SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred in my opinion with the Judgment rendered by the Inter-American Court of Human Rights in the *Case of Blanco-Romero et al v. Venezuela*. Furthermore, I feel I have to put on record, in this Separate Opinion, the personal thinking the instant Judgment rendered by the Court has prompted in me, particularly regarding the issues of the right to know the truth and the forms reparations may adopt, as I have done, concerning this second issue, in my previous Separate Opinions in the *Case of Myrna Mack-Chang v. Guatemala* (Judgment of November 25, 2003), and the *Case of the Plan de Sánchez Massacre* (Judgment on reparations of November 19, 2004).

2. In the instant Judgment, the Court has considered favorably the acknowledgment of international responsibility effected by the State (para. 63), while it has also realized the importance of the right to know the truth, in both its individual (as a means of reparation for the victims and their next of kin) and social (concerning the social fabric as a whole) dimensions. The individual dimension has been pointed out by the Court ever since its Judgments in the cases of *Castillo-Páez versus Perú* (of November 3, 1997, para. 90), *Bámaca-Velásquez versus Guatemala* (of November 25, 2000, merits, para. 201), *Barrios Altos* concerning Peru (of March 14, 2001, paras. 47-48), *Paniagua-Morales et al versus Guatemala* (of May 25, 2001, reparations, para. 200), *Villagrán-Morales ("the Street Children") et al versus Guatemala* (of May 26, 2001, reparations, para. 100), *Cantoral Benavides versus Perú* (of December 3, 2001, reparations, para. 69), *Bulacio versus Argentina* (of September 18, 2003, para. 114), *Molina-Theissen versus Guatemala* (of July 3, 2004, reparations, paras. 80-81), and *the Gómez-Paquiyauri brothers versus Peru* (of July 8, 2004, paras. 229-230).

3. As from the Judgment on reparations in the memorable case of *Bámaca Velásquez versus Guatemala* (of February 22, 2002) —a renowned case with such a great cultural density— the Court went on to point out as well the social dimension (along with the individual one) of the right to know the truth, when determining that

> "Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future" (para. 77).

The Court reaffirmed such social dimension in its Judgments in the cases of *Trujillo-Oroza versus Bolivia* (of February 27, 2002, reparations, para. 114), *Myrna Mack Chang versus Guatemala* (of November 25, 2003, para. 274), *Masacre de Plan de Sánchez* concerning Guatemala (of September 19, 2004, reparations, para. 98), *Carpio Nicolle et al versus Guatemala* (of November 22, 2004, para. 128), *Serrano-Cruz sisters versus El Salvador* (of March 1, 2005, paras. 62 and 169), *Huilca-Tecse versus Peru.* (of March 3, 2005, paras. 107), *Moiwana Community versus Suriname* (of June 15, 2005, para. 204), *Gutiérrez Soler versus Colombia* (of September 12, 2005, para. 96), and *Mapiripán Massacre* regarding Colombia. **(**of September 15, 2005), para. 298).

4. In its Judgment (of July 5, 2004) in the *Case of the 19 Tradesmen versus Colombia*, the Court pointed out that the investigation of the events and the punishment of those responsible were measures benefiting not only the next of kin of the victims, but

" also society as a whole, because, by knowing the truth about such crimes, it can prevent them in the future" (para. 259).

The right to know the truth is connected with the unavoidable duty of the State to effect an earnest and effective investigation of the events resulting in human rights violations and to identify, prosecute and punish those responsible, as the Court points out in the instant Judgment on the *Case of Blanco Romero et al*; it is only thus —the Court adds— that it can be guaranteed that chronic recurrence of such violations and rendering "the victims and their next of kin completely defenseless" will be avoided (para. 93).

5. The Court warns, right afterwards, that according its *jurisprudence constante*

> "no domestic law, statute or rule —including amnesty laws and statutes of limitations— may prevent a State from complying with the order of the Court to investigate and punish those responsible for human rights violations. Specifically, amnesty provisions, statutes of limitations and rules excluding liability purporting to prevent investigation and punishment of those responsible for serious violations of human rights —such as those in the instant case, forced disappearances— are inadmissible, for such violations infringe upon inderogable rights recognized under International Human Rights Law. (para. 97).

