CONCURRING OPINION OF
JUDGE ALFONSO NOVALES-AGUIRRE

I concur in this Judgment on reparations for injuries, based on the precepts of Article 63(1) of the American Convention on Human Rights.

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Obviously, it is now appropriate to clearly establish the reparations that are the obligation of the State of Guatemala for the violations of Articles 5 (Right to Humane Treatment) and 8(1) (Right to a Fair Trial) of the aforementioned Convention, which were thoroughly demonstrated in the Judgment of January 24, 1998.

> Right to Humane Treatment
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> 1. Every person has the right to have his physical, mental, and moral integrity respected.
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> 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
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> 3. Punishment shall not be extended to any person other than the criminal.
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> 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.
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> 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.
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> 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.
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> ...
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> Right to a Fair Trial
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> 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or other nature.

I am convinced that an effective investigation of the facts that brought about the violations of the Pact of San José is an apt form of reparations. This signifies that, the establishment of pecuniary compensation in the present case is not, in my opinion, sufficient reparation for the Blake family, inasmuch as it is the duty of Guatemala, as a State, to continue and intensify the investigation warranted by the case until its conclusion. In that way the families of Nicholas Blake and Griffith Davis obtain effective reparations and there is a precedential frontal assault on impunity in general and particularly on those acts that were established in the July 2, 1996 Judgment on Preliminary Objections, concerning the disappearance and death of Blake and Davis. That decision resulted from the State of Guatemala acceptance of the competence of the Honorable Inter-American Court of Human Rights on March 9, 1987 "*with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States,"* and the fact that the events in this case occurred two years earlier (March, 1985). Therefore, the Court declared itself to be incompetent concerning the alleged responsibility of the State of Guatemala for the detention and death of the persons named, whose mortal remains were recovered in June, 1992.

It was for that reason that my Concurring Opinion to the Judgment dated January 24, 1998, rendered by the Honorable Inter-American Court of Human Rights affirmed that:

> ...the State should be urged to conduct an exhaustive investigation, through the Department of the District Prosecutor (*Ministerio Público)* to determine the "real truth" about the acts perpetrated against Mr. Blake and Mr. Davis; and their families should be 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 in that way launch a frontal assault on impunity.

At the procedural stage corresponding to reparations, it becomes necessary, in order to carry out the Judgment in its true sense, for the State of Guatemala to put its full effort into an effective, dynamic, and prompt investigation of the facts, to convict the material and intellectual perpetrators and accessories after- the-fact in accordance with the criminal law applicable to the case, and to provide the periodic information required by this Honorable Court.

Only after carrying out an in depth, objective, and prompt investigation, can it be said that the present Judgment on reparations has been obeyed so as to conclusively close the present case.

Alfonso Novales-Aguirre
Judge

Manuel E. Ventura-Robles
Secretary