SEPARATE OPINION OF JUDGE SERGIO GARCIA-RAMIREZ
IN *RAXCACO REYES V. GUATEMALA.*
JUDGMENT OF SEPTEMBER 15, 2005

A) *THE DEATH PENALTY IN THE AMERICAN CONVENTION AND THE INTER-AMERICAN CASE LAW*

1. In the case referred to by this *separate opinion* accompanying the judgment adopted unanimously by Inter-American Court, the Court once again broaches the issue of the death penalty, previously examined in the performance of the Court's advisory functions: OC-3/83 on *Restrictions to the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)* of September 8, 1983, and with regard to the contentious matters raised in various applications: the *Hilaire, Constantine and Benjamin et al. cases* (judgment of June 21, 2002) and the *Fermín Ramírez case* (judgment of June 18, 2005), to which I will refer at some length below. In addition, the Court issued an order on June 24, 2005, as a result of a consultation submitted by the Inter-American Commission on Human Rights concerning matters relating to capital punishment, which I will also examine

2. Thus, there is nothing new as regards raising such issues before the inter-American jurisdiction; however, each case has contributed relevant aspects to them. The analysis of these aspects helps shape the Court's legal doctrine on this point of law, whose importance is evident and, as a whole, they involve a contemporary review of the matter from the perspective of inter-American case law. In recent years, particularly, this has begun to permeate strongly the laws and case law of the countries that have accepted the Court's contentious jurisdiction. The reiteration of certain principles can have an influence on the political and juridical decisions of the countries of the hemisphere. Moreover, this effect is the greatest contribution that an international human rights court can make, since it is not a final instance for hearing domestic lawsuits and cannot hear a large number of cases.

3. When the final version of the American Convention on Human Rights was examined and signed in 1969, there was a strong "pro-life" tendency that contested the legitimacy and the utility of the death penalty. This tendency, which was very strong at both the regional and the global level, was revealed by the work of the Inter-American Specialized Conference on Human Rights, which met in San José from November 7 to 22, 1969. At that time, it was not possible to take the essential step of abolishing the death penalty. Perhaps the delegates did not encounter favorable conditions for this step forward; nevertheless they did not overlook the desirability of issuing a ruling that expressed the belief of many countries – and, in any case, of innumerable persons – that capital punishment should be eliminated. This was a warning sign and a guideline for future work, which is still ongoing.

4. As I recalled in my *concurring opinion* to the judgment in the *Hilaire, Constantine and Benjamin et al. cases*, 14 States – that is, most of those present at the meeting in San José – expressed their intention of advancing the cause of humanity very shortly by abolishing capital punishment. During the plenary session of November 22, 1969, following the signature of the final Conference Proceedings and before the closing address, the declaration signed by these States was read. It established the desirability of issuing an additional protocol to the American Convention stipulating the elimination of the death penalty in this region.

5. The Declaration stated: “The undersigned Delegations, participants in the Specialized Inter-American Conference on Human Rights, in response to the majority sentiment expressed in the course of the debates on the prohibition of the death penalty, in agreement with the most pure humanistic traditions of our peoples, solemnly declare our firm hope of seeing the application of the death penalty eradicated from the American environment as of the present and our unwavering goal of making all possible efforts so that, in a short time, an additional protocol to the American Convention on Human Rights - Pact of San José, Costa Rica - may consecrate the final abolition of the death penalty and place America once again in the vanguard of the defense of the fundamental rights of man.”

6. The Declaration was signed by the delegations of the following countries, which I mention in the order used by the Chairman of the Plenary Session: Costa Rica, Uruguay, Colombia, Ecuador, El Salvador, Panama, Honduras, the Dominican Republic, Guatemala, Mexico, Venezuela, Nicaragua, Argentina and Paraguay (Cf. *Inter-American Specialized Conference on Human Rights, San José, Costa Rica, November 7 to 22, 1969, Actas y Documentos, OEA/Ser.K/XVI/1.2*, Washington, D.C., 1973, p. 467). At the date of the Declaration, several of these countries still retained the death penalty among their domestic laws. Accordingly, the document had a twofold intention: of international scope, in all cases; of national scope, in some of them.

7. The concern of the Conference, embodied in the Convention, can be seen in the formula used in Article 4 of the Pact, to which the Inter-American Court has had to refer on several occasions. The Article appears until the title “Right to Life.” Under this phrase – which expresses the most valuable entitlement, consequent with the most important juridical right subject to international protection: life – one paragraph of the Article expresses respect for the life of every person, and immediately initiates a normative consideration on the deprivation of life: “No one shall be arbitrarily deprived of his life.” The remaining six paragraphs of the Article on the “Right to Life” refer to the death penalty, and they are all concerned with announcing prohibitions, restrictions and exclusions. In brief, the authors of the Convention began immediately to close the door they had reluctantly left open. The same situation had occurred in the case of the International Covenant on Civil and Political Rights three years before: of the six paragraphs that compose Article 6 on the right to life, four refer exclusively to the death penalty.

8. This is why the Inter-American Court, when dealing with the death penalty in one of its first advisory opinions, indicated clearly that, even though the American Convention did not eliminate the death penalty, “it reveals a clear tendency to restrict the scope of this penalty as regards both its imposition and its application”; and that, consequently, and with regard to the issue examined, “the Convention adopts an approach that is clearly incremental in character. That is, without going so far as to abolish the death penalty, the Convention imposes restrictions designed to delimit strictly its application and scope, in order to reduce the application of the penalty to bring about its gradual disappearance” (*Restrictions to the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983.* Series A, No. 3, paras. 52 and 57).

9. In the years following 1969, humanity returned to the attack, at the universal level and at the European and American regional levels. In 1984 the Safeguards Guaranteeing Protection of the Right of Those Facing the Death Penalty were issued, and in 1989 the Second Optional Protocol to the International Covenant on Civil and

Political Rights aiming at the abolition of the death penalty was signed and adopted by the United Nations General Assembly. In Europe, two protocols to the 1950 Convention were signed with the same increasingly emphasized purpose: Protocol No. 6 of April 28, 1983, and Protocol No. 13 of May 3, 2002.

10. In our hemisphere, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty of June 8, 1990, was signed. Up until June 2005, this instrument had been ratified by Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Paraguay, Uruguay and Venezuela. The 1990 American Protocol has begun its own ascent towards full acceptance by the States of the hemisphere or, at least, by an important number of them: the members of the American Convention on Human Rights system. It constitutes the target announced by those 14 countries that submitted the Declaration I mentioned above to the Specialized Inter-American Conference on Human Rights.

11. The preambular paragraphs to the 1990 Protocol express the reasons for the instrument: recognition of the right to life and restriction of the death penalty, under Article 4 of the Convention; the inalienable right of everyone "to respect for his life, a right that cannot be suspended for any reason"; the tendency of the American States to favor the abolition of the death penalty; the irrevocable consequences of the application of the death penalty, which "forecloses the correction of judicial error and precludes any possibility of changing or rehabilitating those convicted" (a reference to the "readaptation" purpose of punishments involving deprivation of liberty, reflected in Article 5(6) of the American Convention); the need to "ensure more effective protection of the right to life"; the pertinence of arriving at "an international agreement [...] that will entail progressive development of the American Convention on Human Rights"; and the expression of the intention of the States Parties to the Convention "to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas."

12. It is evident that the 1990 Protocol continues on the path towards the elimination of the death penalty, in its own sphere and at the corresponding stage, an elimination that we trust will be final, as has been the normative exclusion – even though at times actions rebel against laws – of other primitive and unjustified forms of response to crime. It is in this restrictive sense, then, that Article 4 must be interpreted. In this case, the *pro homine* – or *pro personae* – principle invariably endorsed by the Inter-American Court, as is to be expected of the human rights system (attentive to the content of the corresponding juridical declarations and to the nature of the respective international conventions), follows the most restrictive application of the death penalty. It does not eliminate it, when trying to apply treaty-based provisions that expressly retain it, but provides the strictest interpretation of these norms.

13. This reference to the Court's method of interpretation in cases submitted to its consideration, and which it has clearly used in the *Case of Raxcacó Reyes*, as on previous occasion, allows us to recall that p*ro personae* constitutes a method of examining the ultimate meaning of juridical provisions in the sphere that concerns us for the effects of their jurisdictional or non-jurisdictional application; in this sense, it is a "principle of interpretation" that is amply accredited, but it is also a rigorous principle for the elaboration of national and international norms on this issue, and owing to this, it is also "a principle of regulation."

14. Of particular significance is the position of the Rome Statute of the International Criminal Court, which does not include the death penalty among the punishments contemplated in the substantive international penal law system. I believe that this fact is especially eloquent, both because this penal legal system has been designed precisely to confront the most serious crimes against the most important right whose protection is of interest to humanity – a protection that suggests particularly severe penal responses – and because the 1998 Statute constitutes the most recent expression of a penal system agreed on between countries with diverse juridical traditions, including several that still retain capital punishment in their domestic laws.

B) *A RECENT REVISION*

15. I believe that I should mention here the request for an advisory opinion formulated by the Inter-American Commission on Human Rights on April 20, 2004, which was responded to by an order of the Court of June 24, 2005. The Commission requested the Inter-American Court's opinion on certain provisions relating to the death penalty adopted by Caribbean countries, especially those referring to the mandatory death penalty. The Court decided not to answer the questions posed, because "it had already established its opinion on the points set out in this consultation," as it indicated in the preambular paragraphs of the order of June 24, 2005.

16. Reading these preambular paragraphs that justify the decision adopted by the Court, also informs us of the Court's formal position on the issues raised and involves a review of the established case law. This explains my interest in recalling now, in brief, the content of the Commission's questions and the Court's observations in the said preambular paragraphs, some of which are reflected in the judgment in the *Case of Raxcacó Reyes* and in my *concurring opinion*.

17. The Commission asked whether it was compatible with the provisions of the inter-American system "that a State adopt legislative or other measures that deny those condemned to death access to a judicial or other effective remedy to contest the mandatory nature of the punishment imposed." In this regard, the Court invoked (ninth preambular paragraph) its case law concerning Article 2 of the Convention, which alludes to the need to adapt the national legal system to the international legal system, and referred to the decision in *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago.*

18. We should recall that the obligation to adapt domestic legislation to international law has been sovereignly accepted by the State, by means of an explicit commitment documented by the ratification of the international instrument. The rulings mentioned by the Court in this part of the order establish "the incompatibility with the American Convention of laws that impose the death penalty mandatorily and, consequently, the obligation of the State to modify them and not to apply them, because they result in arbitrary deprivation of life by not taking into consideration the particular circumstances of the accused and the specific characteristics of the crime." Likewise, the Court affirmed the State's obligation "to guarantee the most strict and rigorous respect for the right to a fair trial when applying this type of punishment," and confirmed the "right of every person condemned to death to apply for amnesty, pardon, or commutation of sentence, in accordance with the provisions of Article 4(6) of the American Convention".

19. The Commission also asked about the compatibility with various inter-American provisions of legislative or other measures adopted by a State "that deny those condemned to death access to a judicial remedy or any other effective remedy to contest the punishment imposed, based on the delay or the conditions in which the person is being detained." On this point, the Inter-American Court invoked (tenth preambular paragraph) the judgments in the *Hilaire… cases*, and in *Fermín Ramírez v. Guatemala.* On those occasions, the Court had "ordered the State to abstain from executing the death penalty, taking into account, among other matters, the prison conditions which the victims were and are subjected to, which violate Article 5 (Right to Humane Treatment) of the Convention." There is, thus, an implicit recognition of equity.

20. Finally, the consultation of April 20 asked about the compatibility with the inter-American norms of State measures "that deny those condemned to death access to a judicial or any other effective remedy to contest the punishment imposed, based on the fact that they have a proceeding pending before the inter-American human rights system." On this issue, the Court referred to its rulings on provisional measures and to the judgment in the *Hilaire... cases.* With regard to provisional measures, the Court has decided: "in order not to obstruct the processing of a case before the inter-American system and to prevent irreparable damage, the State may not execute" the death penalty. Incidentally, the International Court of Justice ruled similarly in the *LeGrand* and *Avena cases,* also relating to proceedings that had culminated in the application of the death penalty and that were in question. In the judgment in the *Hilaire… cases,* the Inter-American Court "declared the violation of Article 4 (Right to Life) of the Convention because the State executed a victim during the international proceeding in violation of the orders of the Court in its decisions on provisional measures."

21. In the latter cases, three points should be emphasized, in particular: (a) the mandatory nature of provisional measures for State that are bound by the normative system that provides the framework for their adoption; (b) the need for special attention to be paid to compliance with such measures when failure to comply with them may result in irreparable damage; a concept that arises from the very reason for these precautionary instruments, and (c) the existence of a violation when the measure is disregarded and, in consequence, the right being protected by the measure is affected; in those cases, there was an arbitrary violation of that right.

C) *SCOPE OF ARTICLE 4 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS: EXPANSION OF THE HYPOTHESIS AND SERIOUSNESS OF THE FACT*

22. We cannot ignore that, despite substantial advances on the path towards abolition (to which I have alluded above), the authorization and application of the death penalty still persists in some countries – none of them a party to the American Convention – and on an isolated basis in others. It has not been possible to declare that proscription of the death penalty is a principle of peremptory law; namely, international *jus cogens*, which entails obligations *erga omnes* of the States, as is, conversely – and paradoxically – the absolute and definitive exclusion of torture and cruel, inhuman and degrading treatment (in this regard, see the judgments in the *Cantoral Benavides, "Street Children" (Villagrán Morales et al.), Maritza Urrutia, Gómez Paquiyauri Brothers,* and *Caesar cases),* and even of certain punishments that are still permitted – although rarely and censured by the Constitutions of the countries that allow them – under some penal laws: punishments that entail torture or treatment of that nature, as the Inter-American Court has indicated. An example

of the latter is the judgment delivered in the *Caesar case* regarding a national judicial ruling that called for the application of the punishment of flogging, provided for in the penal laws.

23. The Inter-American Court has acted within this context when examining and deciding the *Case of Raxcacó Reyes* in the judgment of September 15, 2005. First, the Court considered the scope of Article 4(2) of the American Convention with regard to the case *sub judice*; a restrictive provision on the one hand and an abolitionist provision on the other. Both aspects of this provision were examined: (a) from the perspective of the authorization of capital punishment only for the so-called "most serious crimes," which is found in the first part of paragraph 2, and (b) from the perspective of the future proscription, in relation to States that, at the time they ratified the Convention or adhered to it, had not yet abolished the death penalty, as regards "crimes to which it is not applied presently"; that is, to crimes punishable by a juridical effect other than the death penalty.

24. Article 4(2), which the Court declares has been violated, contains "substantive" and "non-substantive" points of law. With regard to the former, the paragraph refers to three issues: (a) the importance of the crime, considered in itself ("the most serious crimes"); (b) the specific respect for the principle of legality (*nulla poena sine praevia lege*), and (c) the restriction of the death penalty to crimes for which it is applied presently (namely, illegal actions punishable by the death penalty when the State became bound by the Convention) and the absolute exclusion of crimes "to which it is not applied presently." I shall not examine the second issue, which is not relevant to the present case. I shall only examine the first and third. Furthermore, there is no need to examine the "non-substantive" elements contained in Article 4(2) at this time: competent court and final judgment, with regard to which no violation of the Convention was found.

25. In my *concurring opinion* to the judgment in the *Hilaire… cases,* I examined the concept of "the most serious crimes." At that time, I observed, and now repeat, that, in order to establish the seriousness of the crimes that may be punished by the death penalty, certain objective elements of the criminal judgment must be taken into account; above all, the juridical right protected by the crime category and harmed by the violator; and then, the way in which this juridical right has been affected, which can also involve new information to weigh the greater or lesser seriousness of the conduct executed by the agent. Evidently, the most important juridical right protected by the penal system is human life. This is also the central right – the support or linchpin of all the others – in the order of human rights.

26. The greatest harm to this right is its elimination or destruction, not the attempt to eliminate it. In terms of penal law, we are alluding to the crime of homicide and not to attempted homicide and, subjectively, to the perpetrator of the crime, not to the accomplice, collaborator or accessory after the fact. However, this is not sufficient to resolve the point that we are examining now, because there are different manifestations of illicit and culpable elimination of human life with malice aforethought; indeed, criminal extinction exists in the case of simple homicide (basic type), but also in the case of aggravated homicide (due to the relationship that exists between the perpetrator and the victim, the motives of the former, the means used, etcetera). Consequently, the law usually provides for different punishments for each category of homicide.

27. If aggravated homicide is the most serious crime, the possibility of applying the death penalty should be confined to this case. I prefer not to enter into other considerations on this matter now, such as those derived from the difference between aggravated homicide when the victim is an individual and the same conduct (essentially) when the victim is a group or a multitude (e.g. genocide). Ultimately, all these cases refer to intentional, illegal and culpable deprivation of human life.

28. Other crimes are not as serious, because they do not affect a right of the same rank as human life. Other rights are not comparable, even though they are extraordinarily relevant and must, therefore, be protected by penal laws: physical or mental integrity (injuries), freedom (kidnapping or abduction), property (theft), etcetera. In brief, the most serious crimes, which entail the application of the most severe punishments and, specifically, the most severe of these: death, and which can be punished by the death penalty (in a State that retains this and must subject this retention to the stipulations of the American Convention) are aggravated homicide.