6. I understand such provisions to be inadmissible because they infringe *all* the rights forming the body of Human Rights International Law, —indivisible as they all are— both inderogable and derogable. This becomes particularly relevant in the struggle against impunity. In my experience for more that a decade serving on this Court, I have verified that the States Parties to the American Convention, and that are subject to the jurisdiction of the Court, find it less difficult to comply with pecuniary reparations than to comply with the duty to investigate as a form of non pecuniary reparation (giving satisfaction to the victims, to their next of kin, and to the social environment concerned).

7. Indeed, the provisions in Article 63(1) of the American Convention on Human Rights[1] effectively provide the Inter-American Court with quite an amount of leeway regarding reparations. In my opinion, as pointed out in the Separate Opinions referred to above, in the cases of *Myrna Mack Chang* (2003) and of the *Plan de Sánchez Massacre* (2004) and as reasserted herein, some reparations with dissuasive or exemplary purposes (related to *aggravated* liability) may contribute both to the struggle against impunity and to guarantee non-recurrence of the harmful events.

8. The entire chapter on reparations for human rights violations requires a greater development in concept and in case law, starting with the acknowledgment of the close relation between the right to reparations and the right to justice. Such development is particularly necessary in the event of serious and systematic violations of human rights —as in the instant *Case of Blanco-Romero et al.*— that call for dissuasive reparations, precisely to ensure non-recurrence of such serious human rights violations.

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1 Article 63(1) of the American Convention provides that: "—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."

9. As previously pointed out in my Separate Opinion in the *Case of Myrna Mack-Chang* (2003), on the actual *reparatio*,

> "[contrary] to what the Inter-American Court maintained in the past,[2] it is my view that reparations can perfectly well be both compensatory and punitive, with the aim of putting an end to impunity and ensuring realization of justice –which is perfectly in accordance with the current stage of development of international law." (para. 46)

10. Indeed, reparations of dissuasive or exemplary nature can already be found in the precedents of this Court. Thus, for instance, in the *Case of Aloeboetoe v. Suriname* (Judgment of September, 10, 1993), the Court ordered to reopen a school and establish a foundation to assist the beneficiaries. In the *Case of Villagrán-Morales et al. v. Guatemala* (case of the "*Street Children,*" Judgment of May 26, 2001), the Court ordered once again that an education center be named after the victims of the case; similarly, in the *Case of Trujillo-Oroza v. Bolivia* (Judgment of February 27, 2002), the Court again ordered that an educational establishment be given the name of the victim.

11. I find particularly significant and exemplary the reparation measures aimed at recognizing the suffering of the victims and preserving their collective memory. We can mention at this point some other pertinent examples in precedents of the Court. In the *Case of Cantoral Benavides v. Peru* (Judgment of December 3, 2001), for instance, the Court ordered the State to provide a university-level educational scholarship to the victim. In the *Case of Barrios Altos v. Peru* (Judgment of November 30, 2001), the Court ordered reparations to be made effective through education-related benefits and payment of expenses for health services.

12. Moreover, in the *Case of Durand and Ugarte v. Peru* (Judgment of December 3, 2001), the Court once again ordered payment of health care services or expenses and psychological support. In the *Case of Myrna Mack-Chang v. Guatemala* (Judgment of November 25, 2003), the Court ordered reparations[3] of both compensatory and punitive nature, for dissuasive or exemplary purposes, in order to preserve the memory of the violations occurred, to satisfy (in the sense of serving the interests of justice) the next of kin of the victim, and to contribute to guarantee non-recurrence of such violations.

13. Such exemplary reparations are similar to “punitive damages” which, contrary to what some hasty authors aver, do exist. "Punitive damages" —a notion which is not strange to comparative domestic case law and to arbitration international law[4]— may, in

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2. In the judgments on "compensatory damages" (of 1989) in the cases of *Velásquez Rodríguez* y *Godínez Cruz*, *cit. supra* n. (47).

