CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ
IN THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
IN THE *CASE OF GARCÍA PRIETO* (EL SALVADOR) OF NOVEMBER 20, 2007

A) The Duty to Investigate

1. In the judgment issued by the Inter-American Court of Human Rights in the *Case of García Prieto* (El Salvador) of November 20, 2007, which this opinion accompanies, the necessity of carrying forward certain investigative steps has been examined, and which have been found to be incomplete but required in order to establish the truth about certain events that could have effects under the criminal law.

2. The duty to undertake these investigative steps has a double and cyclical source, which is recognized by a State which is a party to the treaty on human rights and recognizes the jurisdiction of the international tribunal in contentious matters: primarily, the treaty itself –the American Convention- and as a consequence of this, and the recognition of jurisdiction, the rulings pronounced by the Court, which is called to interpret and apply the Convention, in its terms and in the terms of the Statute that derives from it.

B) Adoption of measures for the fulfillment of orders: the process of national reception

3. It is possible that the fulfillment of this duty to investigate (I will leave for another opportunity the issue of the reach of the investigation and its transcendence as a component of judicial access and punishment, an issue upon which the Court invites reflection in one paragraph) raises issues which originate in the domestic fora: obstacles raised or normative gaps. The Inter-American Tribunal has often ruled, following the orientation of the Law of treaties and the rules on the subject of international responsibility, upon the fulfillment –by the States Parties- of the general dispositions (normative) or particular dispositions (jurisdictional, with a double impact: in the actual case and in the system as a while) of the international order. I will not say more on this subject.

4. There is no doubt about the State's obligation to adopt the measures of a legislative or other character (Article 2 of the American Convention) necessary for the observance and protection of the rights and liberties included in that instrument. That is why, in this Judgment, conscious of the circumstances that existed and the arguments that could arise from them, it was necessary to state in an emphatic paragraph: "is incumbent upon the States to create norms and adjust their practices as necessary in order to comply with the orders and decisions of the Inter-American Court, if such norms and practices do not yet exist." The command is found, then, in the international order that the States accept; the solution, with its particularities, is found in the hands (and in the duties) of these States.

5 This expression accentuates, once more, the necessity that the States arrange what is necessary, in their own internal order, with urgent attention, the commitments contracted with the help of the international order, adopted with mandatory force by the same States through their own sovereign decisions. It has seemed interesting to me to refer now to the adoption of these measures, which

constitutes a duty broadly examined and accepted- and which was not contracted, evidently, in this case, inasmuch as it is related to the most relevant and active issue, today, in the link between the national and international order and in the consolidation of the Inter-American System for the Protection of Human Rights: national reception of international decisions.

6. This theme is of course, multifaceted and has multiple implications that I do not suggest be examined now, nor could they. It is important to emphasize, however, that this reception—which is the most relevant and decisive issue in the present time, and one of the most frequently examined now in the literature[1]--should motivate the most energetic and sustained effort, and project itself toward the variety of fronts in which it may be installed and take hold.

C) Reception in the culture

7. On other occasions, I have been occupied with the different manners in which reception should operate and with the actions that must be developed such that reception is projected forward. I have mentioned the necessity of strengthening reception in the American culture with respect to human rights, always disrespected, especially when there are signs of public insecurity that feed the unfavorable discourse
around human rights (which is, in essence, an unfavorable discourse around law itself). That culture is the "natural environment" for the observance of rights. Upon this generalized conviction depends the effective operation, the imperative demand (which impedes choosing the wrong path and favors the advance into new areas) and the real effectiveness of the instruments designed for the protection of rights, as much in the national order as in the international order.

D) Constitutional reception

8. Constitutional reception is also required, which has prospered under a variety of formulas –which as a whole brings a panorama of progress, despite the heterogeneity of its normative expressions- and which slowly might consolidate the idea that beyond the always difficult issue of hierarchy among national and international orders, lies the supreme hierarchy of the human being -common to the fundamental decisions in both orders, and in their most developed and modern versions-, which links all decisions and actions.

E) Political reception

9. The admission of international relations and their declaratory, normative, and jurisdictional consequences in the basic laws of the States, causes the adoption of public policies favorable to the expansion and protection of human rights. This ambit

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[1] With respect to recent examples of this particular accent in the literature, two works which emerged in 2007 should be mentioned. The first of these, with a similar prior publication, which serves as a point of reference, edited a decade ago in Argentina, and the second which reached several countries in the area: Various Authors, *La aplicación de los tratados sobre derechos humanos en el ámbito local. La experiencia de una década*, Abramovich, Víctor, Bovino, Alberto, y Courtis, Christian (comps.), Editores del Puerto/Centro de Estudios Legales y Sociales (CELS)/Canadian International Development Agency, Buenos Aires, 2007, 1005 pp.; and Various Authors, *Implementación de las decisiones del Sistema Interamericano de Derechos Humanos, Jurisprudencia, normativa y experiencias nacionales*, Krsticevic, Viviana, and Rojo, Liliana (coords.), CEJIL, Buenos Aires, 2007, 432 pp.

of reception may be attended, however, even in the absence of explicit constitutional dispositions –as has occurred in several cases-, with sustenance of internal norms in favor of fundamental rights and liberties and in the "anthropocentric spirit" which animates the radical decisions of modern political societies.

F) Jurisdictional reception

10. Internal jurisdictional reception of international jurisprudential criteria is indispensable, which at the same time should undertake the reflection and contribution which come from internal justice systems. The harmonization of the continental order of human rights should be the product of persistent and profound dialogue: jurisprudential dialogue, which advances. This realm of reception constitutes –as I have had occasion to affirm in other fora, in particular before the political organs of the Organization of American States- one of the most encouraging at the present time in the Inter-American System.

G) Legal Reception (instrumental)

11. Likewise, reception is absolutely necessary through the internal norms of fulfillment (which may be denominated instrumental legal means), which constitute the bridge such that international orders are naturally and quickly transmitted without errors and applied domestically, which requires immediate and adequately facilitated executive steps. I do not say that this normative structure is a condition for the validity of international provisions; I only recall that it is a natural medium for their effectiveness.

12. This angle of reception has been left behind. In general, national formulas are not ordered -although there may be good will in practice, which powerfully contributes to the fulfillment, through appropriate interpretations- which foresee with detail the internal admission of the international recommendations and resolutions. Indemnifying reparations exist in some legal systems, but these do not occur in the same way as other types of reparations, whose complexity requires clear rules that deliver quick decisions. These other types constitute, for sure, some of the most important reparations, which are characteristic and evolutionary of the Inter-American jurisdiction over human rights and the guarantee of adequate reparations which the system contains.

H) Regulatory initiatives

13. There are commendable initiatives which have arisen in some States and which may be supported, complemented, or enriched by professional and academic contribution, in the sense of elaborating first drafts of secondary legal systems, preferably rooted in the constitution, designed to guide the fulfillment of international recommendations and orders on the subject of human rights. Of course, each State should have norms that recognize and develop its own circumstances, but it would be practical to have an instrument which collects the general patterns in the introduction of international decisions in national legislation, broad rules of reparations, and special orientations in relation to the variety of categories of reparation that Inter-American jurisprudence has produced

I) Ratification of the role of the Court, throughout the proceedings, in the subjective and objective protection of human rights

14. In another place in the Judgment issued in the *Case of García Prieto*, the Inter-American Court freshly examines, in a brief and appropriate forms, the consequences of a friendly settlement among the State and one of the individuals that was a party in a prior stage of litigation, on her own behalf and on behalf of her minor son. When seen from the perspective of the individual, this issue concerns the composition of a renunciation of certain claims that the interested party deems satisfied by the State.

15. What is more interesting, without prejudice to the substantive findings of this particular case, is to note the function of the Inter-American Court and the way in which the Court is projected into a dispute that, under other conditions, would cease once the agreement between the (material) parties of the case was reached. The Tribunal has made it clear that: a) it is incumbent upon the Court to officiously protect –once the proceedings have been brought in an international suit- the human rights of the interested parties (subjective protection that is detached from the objective protection of the legal order); b) this protection concerns the case *sub judice* and its protagonists, but it does not concern any less (due to the nature and characteristics in which it is being exercised, in the framework of an "international System" for protection of human rights) the whole of the States committed to the System and the individuals of those States subject to its jurisdiction, and, consequently, bearers of an expectation of respect and guarantee of their treaty rights and liberties as interpreted by the Court; and c) the protection of these concepts may require that the trial continue, despite the agreement reached (and independently, up to a certain point, the acts of confession, settlement, and transaction related to it), which leads to a more or less complete trial process, and to a complete judgment on the controversy raised in the petition and, shall we say, a "pedagogical", "preventative" exercise of the jurisdiction which operates despite the settlement. It is in these terms that the Court has operated in the proceedings brought in recent years, in cases in which a settlement among the parties was reached. This orientation remains firm in the present case, without prejudice to the specific characteristics that concur here and that are not necessary to examine at this time.

Judge Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary