CONCURRING OPINION OF
JUDGE NOVALES-AGUIRRE

I concurr with my vote in this judgment, in which the Inter-American Court of Human Rights established the Guatemalan State's international responsibility for violations, to the detriment of Mr. Nicholas Blake's next-of-kin, of Articles 5 and 8(1) of the American Convention, in relation to Article 1(1). Even though the Inter-American Commission did not include in its application Mr. Griffith Davis, whom it expressly excluded from this proceeding, I consider it just that inasmuch as the acts affecting him are the same, they should also have had consequences with regard to that victim, since the inter-American system permits action *motu propio* in connection with human rights violations, without the need for participation by a party (Article 25(2) of the Regulations of the Commission).

With regard to operative paragraph 3 of the judgment, which establishes the State's obligation to investigate the acts denounced and punish those responsible for Mr. Nicholas Blake's disappearance and death, I believe that the State is obliged to extend this investigation to Mr. Griffith Davis, inasmuch as the acts to be investigated are closely linked to his prolonged disappearance and his death, and to the possible effects of the subsequent acts of hiding their corpses (for instance, burning of the remains) and anything that could constitute the commission of a crime under Guatemalan criminal law.

Between the time of Mr. Nicholas Blake's and Mr. Griffith Davis' disappearance at the hands of the Civil Patrol and the present, Guatemala's situation with regard to the protection of human rights has changed.

The end of the armed conflict on December 29, 1996, with the signing of the Agreement on a Firm and Lasting Peace and the Agreement on the Strengthening of Civil Authority and the Function of the Army in a Democratic Society in which it was decided to repeal the Decree-Law creating the Voluntary Civil-Defense Committees, demonstrate the State's and the civil society's commitment to the effective protection of human rights.

Moreover, progress has been made in the criminal proceeding in Guatemala with the replacement of the inquisitorial system by the accusatorial system with special emphasis on the protection of and respect for constitutional guarantees, on the basis of the principle of the obligation of the State and the officials involved in criminal cases to respect human rights.

In the light of the above, the State should have been urged to conduct an exhaustive investigation, through the Department of the District Prosecutor (*Ministerio Público*) in an effort to determine "real truth" of the acts perpetrated against Mr. Blake and Mr. Davis; and their families should have been required to cooperate with the Office of the Public Prosecutor and the court hearing the case, in order to produce the evidence necessary for the case to be resolved with due process and to be able to launch a frontal attack on the authors' impunity.

Aware that a trial obliges the State to protect individuals and their property, making it one of the State's fundamental duties to prevent infringement of law and order and to punish those who do so, the State is obliged to punish the material and intellectual authors of crimes in order to ensure that its citizens can live together in peace.

Alfonso Novales-Aguirre
Judge

Manuel E. Ventura-Robles
Secretary