3. Such as the ones in operative paragraphs 6 to 11 of the Judgment in that case.

4. Cf., for example, *inter alia*, R.W. Hodgin y E. Veitch, "Punitive Damages Reassessed", 21 *International and Comparative Law Quarterly* (1972) pp. 119-132. There are even those who perceive a clear recognition of "punitive damages" in international law; cf., for example, N.H.B. Jorgensen, "A Reappraisal of Punitive Damages in International Law", 68 *British Year Book of International Law* (1997) pp. 247-266. And, for a draft of a jurisprudential construct, cf. G. Arangio-Ruiz, "Second Report on State Responsibility", *in* United Nations, *Yearbook of the International Law Commission* (1989)-II, part I, pp. 31-35, 40-43 y 47-54.

my opinion, be easily conceived in this sense, akin to “obligations to do” that are both compensatory and punitive.[5]

14. “Punitive damages," thus characterized (beyond the merely pecuniary meaning inadequately given to them) can be an appropriate response or reaction of the legal order against particularly serious human rights violations. Thus understood, "punitive damages" —as I observed in my Separate Opinion on the *Case of Myrna Mack-Chang* (para. 52) have already been actually applied, for a long time, in the domain of international human rights protection —which makes us recall the phrase uttered by Molière’s famous character, Monsieur Jourdain, *qui parlait la prose sans le savoir...*[6]

15. Similarly, as I explained in my Separate Opinion on the *Case of the Plan de Sánchez Massacre* (Reparations, 2004):

> “Whether the reparations ordered in the instant Judgment of the Court are called punitive damages (...) or “exemplary reparations,” or any other expression of this type, their basic purpose remains the same: they recognize the extreme gravity of the facts, punish the State responsible for the grave violations committed, acknowledge the extreme sacrifice of the victims who died and alleviate the sacrifice of the surviving victims, and establish a guarantee of non-recurrence of the harmful acts. Whatever they are called, their basic purpose is always the same, they are for the benefit of the victims (direct and indirect) and the population of the defendant State as a whole, because their purpose is to rebuild the damaged social fabric.” (para 25)

16. In its instant Judgment on the *Case of Blanco Romero et al.*, the Inter-American Court has ordered, as one of the reparation measures, as a form of *satisfaction* and as a *guarantee of non-recurrence* of the harmful events, that the State implement a human rights education and training programme for the security forces. In the words of the Court,

> "(...) Taking into consideration the circumstances of the instant case, the Tribunal deems fit to reaffirm what it pointed out in the *Case of the Caracazo v.Venezuela* [reparations, 2002], in the sense that the State must implement, in the educational and training programmes for Armed Forces and [*Dirección General Sectorial de los Servicios de Inteligencia y Prevención* (Office of the Sector Director General for Intelligence and Preventive Services)] officers, a course on the principles and rules for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into account the case law of the Inter-American Protection of Human Rights System, as a way to prevent recurrence of events such as those in the instant case." (para. 105)

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[5]. Thus bridging the gap between civil and criminal, specific to the regulation of responsibility under domestic law.

[6]. M. Jourdain: - "(...) Il y a plus de quarante ans que je dis de la prose, sans que j'en susse rien, et je vous suis le plus obligé du monde de m'avoir appris cela". Molière, *Oeuvres Complètes* (*Le bourgeois gentilhomme*, 1670, Act II, Scene V), Paris, Éd. Seuil, 1962, p. 515.

17. As it is clearly deducted therefrom, the human rights education measures concern, at the same time, both *reparation* and *prevention* of human rights violations, revealing the *temporal dimension* of human rights safeguards. Hence the capital importance of such educational programmes, precisely in order to ensure human rights effectiveness. In the medium term and in the long term, it will only be possible to meet effectively many of the national and international challenges to human rights protection through education.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary