

**CONCURRING OPINION OF JUDGE RHADYS ABREU BLONDET
IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS IN THE CASE OF ROSENDO CANTÚ ET AL. V. MÉXICO, OF AUGUST 31, 2010**

1. I have decided to cast a concurring opinion regarding the Judgment in the case of *Rosendo Cantu et al.*, based on the following: i) Mexico's withdrawal of the preliminary objection regarding the alleged lack of jurisdiction of the Inter-American Court of Human Rights (hereinafter called "the Inter-American Court," "the Court" or "the Tribunal") to hear the petitions submitted resulting from a violation to the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women (hereinafter, the "Convention Belen do Pará") and, ii) the issue of why the Inter-American Court could have established the reparations that it denied in paragraphs 232, 235, and 238 of this Judgment.

2. *Regarding the State's withdrawal of its only preliminary objection.* In the case of *Rosendo Cantú et al.*, as well as in the case of *Fernández Ortega et al.*, Mexico argued that the Inter-American Court lacked *ratione materiae* jurisdiction to hear the violations of the Convention of Belem do Pará, basically reproducing the argument it had offered before this Tribunal in the case of *Gonzalez et al. ("Cotton Field")*, which the Inter-American Court discusses as of paragraph 33 of the aforesaid Judgment. Nonetheless, the State decides to withdraw said preliminary objection at a public hearing conducted for this purpose.

3. Mexico filed said preliminary objection in the case of *Rosendo Cantu et al.* on February 17, 2010 and in the case of *Fernandez Ortega* on December 13, 2009. Both dates are after this Court's Judgment was issued in the case of *Gonzalez et al. (Cotton Field)*, issued on November 16, 2009. Such procedural demeanor demonstrated dissatisfaction with the Court's decision. It does not seem strange to the Inter-American system for the protection of human rights that States show resistance in complying with certain interpretations made by this Court of the American Convention on Human Rights (hereinafter called "American Convention," or "Pact of San Jose"). Such is the case with the *continued crime* criterion granted in cases of enforced disappearance of individuals, which generally impedes the States from alleging the Court's lack of *ratione temporis* jurisdiction regarding probable violations of certain articles of the American Convention, such as the victim's *right to personal integrity* (Article 5) or the *right to judicial guarantees* and to *judicial protection* to next of kin in search of the whereabouts of the victim (Articles 8 and 25), depending on the case.

4. Furthermore, the fact that a given State had "reconsidered" and then later withdrawn by itself a preliminary objection such as the mentioned, which inadmissibility had being exemplarily explained by this Court, must be then understood as a sample of the steadfastness that such jurisprudential criterion has acquired up to this time. Changing it, which would be clearly absurd, is now extremely hard to do.

5. *On why this Court could establish the reparations denied in paragraphs 232, 235, and 238 of this Judgment.* This Tribunal deemed that it was not conducive to rule on reparation measures requested by the Inter-American Commission regarding the: i) design of a policy that would guarantee indigenous women's access to justice by means of respect to their cultural identity, ii) design and implementation of multidisciplinary health services for women who had been victims of rape, and iii) design of participatory programs which would contribute to the integration into the community of indigenous women who had been victims of rape.

6. A precedent set by the Inter-American Court whereby it was established that the necessary motivation and establishment of foundation of the intent of the reparations are not present in generic requests to which proof or explanations are not attached has supported such denial.¹

7. To my knowledge such position is correct in terms of assessing the amount for costs and expenses and in those cases in which the victims' representatives or the Inter-American Commission on Human Rights request the implementation of a public policy or of specific programs which have already been applied by the State, and where these do not explain deficiencies on existing ones.

8. However, in cases of this nature, the Tribunal is competent to determine what could be an appropriate measure of reparation regarding the three cited instances, or for at least setting the standards that should be honored by those policies executed by the State in this regard. A Tribunal that applies standards of human rights issues cannot render a restrictive interpretation of the language in the Pact of San Jose, but can, as established on Article 29(c) of the American Convention and as the Court itself has established, apply the *pro homine* principle.

9. The aforementioned conclusion can be reached, even when the combination of the principles *iura novit curia* and *pro homine* are applied in interpreting human rights' treaties. Such important decision, that of fixing the appropriate reparation for the victim, should not be left only to the diligence or lack of it, coming from the parties in the proceedings, because if the Inter-American Commission or the victims' representatives fail to support their respective petitions, the victim should not be devoid of such measures.

10. I mention the principle *iura novit curia* because if international tribunals, regardless of what the parties establish, are competent to determine what Articles of the American Convention have been violated after analyzing the facts, the Tribunal is likewise competent to determine what the applicable reparations should be, even if neither of the parties has proposed it (or had not supported the request).² The authority to establish the State's international responsibility for the violation of any of the Articles in the American Convention, cannot be severed, thus the Tribunal has the last word on establishing reparations that would be effective in trying to return the victim to the status quo when Article 63(1) of the San Jose Pact is properly applied.

11. Furthermore, it could also be said "who can handle the greatest, can also handle the lesser." It would be pointless if the Inter-American Court can indeed establish a State's international responsibility for the violation of a certain Article, from the review of proven facts, regardless of the violations put forward by the Inter-American Commission and/or by the victim's representatives, but not establish pertinent reparations for such violation. The Court could possibly reject such reparation measures, only based on arguments that the State has already proven implementation of identical or suitable measures to repair such a violation, and that the parties have not proven the mistake, but the Court can never reject them based on an argument that they were submitted in a generic fashion or without supporting argumentation.

¹ Cf. *Case of González et al. ("Cotton Field") v. México. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 493.

² See, in regard to this principle, *inter alia*, *Case of the "Mapiripan Masacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 57.

Rhadys Abreu Blondet
Judge

Pablo Saavedra Alessandri
Secretary