disturbed that the criminal investigation into the murder of journalist Georgiy Gongadze has been obstructed by authorities and has not been carried out in accordance with the rule of law.

V INTER-AMERICAN SYSTEM
Claudia Martin and Diego Rodríguez-Pinzón*

A. Inter-American Court of Human Rights

Since the last report produced on the Inter-American System, the Court has decided several cases. In the second half of 2000, the Court ruled on the merits in Durand and Ugarte, and Cantoral Benavides, both against Peru, and Bámaca Velásquez vs Guatemala. In 2001, the Court has adopted decisions on the merits in the cases of the Constitutional Tribunal and

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Ivcher, both against Peru, Baena et al vs Panama, Olmedo Bustos et al vs Chile ('Last Temptation of Christ' Case), and Chumbipuma Aguirre et al. vs Peru ('Barrios Altos' Case). Moreover, the Court has ruled on reparations in Paniagua Morales et al. vs Guatemala, Villagráñ Morales et al vs Guatemala, and Cesti Hurtado vs Peru. For considerations of space and relevance, this report will only focus on the decisions in the Baena, Olmedo Bustos, and Chumbipuma Aguirre Cases. The full text of the decisions can be obtained in Spanish and English on the web site of the Inter-American Court at www.corteidh.or.cr

Baena et al vs Panama. Judgment on the merits
On 16 October 1990, the Coordinadora de Sindicatos de Empresas Estatales, a group of trade unions representing workers in the public sector, in particular State owned companies, presented to the Government of Panama a list of petitions on labor-related issues. Those petitions were rejected by the Government on 16 November 1990. As a result, the Coordinadora called for a public demonstration on 4 December and a 24-hour work stoppage for the following day. The demonstration, which was peacefully held, coincided with the escape of the former head of the National Police Force, Colonel Eduardo Herreras, who was imprisoned for challenging the authority of the civilian government. Herreras took the principal barracks of the National Police Force during the night of 4 December and part of the following day, until he was detained by the US armed forces and handed over to the Panamanian authorities. The State considered that Herreras's activities were linked to the work stoppage organised by the trade unions; therefore, to avoid any suspicions, the trade unions suspended the stoppage early on 5 December. On 6 December, the Executive Branch referred a draft law to the Legislative Assembly proposing the dismissal of all the public employees who had participated in the organisation and implementation of the work stoppage alleging that the workers' actions were aimed at overthrowing the constitutionally installed Government. The law, identified as Law 25, was passed on 14 December and authorised the retroactive application of its provision to the 4-5 December events. The retroactivity of this legislation was permitted by Article 43 of the Constitution of Panama according to which public order laws may be applied retroactively. In addition to authorising the dismissal of public employees, Law 25 granted the Executive Branch the power to determine the actions that would fall within the definition of 'acts contrary to democracy and the constitutional order' and which would constitute the grounds for dismissal. Through a resolution adopted on 23 January 1991, the Executive Power provided that 'acts contrary to democracy and the constitutional order' encompassed abrupt stoppages and suspension of activities in the public sector and that public employees who had promoted, convoked, organised, or participated in such actions since 4 December 1990 would be subject to dismissal. Law 25 also authorised the Executive Branch or the Directors of the State owned companies or other governmental agencies to identify and dismiss the workers who had participated in the organisation and implementation of acts contrary to democracy and the constitutional order. Finally, the law modified the administrative and judicial proceedings to challenge the dismissals, specially in relation to some of the workers who were protected by a special legal regime.

In application of Law 25, 270 workers from State owned companies and other governmental agencies were dismissed from their jobs. Some of the workers were dismissed before the law came into force and all of them were fired before the Resolution of the Executive Branch defining the acts for which they were sanctioned was adopted. As required by that law, most of the workers exhausted administrative remedies and then appealed the rulings to a Chamber of the Supreme Court with jurisdiction to decide on labor-related issues.
In the meantime, the Supreme Court of Panama in plenary had declared Law 25 constitutional, with the exception of the provision that granted authority to the Executive Branch to define the scope of the acts that fell within ‘acts contrary to democracy and the constitutional order’. In application of this judgment, the Chamber of the Supreme Court rejected the workers’ appeals and ruled that the dismissals carried out under Law 25 were legal. The decision by the Chamber of the Supreme Court was final and non-appealable.

After exhausting domestic remedies, the 270 workers dismissed from their public employment brought a petition to the Inter-American Commission on Human Rights. On 16 January 1998, the Commission referred the case to the Inter-American Court of Human Rights claiming violations to the following articles of the American Convention on Human Rights: 8 (right to a fair trial); 9 (freedom from *ex post facto* laws); 10 (right to compensation); 15 (right of assembly); 16 (freedom of association); and 25 (right to judicial protection) in relation to Articles 1(1), 2 and 33 and 50(2) (duty of the State to comply in good faith with the recommendations issued by the Commission in its reports). Furthermore, it requested the Court to declare that Law 25 and Article 43 of the Panamanian Constitution, which permit the retroactive application of laws, are incompatible with the Convention and that they should be modified or repealed in accordance with Article 2 of the said Convention. In addition, the Commission alleged that the State violated its duty to comply in good faith with its international obligations in breach of Articles 33 and 50(2) of the Convention, when it failed to implement the Commission’s recommendations. The Commission also requested the Court to order the State to reestablish the 270 workers in the exercise of their rights, to make reparations, and to compensate the victims or their families for the acts committed by its agents, as established in Article 63(1) of the Convention. Lastly, the Commission requested that the State should be condemned to pay the costs and expenses of the proceeding. In 18 November 1999, the Inter-American Court of Human Rights dismissed the preliminary objections submitted by the State of Panama and decided to continue with the consideration of the merits of the complaint.

In its judgment on the merits, the Court addressed two general issues before deciding on the alleged violations to the American Convention. First, the Court rejected the argument made by the State that all facts denounced in this case were justified on the basis that the State was facing an emergency situation. In that regard, the Court concluded that the State never declared a state of emergency and notified the Secretary General of the Organization of American States as required by Article 27 of the American Convention; therefore, the Court analysed the violations alleged by petitioners without considering the limitations allowed by that provision. Second, the Court considered whether the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (hereinafter ‘San Salvador Protocol’) was applicable to the facts of this case. The Commission argued that, in addition to other provisions of the American Convention, Law 25 affected trade union rights protected by Article 8 of the San Salvador Protocol. Panama was not a State Party to the Protocol by the time the facts of the case took place, but it had signed that treaty in 1988. On that basis, the Commission alleged, Panama had a duty not to defeat the object and purpose of the treaty from the time it signed the Protocol, as provided by Article 18 of the Vienna Convention on the Law of Treaties. The dismissal of workers for organising a work stoppage affected trade union rights and therefore violated that duty. The Inter-American Court reasserted the general principle of good faith in the compliance of international obligations and the duty not to frustrate the object and purpose of a treaty, even from the signature of such an instrument. However, it concluded that since Panama had not
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ratified the San Salvador Protocol at the time the facts alleged in the case took place, it could not attribute violations of that Protocol to the State.

Next, the Court analysed the alleged violation of Article 9 of the American Convention on Human Rights which ensures the freedom from ex post facto laws. First, the Court concluded that this provision was applicable to those administrative sanctions that, like criminal ones, are utilised to punish an illicit conduct. In a democratic system, both administrative and criminal sanctions must be regulated and known before the conduct that triggers their application takes place. According to the 'principle of legality and non-retroactivity' enshrined in Article 9, the determination that a particular action or omission is illegal and the sanctions it entails must be stated before an individual is punished for carrying out the prohibited conduct. Individuals must be able to foresee the consequences of their actions. Second, the Court appears to have concluded that the dismissal of the petitioners were the type of administrative sanctions that fell within the scope of Article 9. On that basis, it held that the retroactive application of Law 25 authorising the dismissal of workers who participated in the work stoppage of December 1990 was a violation of that provision. The retroactive application of the law is proved by the language of the statute itself and the fact that the scope of the actions for which the workers were sanctioned - acts against democracy and the public order- were only determined on 23 January 1991 by Resolution of the Executive Branch.

The Court also found a violation of the rights to a fair trial (Articles 8 paragraphs 1 and 2) and to an effective remedy (Article 25), both protected by the American Convention on Human Rights. The Court first analysed the application of Article 8 to administrative disciplinary proceedings and concluded that state authorities must observe the right to a fair trial in those type of proceedings. Second, the Court held that both the procedural guarantees ensured in paragraph 1 of Article 8 and those spelled out in paragraph 2 of the same provision must be respected in administrative disciplinary proceedings. It is worth to note that paragraph 1 of Article 8 refers to the procedural guarantees that States undertake to respect in the determination of rights and obligations of a civil, labour, fiscal or other nature, and of a criminal charge, while paragraph 2 includes procedural guarantees that are ensured only to a person who has been charged with a crime. It looks like the Court considered that, when an administrative sanction can be assimilated to a criminal sanction, due process rights provided in paragraph 2 should be ensured in the application of such a measure. Following that conclusion, the Court appears to have reasoned that since Law 25 provided for sanctions similar to those of a criminal nature, the State should have respected the procedural guarantees ensured in both paragraphs of Article 8. In particular, the State should have provided workers with access to an administrative proceedings prior to dismissing them from their employment. Panama argued that by the time the facts in this case took place, there were no laws regulating public employment and that the State had discretion to hire and remove public employees. Thus, authorities had no obligation to follow any prior administrative procedure before dismissing the victims in this case. The Court considered that a distinction must be drawn between the discretion to remove personnel on the basis of necessity of the public service and the State power to sanction a public employee. In the exercise of the power to apply sanctions, State authorities must respect the due process rights protected by the Convention. In this case, the President of Panama concluded that the work stoppage was linked with the activities carried out by Colonel Herrera Hassán and ordered the dismissal of those workers who had participated in the stoppage, presuming their support to the former military. Additionally, sanctions were applied to workers identified by reports prepared by their superiors, without permitting the victims to defend themselves and

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challenge the conclusions as to their participation in the events that led to the massive dismissals. Moreover, once sanctions were imposed, several victims filed administrative appeals that were never decided by State authorities. Finally, the Court considered that given the seriousness of the sanction, which implied the loss of the workers economic support and the consequences that this situation entailed for them and their families, the State should have ensured the victims the right to due process when deciding their dismissal. For those reasons, the Court found that the State did not respect the right to a fair trial provided in Article 8 of the Convention.

In relation to the violation of Articles 8 and 25 in the context of the judicial proceedings, the Court established that workers exercised their judicial remedies in three situations: 1) writs of *amparo* filed before the Supreme Court; 2) petitions requesting the unconstitutionality of Law 25 also submitted to the Supreme Court; and 3) judicial appeals against the decision of administrative authorities confirming the dismissals presented before the Third Chamber of the Supreme Court, with jurisdiction to deal with labour-related matters. Petitioners brought the writs of *amparo* to challenge the decision of labour courts not to accept for review the workers' dismissals because Law 25 have deprived them of jurisdiction to decide those cases. Since the Supreme Court limited itself to order those courts to adopt a reasoned decision regarding their lack of jurisdiction but refused to address the merits of the petitions, the Inter-American Court found that the victims did not have access to an effective remedy. On the other hand, after the constitutionality of Law 25 was declared, petitioners appealed to the Third Chamber of the Supreme Court to challenge the application of the law to their own cases. This tribunal limited itself to conclude that being the law constitutional, the dismissals were legal in the cases of those workers that appeared to have participated in the work stoppage. It failed to establish in each case whether the particular petitioner had committed the conduct punished by the Law. In fact, the tribunal did not have access to the reports prepared by the authorities identifying the workers that had participated in the events of 4-5 December, which were not even a piece of evidence incorporated in the proceedings. Furthermore, it applied Law 25 without taking into account the fact that the conduct for which the workers were sanctioned were not defined until a month and a half after the events took place. Finally, the decision of the Third Chamber of the Supreme Court was final and non-appealable. For the above reasons, the Inter-American Court held that victims in this case did not have access to judicial proceedings that ensure their right to a fair trial and to an effective remedy as required by Articles 8 and 25 of the American Convention.

Additionally, the Court reviewed the alleged violation of Articles 15 and 16 of the Convention which protect the right of assembly and freedom of association, respectively. In relation to the right of assembly, the Court found that the public demonstration of 4 December was carried out without interference from the state authorities and that it was even protected by the public force. Moreover, according to Law 25, workers were dismissed for organising and participating in the work stoppage of 5 December, but not as a result of their participation in the events of the day before. Therefore, the Court held that there was no evidence showing that the right of assembly of the victims was illegitimately restricted. With respect to Article 16, the Court stated that this provision had to be analysed in the light of the right to organise and bargain collectively which includes the right to establish trade unions without interference from the State. In addition, Article 16 encompasses the right to form associations, subject to the restrictions authorised by that provision, and the freedom to join or not to join those associations. Next, the Court held that Law 25 authorising a massive dismissal of public employees and trade unions representatives constituted an interference with the exercise of the right to freedom of association. To come to that conclusion the Court
took into account the conclusions reached by the ILO Committee on Freedom of Association and the ILO Committee of Experts in the Application of Conventions and Recommendations, which had previously ruled that those dismissals seriously compromised the actions of trade unions and that, in consequence, those measures violated ILO Convention No. 98 on the right to organise and bargain collectively. Once the interference was established, the Court proceeded to consider the legality of such a restriction. In that vein, it analysed whether the interference was established by law, justified on one of the grounds authorised by Article 16, in particular public order, the protection of the general interest or the independence and security of the State, and if it was necessary in a democratic society. The Court, though it came close to consider that Law 25 did not meet the conditions required by the Convention to be a legitimate measure to restrict freedom of association, it limited itself to hold that the law was not needed to protect public order, it was disproportional to the end that it intended to achieve, and, in consequence, it was not necessary in a democratic society.

Furthermore, the Court concluded that the violations of the rights protected in Articles 9, 8(1), 8(2), 25, 15, and 16 constituted an additional breach of the general duties to respect and ensure the exercise of the rights protected by the Convention, as provided in Article 1(1) of that instrument. Also, by passing Law 25, the State failed to comply with the duty to adopt measures to give effect to the rights and freedoms enshrined in the American Convention in breach of Article 2 of that treaty. It is noteworthy the fact that the Court did not address the request of the Commission to declare the incompatibility of Article 43 of the Panamanian Constitution with the American Convention when considering Article 2. It only referred to this petition in the section on reparations and it held that it was not necessary to review this issue since it had already ruled on Law 25, which was the measure applicable to the facts of this case.

The Court next considered the alleged breach to Articles 33 and 50(2) of the American Convention. The Court held that Article 50(2), which regulates the elaboration and transmittal to the State of the Commission’s report with recommendations, was not applicable to this case because the Commission, by submitting the case to the Court relied on this tribunal to adopt a decision on the merits of the case. With respect to Article 33, the Court reiterated its prior jurisprudence according to which States Parties to the Convention should take into account the recommendations made by the Commission in its reports because this organ has the power to monitor compliance with the obligations assumed by States when ratifying the Convention. Moreover, States Parties to the Convention must make their best efforts to implement the recommendations of the Commission in light of the principle of good faith in the compliance of international obligations, as codified by the Vienna Convention on the Law of the Treaties. In the end, however, the Court concluded that it had no power to review the actions of the State of Panama during the proceedings before the Commission.

Finally, the Court ruled on reparations under Article 63(1) of the American Convention. To ensure the enjoyment of the rights violated, the Court ordered the State to reinstate the workers who are alive in the positions they held by the time they were dismissed or, if not possible, to offer them employment alternatives that ensure the same working conditions, salaries, and social security benefits. If this option is not applicable, the State should compensate the victims for termination of employment, as provided by the domestic law of Panama. Moreover, the State should award pension rights and other social security benefits to the survivors of those workers who passed away. Second, the Court awarded compensation to the victims or their heirs, including material and moral damages. Lastly, the Court awarded
expenses and costs incurred by the victims and their representatives in the domestic and international jurisdictions.

*Olmedo Bustos et al vs Chile ('The Last Temptation of Christ' Case). Judgment on the merits.*

Article 19§12 of the Constitution of Chile authorises the establishment of a system of censorship for the exhibition and publicity of cinematographic productions. In furtherance of that provision, Decree Law No. 678 grants power to the Cinematographic Classification Council to supervise cinematographic exhibition in Chile and classify films. In 1988, United International Pictures Ltd. petitioned the Chilean Cinematographic Classification Council to authorise the exhibition of the film ‘The Last Temptation of Christ’, but the request was rejected. Later on, however, on 11 November 1996, following a further petition by United International Pictures Ltd., the Cinematographic Classification Council reviewed the prohibition to exhibit the same film and finally authorised its exhibition for an audience of 18 years of age or more. Against that decision, seven lawyers filed a protection writ (‘recurso de protección’) arguing that the content of the film affected the right to reputation of Jesus Christ, the Catholic Church and themselves. The Court of Appeal of Santiago granted the writ and annulled the administrative decision adopted by the Cinematographic Classification Council lifting the ban on the exhibition of the movie. This decision was upheld by the Supreme Court of Chile on 17 June 1997. Both decisions were based on the argument that the film, by deforming and abusing the image of Christ, affected his honor and dignity, and offended the sincere beliefs of those who based their faith in his person.

The case was brought to the Inter-American Commission on Human Rights, which referred it to the Inter-American Court on 15 January 1999. Before the Court, the Commission argued a violation of Articles 13, 12, 1(1) and 2 of the American Convention on Human Rights, which ensure the rights to freedom of thought and expression, freedom of conscience and religion, and the general duties to respect and ensure the exercise of the rights protected by the Convention, and to adopt the necessary measures to give effect to those rights. As to the violation of the right to freedom of thought and expression, the Court held that the decisions of the domestic courts in Chile constituted prior censorship, a measure expressly prohibited by Article 13(2) of the American Convention. In addition, it underscored that preventive measures that do not fall within the exception of paragraph 4 of that provision, which permits censorship in public entertainment for the protection of minors, infringe the right to freedom of expression. The decision of the Court implicitly rejected the approach followed by domestic courts according to which opinions or publications that harm the honor of others can be restrained through an injunction without violating the right to freedom of expression, because judicial injunctions do not constitute prior censorship.

Next, the Court found no violation of the right to freedom of conscience and religion protected by Article 12 of the American Convention. The Court rejected the Commission’s arguments which sustained that the decision of the Chilean courts deprived the victims in this case, and society as a whole, of access to information that could have allowed them to maintain, change or modify their beliefs. Moreover, the Commission alleged, the decision affected those who belong to other creeds than Catholicism or do not have religious convictions, since they do not have access to the ideas expressed in a work or art with a religious content. The Court reasoned that Article 12 ‘constitutes a far-reaching element in the protection of the convictions of those who profess a religion and in their way of life’. However, in the end it concluded that there was no evidence to sustain that any of the freedoms embodied in that provision, including the right to maintain, change, profess or
disseminate their religion or beliefs, have been affected by banning the exhibition of the film.

Additionally, the Court concluded that the State of Chile violated the general duties to respect and ensure the right of petitioners to freedom of thought and expression, ensured by Article 1(1) of the Convention, when it banned the exhibition of the film. In regard to Article 2, the Court held that the existing legislation in Chile, in particular Article 19(12) and Decree Law No. 679, are incompatible with the standards of Article 13 of the Convention, because they permit prior censorship of the exhibition and publicity of cinematographic production. Though Chile had been in the process of amending those provisions, the challenged domestic legislation was still in force. Therefore, there was a breach of Article 2 of the Convention.

In the end, the Court ruled on the measures of reparation to be awarded to the victims in this case, as provided by Article 63.1 of the Convention. First, the Court ruled that to guarantee the free and full exercise of the right to freedom of thought and expression, the State must amend the existing legislation that permits prior censorship and authorise the exhibition of the film ‘The Last Temptation of Christ’. Second, in regard to other measures, the Court concluded that the judgment was, per se, a form of reparation and moral satisfaction of significance and importance for the victims. Finally, the Court awarded the expenses incurred by the victims to argue the case in the domestic and international jurisdictions.

*Chumbipuma Aguirre et al. vs Peru (‘Barrios Altos’ Case). Judgment on the merits.*

The victims in this case, residents in the Barrios Altos neighborhood in Lima, were having a fund-raising party when six armed individuals with their faces covered with ski masks interrupted the building. The attackers arrived in two vehicles equipped with police lights and sirens. They asked the victims to lay on the floor and shot at them indiscriminately, killing 15 persons and seriously wounding another four. Judicial investigations and press reports revealed that the attackers were members of ‘Grupo Colina’, an anti-subversive group within the Armed Forces of Peru. Two weeks after the events, in November 1991, the Peruvian Congress set forth an Investigation Commission to investigate the facts of this case and establish the responsibility of those that participated in the extrajudicial executions. The Commission initiated its activities, but it was later dissolved in April 1992, when then President Fujimori ordered the Congress closed. The new Congress elected in November of that year discontinued the investigation. Judicial action was not taken until 1995, when a judge, at a request of a provincial prosecutor, opened a formal investigation against five members of the Peruvian Armed Forces. While the investigation was being carried out, the Peruvian Congress passed Law No. 26479, exonerating members of the armed forces, security forces, and civilians from responsibility for the commission of human rights violations carried out from 1980 to 1995. The law granted amnesty to those individuals who were subject to criminal investigations or who were serving time in prison for violations of those rights. The investigatory judge in charge of the criminal investigation decided that the law was not applicable to the facts of this case because it was incompatible with the Constitution and the international obligations to which Peru was bound, in particular the American Convention on Human Rights. The decision was appealed to the Superior Court in Lima and a hearing was scheduled to deal with the applicability of Law No. 26479. Before the hearing was held, however, Congress passed a second law, Law No. 26492, providing that Law No. 26479 was not subject to judicial review and that its application was mandatory. Moreover, it extended the scope of the initial law by granting a general amnesty to those members of the armed forces, security forces, or civilians who could be subject to an investigation for human rights violations in the future, even if those violations had not yet
been reported. On 14 July 1995, the Superior Court in Lima vacated the decision of the investigatory judge and ordered the case to be definitely filed.

Several non-governmental organisations brought petitions to the Commission on behalf of the victims or their next-of-kin, which were finally joined in one case. On 8 June 2000, the Commission submitted the case to the Inter-American Court on Human Rights alleging violations of Articles 4, 5, 8(1), 25, 1(1) and 2 of the American Convention on Human Rights. Initially, Peru argued that the Court did not have jurisdiction to deal with the case because the State had withdrawn its declaration recognising the contentious jurisdiction of that tribunal. After the resignation of President Fujimori, the transitional Government elected in Peru notified the Court that the withdrawal from that tribunal had been revoked and that the initial declaration recognising the Court’s contentious jurisdiction was fully reinstated. Additionally, in February 2001 Peru accepted international responsibility for the human rights violations resulting from the facts of this case. After hearing the Commission and the victims’ representatives, the Court declared that Peru violated the rights to life (Article 4), personal integrity (Article 5), fair trial (Article 8), and judicial protection (Article 25) of the victims who were executed or injured in this case. In addition, the Court ruled that Peru was responsible for the breach of Articles 1(1) and 2 of the Convention for the failure to respect and ensure the rights protected by the American Convention and for passing amnesty laws Nos 26479 and 26492.

Next, the Court held that the amnesty laws passed in Peru are incompatible with several provisions of the American Convention on Human Rights. In particular, these laws impeded the victims or their next-of-kin to exercise their rights to access to a court and to judicial protection in violation of Articles 8(1) and 25 of that instrument. Moreover, the laws prevented the investigation, prosecution, and punishment of those responsible for the extrajudicial executions and injuries caused to the victims in this case. Finally, by passing those laws, Peru failed to respect the duty to adopt measures to give effect to the rights protected by the Convention, in breach of Article 2 of that treaty. The Court also underscored that any State Party to the American Convention that adopts amnesty laws will be in violation of the international obligations assumed when ratifying that treaty. In light of the fact that these laws contribute to the non-protection of victims and the perpetuation of impunity, they are manifestly incompatible with the words and the spirit of the treaty. Furthermore, the Court concluded that being the amnesty laws in Peru manifestly incompatible with the American Convention, those laws have no legal value and, therefore, they do not constitute an obstacle for the investigation of the facts of this case and the punishment of those responsible. The Court appeared to declare the laws incompatible with the Convention even beyond the facts of this case when it stated that in general these amnesty laws cannot be applied to other cases to impede the investigation and punishment of human rights violations. Finally, the Court addressed the argument made by the Commission regarding the violation of the ‘right to know the truth’ which allegedly arises under Articles 8, 25, and 13(1) of the Convention. In that regard, the Court, as in prior cases, denied the existence of an independent right to truth and concluded that this right is subsumed in the scope of Articles 8(1) and 25 that guarantee the State’s duty to investigate and punish those responsible for the violation of rights protected by that treaty.

The Court considered that the parties in this case should determine the appropriate reparations to the victims within three months. The Court will assess any agreement that the parties reach to ensure that it is compatible with the relevant provisions of the American Convention. If the parties cannot reach an agreement, the Court will determine the scope and amount of the reparations in application of Article 63(1) of that treaty.
B. Inter-American Commission on Human Rights

The following summary describes some of the most relevant activities of the Inter-American Commission on Human Rights (IACHR). We have selected a few decisions in individual cases that illustrate the standard setting work of the Commission. The full text of the documents and cases mentioned below can be found in the following web site:
http://www.cidh.oas.org/

i OAS General Assembly

The IACHR formally presented the Commission’s 1999 Annual Report to the General Assembly, which was held in Windsor, Canada in June 2000. The Commission also made public during the General Assembly the following Special Reports: 1) Situation of Human Rights in Peru; 2) The Human Rights Situation of Asylum Seekers within the Canadian Refugee Status Determination System; and 3) The Situation of Human Rights in the Dominican Republic.


ii On-site visit to Haiti

The Commission conducted an on-site visit to Haiti from 21 August to 25 August, 2000. The purpose of the visit was to observe the human rights situation in Haiti, and to enhance the cooperative efforts with the Haitian Government and civil society for the protection and promotion of human rights in that country. The IACHR met with representatives of the Haitian executive, legislative and judicial bodies and with various sectors of civil society, including human rights organisations and other social and humanitarian welfare groups, representatives of the Catholic Church, alleged victims of human rights violations, journalists, and representatives from other international organisations. The Commission also visited the National Penitentiary and the National Fort, a detention center for women and children. The Commission received individual complaints of human rights violations in Haiti, and gathered information to prepare a special report analysing the human rights situation in that country.

iii Special Report

The IACHR released, among others, the following Special Reports in 2000: 1) ‘Report on the situation of human rights of asylum seekers within the Canadian refugee determination system’. This report examines a series of issues relating to the situation of human rights of
persons subject to the refugee determination system of Canada. 2) ‘The human rights situation of the indigenous people in the Americas.’ The report deals with the situation of the indigenous peoples of the Americas, ‘who generally, in addition to having been historically dispossessed, today have the lowest levels of services, income, and access to opportunities in their countries. Many continue to suffer discrimination’. 3) ‘Third report on the situation of human rights in Paraguay’. The IACHR visited Paraguay from 28 to 30 July 1999, to observe the general human rights situation. Based on this visit, the Commission released this report with the finding on the visit. Additionally, the IACHR released its Fifth Special Report on the situation of human rights in Guatemala.

iv Individual Cases
One of the main functions of the Commission is to receive and decide individual communications alleging violations of human rights in the States of the Americas. Some interesting statistics on its work with individual complaints have been published. During the year 2000 the Commission was processing 930 cases. During that year the Commission received 681 petitions, registered 110 new complaints, and published 23 reports on the merits of cases. It closed 61 cases. It granted 52 precautionary measures, 12 regarding Colombia and 12 regarding the United States. 91 cases are being processed through the friendly settlement procedure.

In 2000 the Commission submitted 5 cases to the Inter-American Court. In 1999 it had submitted 7 cases to the Court. Among the recent cases decided by the Commission we must mention the following:

1) The Commission continues to receive petitions regarding the rights of indigenous communities. Among the 2000 admissibility decisions of the Commission is the Maya Indigenous Communities and their members (Belize) (Report No. 78/00, Case 12.053) that deals with alleged violations under the American Declaration on the Rights and Duties of Man. The petitioners argued the violation of the rights of the Toledo Mayan indigenous communities regarding their lands and natural resources. The Commission argues that the State granted numerous concessions for logging and oil development to developers on land traditionally used and occupied by the Mayan communities, refusing to recognise the rights of the Maya people over their traditional lands and causing them environmental harm.

2) The Commission continues to monitor the dramatic human rights situation in Colombia through its individual complaint procedure. For example, it released, among others, its decision on the merits in the case of the Riofrio massacre (Report No. 62/01, Case 11.654). Similarly, it issued admissibility decisions in the cases of the massacres of Mapiripán (Report No. 34/01, Case 12.230) and La Granja, Ituango (Report No. 57/00, Case 12.050).

3) Maria Eugenia Morales de Sierra (Guatemala), Report No. 4/01, Case 11.625: The petitioners alleged that several articles of the Civil Code of Guatemala, which define the role of each spouse within the institution of marriage, ‘create distinctions between men and women which are discriminatory and violate Articles 1(1), 2, 17 and 24 of the American Convention on Human Rights’. In the admissibility phase of this case, the Commission dealt with the notion of victim in the inter-American system. A friendly settlement was attempted in this case and Guatemala did implement some, but not all, of the required changes to its relevant national legislation. Because no amicable solution was reached, the Commission issued its final decision finding several violations of the American Convention by Guatemala.
In the decision on the merits, the Commission found that Guatemala violated Article 24 (equal protection of the law) of the ACHR. The Commission applied the ‘reasonable and objective criteria’ also followed by the Human Rights Committee and the European Court on Human Rights. In this regard the Commission stated that a ‘distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought’. The Commission also referred to the Convention on the Elimination of All Forms of Discrimination against Women to inform the interpretation of Article 24 of the ACHR, as required by Article 29 of the ACHR.

The Commission also found a violation of Article 17 (rights of the family) of the ACHR. It considered that the Civil Code impeded the ability of wife and husband to equally exercise their rights and fulfill their responsibilities in marriage, as required by the Convention. The Commission also informed the interpretation of Article 17 with Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women. Finally, the Commission found that the generic provisions contained in Article 1(1) and (2) of the ACHR were also violated by Guatemala.

4) Marcelino Henriquez et al. (Argentina), Report No. 73/00, Case 11.784: This case dealt also with the question of equal protection of the law recognised in Article 24 of the American Convention. The Commission found that the case was admissible, but it considered that there was no violation of the Convention after applying the above mentioned ‘reasonable and objective’ test.

The petitioners argued that during the Argentinian dictatorship, the alleged victims ‘were incarcerated by order of a federal judge who was neither independent nor impartial and who charged them with an offense criminalised in a law whose legal qualification made the law itself a violation of the right to freedom of expression’. After the transition to democracy, a law was enacted to provide for reparations for persons detained on orders of the executive branch of government during the dictatorship. The alleged victims requested compensation for the days they were held in custody under judicial orders from a judge. Their right to compensation for an eight-day period during which they were in executive custody was recognised, but the Government denied them any compensation for the court-ordered incarceration. They went to court to appeal the government’s decision and to have the law declared unconstitutional on the grounds that it discriminated against them by making no provision for their predicament. The courts that heard the appeal upheld the government authorities’ decision. The Commission rejected the claims of the petitioners considering, among others, that the distinction made by the State was legitimate. The law provided for a special administrative procedure for persons detained on orders of the executive branch of government to seek compensation, but it did not deprive those other persons detained under judicial orders to seek judicial remedies.

C. New Rules and Regulations of the Commission and the Court

Both the Commission and the Court recently adopted new rules of procedure. In a following review of the inter-American system we will include a detailed reference to the importance of the changes adopted. The mentioned regulations can be find in the above mentioned websites for each organ.