DISSENTING OPINION OF

JUDGE ALEJANDRO MONTIEL-ARGÜELLO

1. I have voted against operative paragraph 1 of the Judgment on merits in the Blake Case because, in my view, the State of Guatemala did not violated Article 8(1) of the Convention.

2. Indeed, that provision enshrines the right of my person to be heard by a competent court or tribunal, and I do not consider that right to have been denied anyone in the case now before the Court.

3. Mr. Nicholas Blake's relatives chose to conduct private inquiries and did not participate in the proceedings in the Guatemalan courts to investigate the persons responsible for Mr. Blake's disappearance and death.

4. What did occur in the instant case was the Guatemalan State's failure to use all the means at its disposal to ensure that the investigation was successful.

5. As this Court has stated on a previous occasion:

> ...
>
> Nevertheless, [the investigation] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective … (*Velásquez Rodríguez Case*, **Judgment of July 29, 1988**, para. 177).

6. The Guatemalan authorities clearly obstructed the investigation of the Blake Case by denying any knowledge of the victim's disappearance and hiding the corpse and the clues that would identify his remains.

7. In those circumstances what was required was a declaration of non-compliance with the obligation to investigate rather than an attempt to connect it with Article 8(1) of the Convention.

8. The Guatemalan Government acknowledgment of its delay in the application of justice must be seen as recognition of a delay in the investigations intended to clarify the facts.

9. Although I voted in favor of operative paragraph 2 of the judgment, it is my view that it should not be included here.

10. In actual fact, any obligation of a right produces moral and material damage which must be assessed at the reparation stage.

11. What we have before us, then, is not a violation of a right, but the consequence of a violation.

12. Lastly, in Section XV, entitled "Concerning" Article 51(2), I consider it appropriate to adduce, as grounds for rejecting the Commission's claim, the fact that the report referred to in that article was not produced, it being an error that could be rectified by the Court.

13. The real reason is that, as the Court has stated on a previous occasion, "the States Parties undertake to comply with the recommendations approved by the

Commission in its reports (*Loayza Tamayo Case,* **Judgment of October 17, 1997**, para. 80); in other words, States must heed those recommendations, but this does not necessarily imply the obligation to implement them.

14. The foregoing was clearly expressed by the Court when it stated that the "term 'recommendations' does not have the character of an obligatory judicial decision for which failure to comply would generate State responsibility" (*Caballero Delgado and Santana Case*, **Judgment of December 8, 1995**, para. 67).

Alejandro Montiel-Argüello
Judge

Manuel E. Ventura-Robles
Secretary