29. The excessive application of the penal system – and, because it is excessive, possibly arbitrary, in violation of Article 4 of the Convention – revealed by meting out the most severe punishment for acts that do not constitute the most serious crimes, is also evident when the penal laws exclude the possible of the court weighing the characteristics of the act and the conduct of the perpetrator. This is what occurs in the case of the "mandatory death penalty."

30. When the mandatory, almost mechanical, application of a specific punishment is ordered for any illegal conduct that produces a determined result, the comprehensive assessment of the fact with all its components is excluded (in other words, the possibility of distinguishing between simple homicide and aggravated homicide is prevented; and these *are not* the same crime, even though the result is the same in both cases: deprivation of life); also, the assessment of the guilt of the agent is omitted, which is a necessary reference for a rational determination of the punishment.

31. In this case, the Court has considered that another substantive aspect of the authorization contained in Article 4(2) to which I referred above has been violated: the restriction of the death penalty only to the crimes to which it is applied presently (namely, to those that were punished with the death penalty when the State became bound by the Convention) and the consequent and absolute exclusion of crimes "to which it is not applied presently."

32. When the State ratified the American Convention, a text of Article 201 was in force according to which: (a) the kidnapping or abduction of a person, for specific purposes, would be punished with from 8 to 15 years of imprisonment, and (b) the kidnapping or abduction associated with the death of the victim (a death "because of or during the kidnapping or abduction") – in other words, acts that culminated in a twofold result (deprivation of liberty and deprivation of life) – would be punished by the death penalty.

33. In this context, the State could maintain the application of the death penalty in the case mentioned in the preceding paragraph *sub* (b), punished with the death penalty, but not in the hypothesis identified *sub* a), which, at the time, was only punished by deprivation of liberty. It appears evident, but it is necessary to emphasize this, because it is a central element of the contentious matter submitted

to the Inter-American Court, that the crime punished by the death penalty under Article 201 of the Penal Code, in accordance with Legislative Decree 17/73, in force when the Convention was ratified, *is not the same crime* punished with the death penalty in that Article according to Legislative Decree 81/96, used to condemn the defendant Raxcacó Reyes.

34. The facts that the State could retain as hypotheses for the application of the death penalty, without conflicting with Article 4(2), *in fine*, of the American Convention, constitute in reality a *conjunction of two different crimes:* kidnapping or abduction, on the one hand, which violates the liberty of the victim, and homicide, on the other hand, which deprives the victim of his life. The possibility and necessity of making this distinction is manifest and essential. In contrast, the act for which the accused was convicted did not entail any conjunction of crimes, but only kidnapping or abduction; that is, deprivation of liberty. Thus, if kidnapping is punished by death, without the victim having been deprived of his life, then there has been an extension of the applicability of the death penalty. Indeed, it would have been used with regard to an act for which it was not provided when the State ratified the Convention.

D) *PROCEDURAL MATTERS*

35. The Court has declared that there has been a violation of Article 4(6), which embodies the right of every person condemned to death "to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases." On this point, I consider that there has been a concurrence of rights deriving from the application or applicability of the death penalty, on the one hand, and rights inherent in due process of law during the procedural stage subsequent to the guilty verdict, on the other hand. The recognition of a right entails, logically, the establishment of the means to make it effective, which in this case are organic and procedural: attribution of the corresponding powers to a specific organ of the State and definition of a procedure for the exercise of the recognized right so that this "may be granted." This does not mean that the pardon or commutation of sentence *must* be granted, but merely that it is *possible* to grant it. How can this be achieved if there is no means to this end, despite the stipulation embodied in the Pact ratified by the State, which thereby assumed sovereignly the obligations established in Articles 1 and 2?

36. In the judgment that this *opinion* accompanies, the Court has decided, as a reparation, that "the punishment imposed should be annulled and, without the need for a new trial, another punishment should be ordered, which, under no circumstances, may be the death penalty" (para. 133). Subsequently, the same judgment indicates that "before delivering (the new) judgment, [the State] should offer the parties the opportunity to exercise their right to a hearing" (ibidem). Regarding this part of the judgment of the international court, I consider it pertinent to offer the following observations:

(a) It is evident that the Inter-American Court did not rule on the guilt of the accused. This is an element which only the national criminal courts are competent to decide. Anyone who considers that the Court is conducting a criminal proceedings on the person accused of committing the crime would be incurring in error;

(b) The decision of the Inter-American Court in no way obstructs the State's response to crime in general and to a certain crime in particular; the Court itself

has emphasized that the State has the obligation, and not only the authority, to defend society against crime;

(c) The Court has not ordered that a new trial should be held, because the existence of procedural violations that would make it necessary to conduct an effective trial, respecting the principles of due process on which the *res judicata* authority of the judgment is based, has not been proved;

(d) It has merely been indicated that the State may deliver a new ruling, which would not be the death penalty. This proviso does not arise from the judgment of the Inter-American Court, but from the commitment assumed by the State when it ratified the American Convention: not to extend the applicability of the death penalty to crimes for which it was not provided for at the time of ratification; and

(e) The decision that the opportunity should be provided for the parties to assert their right to a hearing concerning the new final ruling issued, reflects the awareness that this ruling will affect their claims, and therefore the guarantee of a hearing must be respected so that they may provide any evidence they deem pertinent and formulate any arguments they consider relevant.

E) *PRISON CONDITIONS*

37. I do not wish to omit an allusion, however brief, to the other issue considered in the judgment of the Inter-American Court: the prison conditions. In various *concurring opinions* to judgments, provisional measures and advisory opinions, I have called attention to international standards concerning the deprivation of liberty for procedural reasons or for punishment. We are faced with a growing problem, which on many occasions has caused a crisis with dramatic results. This can happen again, in catastrophic conditions. The issue is not exhausted with this case. The Court has had the opportunity to observe its appearance and persistence in different countries in the hemisphere. It is necessary – absolutely urgent and necessary – to undertake a real prison reform, which establishes living conditions compatible with human dignity. We are far, very far, from having achieved this.

F) *APPRAISAL OF ACTIONS*

38. The judgments of the Inter-American Court usually note and record, when applicable, the efforts made by the State to improve the prevailing situation with regard to the respect and guarantee of human rights within its jurisdiction, either by legislative measures or draft laws – such as the initiative announced by the State to incorporate into domestic law the regulation corresponding to the remedy established in Article 4(6) of the Convention, or through actions of another nature.

39. A judgment should decide on contentious matters submitted to the Court that delivers it. It is not a general appraisal of what occurs in the State. This corresponds to other types of documents – general or special reports – the elaboration of which is not within the Court's mandate. Consequently, its resolutions are limited to the brief notes or statements to which I have referred. However, an individual *opinion* which is not in itself a ruling of the Court with binding effects, but rather its author's assessment of the facts, reasoning and decisions in relation to the case *sub judice*, can advance a little further – although not unrestrictedly – in considering the context and expressing points of view.

40. In view of the above, appreciation should be expressed for the efforts that many State officials have made, before and currently, in favor of respect for human rights. It is worth recalling the contributions to the construction of the inter-American system of the illustrious Guatemalan jurist and diplomat, Carlos García Bauer. This professor of the Universidad de San Carlos was prominently involved in the preparation of the draft convention entrusted to the Inter-American Juridical Committee – of which he formed part – during the Meeting of Consultation of Ministers of Foreign Affairs (Santiago, Chile, 1959), and in the Specialized Conference from which the American Convention emerged in 1969. García Bauer chaired Commission II during this Conference, which was responsible for the Articles referring to "organs of protection and general provisions."

41. During the 1969 Conference, the Guatemalan delegation proposed important elements: for example, the specific treatment of economic, social and cultural rights (*Specialized Conference…, Actas y Documentos*, op. cit., p. 269); the mission of the State in the observance of human rights and the complementary nature of the inter-American protection system; the possibility of extending to individuals and groups legitimacy to present their cases before the Inter-American Court (*id*., p. 119), etcetera. It was García Bauer, Head of the Guatemalan Delegation, who proposed the name of the Convention (*id.,* p. 438). It is also necessary to add the initiative adopted by 14 States, including Guatemala, which expressed, as I indicated above, "the majority sentiment expressed in the course of the debates on the prohibition of the death penalty, in agreement with the most pure humanistic traditions of our peoples," and the solemn declaration of the "firm hope of seeing the death penalty eradicated from the American environment as of the present."

42. The Court is aware of the recent actions of the State that entail the willingness to respect human rights and comply with the international commitments it sovereignly assumed. In this regard, it is worth mentioning, as an expression of this willingness, the acts of acknowledgement and solidarity with the victims of different events in which the President of the Republic has participated – in relation to the *Myrna Mack case* – and the Vice President – in relation to the *Plan de Sánchez Massacre case*. These are actions that contribute to the advancement of a cause shared by the States and the organs of protection of the inter-American system.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary