PERMANENT PEOPLES' TRIBUNAL

IMPUNITY FOR CRIMES AGAINST HUMANITY IN LATIN AMERICA

Bogotà 22-25 April 1991

Members of the Tribunal

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Development of the Proceedings, Sources and Legitimation

Preliminary Hearings

1. The Permanent Peoples' Tribunal convened hearings in response to the Latin-American appeal for the prosecution of impunity for Crimes against Humanity. These final hearings were held from 22 to 25 April 1991, at the request of all the institutions and organizations who, for more than two years, either made claims against or provided testimony at preliminary hearings to examine country cases, according to the following schedule:

Colombia, November 4 to 6, 1989, conducted by Judges Philippe Texier and John Quigley;

Uruguay, April 20 to 22, 1990, conducted by Judges John Quigley and Antonis Tritsis;

Argentina, May 4 and 5, 1990, conducted by Judges John Quigley and Antonis Tritsis; with the participation of Associate federal Judges Ricardo Molina and Eugenio Raúl Zaffaroni;

Paraguay, June 22 to 24, 1990, conducted by Judges Salvatore Senese and Luigi Ferrajoli;

Brazil, June 29, 1990, conducted by Judges Salvatore Senese and Luigi Ferrajoli;

Peru, July 5 to 7, 1990, conducted by Judges Perfecto Andrés Ibañez and Antonis Tritsis, with the participation of Associate federal Judges: Monsignor Luciano Metzinger, José Ignacio López Soria and Hortensia Muñoz;

Honduras and Guatemala, July 19 to 22, 1990, conducted by Judges Giulio Girardi, Ward Morehouse, and José Echeverría;

Ecuador, August 3 and 4, 1990, conducted by Judges Fabiola Letelier and Eduardo Umaña Mendoza;

Panama, January 7 to 9, 1991, conducted by Judges John Quigley and Eduardo Umaña Mendoza.

The acts and mandates from these hearings, which have been published in the different countries and submitted to their respective governments, constitute the basic documentation upon which the deliberations of the Tribunal are based.

Final Hearing

2. During the public hearing on April 22, after listening to the testimony of Doctor Eduardo Umaña Luna, the Tribunal received updated reports from the representatives of Argentina, Brazil, Bolivia, Colombia, Chile, Ecuador, Guatemala, Honduras, Panama, Paraguay, Peru and Uruguay.

3. The Tribunal also took into consideration the evidence previously submitted to the Secretary General by various organizations and institutions in Bolivia where the holding of the public session of the Tribunal was formally prohibited. The documents, as well as the conditions of this prohibition, were evaluated by Judges Salvatore Senese and François Houtart, who formulated their opinions following the same criteria used in other public investigation sessions.

4. In the case of Chile, the political climate in the country and, in particular, the recent publication of the report of the Commission on Truth and Reconciliation, suggested the calling of a National Convention, preceded by regional conferences, whose results, including the list of all convening organizations, were given to the Tribunal in the general report presented on April 22.

5. The Tribunal made great efforts to conduct hearings in El Salvador and in Haiti. Unfortunately, the chaotic political situation of these two countries did not allow this. These countries are not excluded but are even more present in our analyzes and in our call for solidarity.

6. The Tribunal also considered general points raised on April 23 by the following experts:

Doctor Eduardo Umàña Mendoza, Colombian, on “institutional mechanisms of impunity”;

Doctor Rodolfo Matarollo, Argentinian, on “the recent amnesties and pardons in Latin America vis-a-vis international law”;

Doctor Alejandro Bendaña, Nicaraguan, on “impunity and negotiations in Central America”;

Doctor Etienne Bloch, French, on “impunity in Europe after the Second World War”;

Doctor David MacMichael, United States of America, on “United States government involvement in the impunity of crimes against humanity in Latin America”;

Doctor Antonio Funari, Brazilian, on “Reasons of State and Christian principles on reconciliation”;

The Tribunal has also been informed of the Secretariat’s activities in notifying the Governments, and other parties interested in the proceedings, of the contents and development of

the hearings (according to articles 14 and 15 of the Statutes). The Tribunal also heard letters sent by the President of Colombia and the Presidential Adviser for Human Rights.

Sources

5. In the course of its proceedings, the Tribunal considered the following international instruments:

- Universal Declaration on the Rights of peoples, Algiers, July 4, 1976.
- Statutes of the Permanent Peoples' Tribunal

United NationsGeneral Assembly

- Universal Declaration of Human Rights, December 10, 1948.
- International Covenant on Civil and Political Rights, December 16, 1966.
- Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, November 26, 1968.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, November 30, 1973.
- Principles of International Cooperation in the Identification, Detention, Extradition and Punishment of those Guilty of War Crimes and Crimes Against Humanity, Resolution 3.074 (XXVIII), December 3, 1973.
- Convention on Slavery, Geneva, September 25, 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Similar Practices to Slavery, April 30, 1956.
- Convention against Torture and Other Cruel or Unusual, Inhuman or Degrading Treatment, December 10, 1984.
- International Law Principles recognizes by the Statute and by the Sentences of the Nüremberg Tribunal, Resolution 95 of December 11, 1946 and Resolution 488 (V), 1950.
- Convention relating to the Status of Refugees, July 28, 1951, article 1(f).
- Resolution on the Definition of Aggression, adopted on December 14, 1974 by the general Assembly.
- Principles relative to the effective prevention and investigation of extrajudicial, arbitrary or summary executions, confirmed by general Assembly Resolution 44/162 of December 15, 1989.
- Declaration on the fundamental principles of justice for victims of crimes and abuses of power, General Assembly Resolution 4.034 of November 29, 1985.

United Nations International Law Commission

- Draft Code of Offences against the Peace and Security of Mankind.
- Report of the Commission to the General Assembly, 35th session, May 3 to July 22 1983, supplement no. 10 (A/38/10).
- Report of the Commission to the General Assembly, 36th session, May 7 to July 27, 1984, supplement no. 10 (A/39/10).

- Report of the Commission to the General Assembly, 38th session, May 5 to July 11, 1986, supplement no. 10 (A/41/10).

- Report of the Commission to the General Assembly, 42nd session, May 1 to July 20, 1990, supplement no. 10 (A/45/10).

- Fourth Report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Offences against the Peace and Security of Mankind, A/CN.4/398, March 11, 1986.

- Seventh Report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Offences against the Peace and Security of Mankind, A/CN.4/419, February 24, 1989.

- Eighth Report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Offences against the Peace and Security of Mankind, A/CN.4/430, March 18, 1990 and A/CN.4/430 Add. 1, April 6, 1990.

- Draft Articles on State Responsibility for their Internationally Unlawful Acts.

- Draft Articles of the General Principles of the State International Responsibility

Organization of American States (OAS)

- American Declaration on the Rights and Duties of Man, 9th Conference, Bogotà, Colombia, 1948.

- American Convention on Human Rights, "Pact of San José", 1969.

- lnter-American Convention on the Prevention and Punishment of Torture, Third Plenary Session, December 9, 1985.

- Forced Disappearances, A Crime against Humanity, Resolution A.G.666 (XIII-0/83), November 18, 1983.

Inter-American Court on Human Rights

- Case of Velásquez Rodríguez v. Honduras, Decision of July 29, 1988, comma 181.

- Godinez Cruz v. Honduras, Decision of January 20, 1989, comma 191.

International Humanitarian Law

- Geneva Conventions on the Protection of Victims of War, August 12, 1949.

- Additional Protocols I and II to the Geneva Conventions, June 8, 1977.

Council of Europe

- Resolution 828 of 1984 in which the Parliamentary Assembly declared that the forced disappearance of persons is a Crime against Humanity.

Nature of the Permanent Peoples' Tribunal

6. The Permanent Peoples' Tribunal is an international non-governmental entity, completely independent of any government, state, political party or movement.

7. It is a tribunal of opinion, or a tribunal in a very specific sense:

- "tribunal", because as all tribunals should be, it is independent of all interests other than the examination of facts and the application of principles, because it is governed by methods of comparison, free of preconceived theses.

- “of opinion”, because it does not attempt to exercise any influence other than that derived from public opinion; in other words, it addresses the conscience and intelligence of people.8. The purpose of the Permanent Peoples’ Tribunal is to supplement judicial institutions, not only on the domestic level, but more importantly on the international plane as well. After the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in 1948, and the numerous international human right treaties which followed it, the fundamental human rights were transformed, in practice, into supranational legal principles. Thus, their safeguarding is not only a source of internal legitimation of the States in regard to their laws and constitutions, but also a basis for their external or international legitimation. It follows that these rights limit the power of States, not only with regard to their own peoples, but before all peoples; not only before the national community, but before the international community.

9. The international order, nevertheless, remains imperfect and embryonic. Its basic nature is characterized by imperfect laws, which do not have corresponding sanctions or procedural guarantees. This does not dilute, however, the validity of binding standards. We simply find ourselves before what jurists call a “void” consistent with the absence of penalties for violations of proclaimed rights, and the lack of procedural norms for their application. If this “void” does not permit the imposition of sanctions, rather than exclude, it demands that violations of fundamental norms that safeguard human rights be exposed, recognized and condemned as such.

It is the existence of this void which challenges the responsibility of the international legal community, and which constitutes the source of legitimacy of the Permanent Peoples’ Tribunal on the issue of impunity.

10. We are perfectly aware that the Permanent Peoples’ Tribunal moves along the boundaries of “jus conditum” and “jus condendum”, between substantive positive law already codified in international human rights declarations and conventions, and natural law guaranteed in positive forms through new norms and procedural methods, in order to assure the validity, applicability and effectiveness of these rights.

Characteristics of the Hearings on Impunity11. This final hearing of the Permanent Peoples’ Tribunal on impunity in Latin America is characterized by two additional aspects:

a. an evident continuity in the work and decisions of the Tribunal through its previous sessions on Argentina (Geneva 1980), El Salvador (Mexico 1981), and Guatemala (Madrid 1983), and three hearings of the Russell II Tribunal on Latin America (Rome, 1974; Brussels, 1975; Rome, 1976).

These deep roots in the history of the people of Latin America strengthen and support the competence of the Tribunal to judge the facts and the mechanisms examined in the present session on impunity. This session of the Tribunal makes it drastically clear that Latin American peoples have been exposed, for an excessive period of time, to grave violations of human rights. There is no end in sight to the violations, despite recent political and institutional changes that have occurred in a majority of Latin American countries. This dismaying situation also makes clear the continued absence of effective organs and instruments within the international community that could respond to the Latin American peoples’ needs for justice.

b. This final hearing also represents the conclusion of intensive work carried out during these last two years - a task which has involved coordinated action from many non-governmental organizations which, in fifteens countries, struggle for the defense of fundamental rights of peoples. This joint effort has made it possible to document the cases of Crimes against Humanity and has uncovered numerous mechanisms and cases of impunity. This continent-wide effort made

it possible to gather copious documentation which served to advise the National Meetings of Preliminary Hearings, thereby guaranteeing an adequate judgment of the occurrences in each country as well as the legal context.

12. The synthesis and comparative profiles of impunity in Latin America, subjected to judicial scrutiny for the first time, is both depressing and exciting. Depressing, for the horror still present within this suffering, blood drenched continent, plagued with the ghosts of the disappeared, of destroyed families, of societies deeply traumatized by State terrorism and of ruined hopes. Exciting, because of the courage of the victims, and of all those who closed ranks around them, in their heroic struggle against the monstrous impunity that prevails.

It is to these people, from the past and the present, the protagonists and the witnesses, to whom this session of the Tribunal dedicates its Hearing, in the spirit of the rights of peoples.

1. THE FACTS

Argentina

13. The current government can be characterized as being in transition towards to democratic consolidation. Continued pressure by the armed forces on the civilian government is evident. Crimes against Humanity illustrate the repressive strategy of State terrorism, which characterized the military dictatorship from 1976 to 1983. After this period, the constitutional government followed a strategy of "social control" characterized by an increase in the repression of the penal system, and the arbitrary nature of police action towards the least protected social sectors.During the regime of the military dictatorship there were numerous cases of degrading torture and ill-treatment, forced disappearances, arbitrary detentions and murders. In the current form of the civilian government, due to the serious socio-economic crisis, an increased level of misery of the people led to a greater degree of "common delinquency", resulting in a policy of "elimination", by the method of "false confrontation".

The mechanisms of impunity are manifested in the judicial power of the State of National Security by extending the exemption of "due obedience"; the denaturalization of prescription; the subordination of the competences of judges to military jurisdictions; the sanction of laws and decrees and the emission of legislative criteria designed to interrupt the criminal execution of the guilty; restrictions on the participation of victims and the absence of accumulation of charges, rejection of evidence, unjustifiable delays in legal proceedings; and the role of some members of the ecclesiastical hierarchy, the mass media and the corporate community in the cover-up and justification of Crimes against Humanity.

Bolivia

14. The current civilian government is characterized by the same power structures present in earlier regimes responsible for Crimes against Humanity committed under the dictatorships of Hugo Banzer, Luis Garcìa Meza and Alberto Natusch Busch.

Under these military dictatorships, hundreds of citizens were arbitrary detained; there were constant massacres of peasants; persons were captured and disappeared. Thousands of Bolivians sought exile because of fear of unjust persecution. The massacres at the Valley of Talata and Episana in 1974, and at Todos los Santos in 1979 are factual examples of the systematic and repeated violation of the most basic civil rights.

Most notable among the mechanisms of impunity are the actions of the Parliament which prevent the prosecution of those responsible. The Supreme Court of Justice, elected by the Legislative Branch, is made up of judges who for political reasons conform to the tendencies of members of Congress, defenders of military regimes. The judicial system, consequently, blocks the initiation of lawsuits and delays the administration of justice.

In the exceptional case against Luis Garcìa Meza, eight judges of the Supreme Court of Justice were suspended, neutralizing the judicial proceedings.

The civil governments of Victor Paz Estensoro and Jaime Paz Zamora were distinguished by the lack of political will to prosecute those responsible for disappearances, massacres and other crimes.

Brazil

15. The government has not completely dismantled the structure of the military dictatorship. In fact, crimes against Humanity have occurred under the current de facto government without any punishment by the authorities. This repression provoked the exile of many Brazilians. It is important to point out that currently these crimes have increased.

Paramilitary organizations, financed and directed by the landowners, respond to land disputes by massacring peasants and rural workers. In the cities, institutional repression by or on behalf of the Police is used to implement the policy of "social cleaning" by eliminating homeless children who roam the streets.

The failure to judge and punish those responsible for these crimes is rooted in the behaviour of the federal and state governments which ignore the constant violations of human rights; in the National Congress no opposition force exists to implement a policy of punishing the guilty parties: the judicial system constitutes an obsolete mechanism that seeks to benefit the interests of the economically powerful; it is an exception when criminals are tried and in those few cases when they are actually convicted, they soon manage to "escape" from the prisons in which they are serving their sentence.

Colombia

16. Although formally democratic, the government is marked by an unusual and persistent incidence of Crimes against Humanity. Institutional violence (by the Armed Forces and other organs of state security), para-institutional violence (para-military organs) and extra-institutional violence (paid assassins), under the National Security Doctrine and the theory of Low-intensity Conflict, aim to eliminate every person or social organization, trade union or political party threatening the prevailing unjust socio-economic and political status quo. The assassination of popular opposition political leaders, forced disappearances, massacres of peasants, bombings of rural zones and illegal detentions are some of the instruments used in the systematic and constant violation of the most basic human rights of the Colombian people.

Mechanisms of impunity include protection of the assassins by the authorities; the legalization of self-defense groups; the lack of a register of persons captured and imprisoned in military buildings; the refusal by the authorities to accept accusations of acts constituting Crimes against Humanity; intimidation of witnesses and plaintiffs; non-recognition of crimes such as collective murder and forced disappearances; military immunities, extended even to common crimes committed "in the line of duty" by the Armed Forces and the National Police; passage of legislation providing quasi-pardons, improper pardons or concealed amnesty for para-military soldiers. There is a clear absence of political will on the part of the State which, by conscious action or omission, allows and is itself a principal author of crimes against Humanity.

Chile

17. Chile is in a period of transition towards democracy. In regard to human rights, the main problem with the current government is the handling of the unfortunate legacy of massive violations of rights carried out by the military government of General Pinochet between 1973 and 1990. The most important initiative taken by the current government has been the formation of a National Commission of Truth and Reconciliation, which submitted a report to the country acknowledging the occurrence of approximately 2,100 unlawful deaths, with over 600 more cases completely unexplained. The government has turned these records over to the Supreme Court of Justice.

In the case of Chile, important factors likely to lead the practice of impunity include: the existence of a law of self-amnesty, passed by the military government in 1978; the traditional reluctance of the judicial system to act even when confronted with Crimes against Humanity; the maintenance of military immunity for all cases in which a member of the armed forces is implicated; the permanence of General Pinochet as Commander-in-Chief, of the Army, who has said that he will not accept judgments against members of the armed forces or of the security forces (DINA and CNI); a constitution that enshrines important anti-democratic elements in the interest of national security, the absence of judicial representation of the government in legal proceedings on human rights violators; the lack of parliamentary initiative on these matters by political parties; the governmental policy on terrorism, which relegates human rights problems to the background; the continuation of a neo-liberal economic model that does not want to be bothered by human rights problems; and the continued imprisonment of some two hundred political prisoners to whom justice has not been rendered and who are victims of Crimes against Humanity.

Ecuador

18. The current government bases its policies on the "supreme" principle that the leader is above all the guarantor of security. Under the previous government, Crimes against human rights multiplied: summary executions, forced disappearance; the existence of groups hired and controlled by sectors that hold economic power; mistreatment of indigenous people and peasants by members of the army and of the police within the context of disputes over possession of lands.

But above all, there is the "Law of National security", adopted many years ago by a de facto government to justify anti-democratic practices and principles. Under the current government while Crimes against Humanity are quantitatively diminishing, disturbing elements continue such as paramilitary gangs armed by landowners, unlawful detentions, and the generalized practice of torture.

The lack of initiative on the part of the Judicial powers to push criminal investigations vigorously, the existence of special laws which guarantee impunity for acts committed by the armed forces, the pressure exerted by the military for the sake of "national security" to cover up its failures, the complicity of the police forces with the paramilitary gangs and the lack of political will to punish the responsible parties, all become real and effective mechanisms of impunity.

Guatemala

19. The current government headed by Jorge Serrano, in the short period since his election, maintains the repressive counter-insurgency model, which has existed in this country for many years. It is necessary to bear in mind that in Guatemala there exists a situation of internal armed conflict, generated by structural socio-economic and political factors. It is within this situation that Crimes against Humanity, such as genocide, ethnocide and others, have become more extensive and far-reaching.

In the mid 1960's, the Guatemalan Army gained control of the State apparatus. The violation of human rights is attributed to the State security organs, especially the army and others, including the so-called "apparatus of clandestine repression" which has been formed, conducted and protected by military intelligence.

The army, invoking State security, still exercises a series of repressive measures against the non-combatant civil population, the result of which has been the destruction, massacres, and air and ground bombardment of peasant and indigenous villages. Cases of persecution, forced

disappearances, torture and individual extrajudicial executions continue. Survivors are forced to live in concentration camps which are referred to as "model villages". There, in addition to this forced choice of residence and the deprivation of their freedom, they are subjected to ideological indoctrination and other coercive measures such as forced labor.

Obligatory military service in the guise of "civil self-defense patrols" forces hundreds of peasants to participate in counterinsurgency activities. The rape of women by members of the repressive military force are among the other human rights violations.

Both the de facto and civil governments condone and allow for impunity through the existence of self-amnesty laws, such as that passed by General Mejia Victores prior to handing power to Vinicio Cerezo and by decrees stemming from de facto governments through temporary constitutional measures which legalize military control of the civil population. No authority takes action to determine the corresponding penal responsibilities. All accusations and evidence of Crimes against Humanity remain without investigation, and the accused go unpunished.

Honduras

20. Honduras is another country in transition towards democracy which has devoted its scarce resources to continued militarization. Its government has allowed the intervention of the United States in its internal affairs, through military aid for the acquisition of armaments, advice to the Army and training of officials in methods of counterinsurgency. This has resulted in an increase in the Armed Forces' political power, which has led to its supremacy over civilian power.

The ideological, economic and technical support given to the Armed Forces by the United States of America allowed the National Security Doctrine to take root in the past decade. The most important consequence of this is the execution of countless crimes and violations of human rights against persons considered dangerous to the security of the State. Army Battalion 3-16, whose agents were trained in the United States of America, is guilty of forced disappearances, political assassinations, torture, persecution and illegal detention.

The mechanisms of impunity are based in the supremacy of military over civilian power and the lack of political will by the government to follow the law strictly. The Armed Forces show open disregard for any judicial authority, and in the forced submission of judges and lawyers to the will of the military. In November 1987, the legislature issued broad, general and unconditional amnesty for those guilty of committing Crimes against Humanity.

Panama

21. As of December 1990, after many years of military rule, the country has been governed by an ostensibly civil government which is subject to the will of the United States government.

The military intervention by the United States in December 1989 was accompanied by numerous Crimes against Humanity such as shooting and killing non-fighting civilian populations and the members of the Civil Defense Forces who were not engaged in combat; indiscriminate bombings; cruel and degrading treatment; and destruction of houses, other property and the means of subsistence of many persons and families.

Thousands of persons violently deprived of their property formed an association of victims, living as refugees under inhuman conditions which, ironically, made them long for the past, even though spent in difficult struggle for survival.

The constitutional structure of political power, notably the administration of justice, has been profoundly corrupted by the North American military intervention as much as by the

previous military regime. In reality, there is little possibility that crimes will be fully exposed and that those guilty will be punished and that the victims will be compensated.

Paraguay

22. In a political context of transition, under the attentive and discreet surveillance of the army, the current government is being shaped by persons from the Stroessner regime, many of whom were indicted by public opinion and in some cases by courts as perpetrators of Crimes against Humanity.

From 1954 to February 1989, Paraguay was governed by a dictatorship which systematically violated the economic, social and cultural rights of the Paraguayan people. The system of power was represented by "Stronism", a modern form of despotism, an organization with absolute and arbitrary power, concentrated in the hands of a single person and by a restricted dominant group, endowed with a series of anti-democratic legal instruments included in the Constitution of 1967. The events of February 1989 constitute a retroactive confirmation of the violations by the regime of the fundamental rights of the people of Paraguay. The legitimacy of destructive violence, which cost many lives, was in fact justified by General Rodriguez as necessary to end the intolerable repression.

The immeasurable number of Crimes against Humanity - assassinations, torture, forced disappearances and arbitrary detentions, the massive exile of citizens and the inhuman conditions of survival of largely landless peasants - clearly reveal the character of the dictatorship.

Among the mechanisms of impunity is the position of the Chamber of Deputies and the Senate, whose membership is comprised in the majority by the Colorado party, which refuses any essential modification through legislation to allow for the prescription of judicial and other procedures against human rights violations. The presence of members of the Colorado party in the Executive Branch - those who have sustained the Stroessner regime and the current President Rodriguez - openly protects persons who have committed offences, even providing them police protection.

The judicial power, dependent on the executive power, which names and dismisses judges, is subject to the political will of the current government. Its performance is inadequate in protecting the fundamental rights of the people.

The Security Forces (the Police) discretely protect the repressive forces of the previous regime.

Perú

23. The new government of President Alberto Fujimori maintains the policies and methods of action of the previous regimes. These policies and methods include the generalized use of states of emergency and of armed political-military groups; the functioning of paramilitary organizations, the restrictions on civilian power; and the growing autonomy of the Armed Forces.

During the last few years, in the so-called counterinsurgency, Crimes against Humanity have increased: thousands of detainees-disappeared; arbitrary, selective and indiscriminate executions; systematic use of torture as a method of interrogation; massacres of peasants, plundering and burning of towns, and assaults on members of non-governmental human rights organizations.

On some occasions, the repression is carried out directly by the Armed Forces, and on others, by the so-called "civilian defense committees", and paramilitary groups.

Currently there exists well founded evidence that the Peruvian State encourages or tolerates the perpetration of extremely serious crimes against human rights, and allows for their impunity,

despite the fact that it has an adequate normative framework of recognition and protection of human rights, and that it has adopted and ratified the relevant basic international instruments.

The Armed Forces operate outside of controls found in the Constitution and in law, to the indifference of other State organs. The law that establishes military courts as the sole competent body to address human rights violations committed by the Armed Forces and the police, favors impunity for these violations.

The extension of military power into emergency zones has resulted in the army placing itself above the authorities in control, i.e., the fiscal authorities and the civil judges, who are arbitrarily prevented from carrying out their duties.

The reports by the parliamentary inquiry commission on serious occurrences in emergency zones were objected to by the parliamentary majority who have been accommodating the executive power and the army.

Furthermore, under the pretext of responding to structural State violence and increasing impunity, guerrilla organizations have equally committed - although on a different level - serious humanitarian infractions.

Uruguay

24. After twelve years of dictatorship, Uruguay is living through a second constitutional period. The Armed Forces are subordinate to civilian power, except for their sporadic anti-democratic pronouncements. Nonetheless, it is certain that numerous military officials, active during the dictatorship and accused of gross violations of human rights, have received career promotions to higher official positions. Several of them have sought to vindicate their behavior in the anti-subversive struggle between 1973 and 1985.

Since the “Declaration of Domestic War” approved in 1972 by the Parliament under the Bordaberry government, and the “Law of National Security” of the same year, the legislative and judicial institutions in the country lost their validity before the military powers who perpetrated the most arbitrary repression, not only against the Tupamaros; but against every democratic sector.

Bordaberry completely gave in to the Armed Forces on the basis of the Pact of Boisso Lanza in 1973. Until 1986, the country lived under a reign of terror. All civil guarantees were abolished; arbitrary detention and the most aberrant forms of torture were systematically practiced. Military justice, applied to civilians, served to legitimize the barbarism. Thousands of people - men, women and children - were detained or made to disappear. In short, human rights were systematically violated.

Under the current government, the character and methods of repression have changed. The police forces constantly violate the rights and guarantees of Uruguayans accused of being common criminals. They are protected by the conviction they will not be punished due to the impunity enjoyed by those responsible for Crimes against Humanity; impunity consecrated by the civilian government through the “Amnesty Law” adopted by Parliament in 1986. The judicial branch, through an elaborate interpretation of this legal text, “applies” the law only to marginal crimes of common delinquency committed during the dictatorship. In short, impunity in Uruguay is recognized through a legal norm of mandatory compliance.

Mechanisms of Impunity

The following stand out among the principal mechanisms of impunity common to several countries:

25.The judicial system, far from being a recourse against impunity in many Latin American countries, represents a mechanism for cover-up. In addition to supporting old military and police structures, it includes judges chosen by dictatorships, who, along with military officials, are subsequently confirmed in their roles by constitutional governments and Parliaments. In this way the old biases in law favoring the military and police are maintained. The lack of will to prosecute the military for Crimes against Humanity is also translated in the refusal of courts to apply relevant International Law.

26. In some cases, the creation by governments of commissions or special courts has only been a tactic to dilute or delay legal proceedings and to avoid identifying the real perpetrators of repression.

27. Disinformation or indifference to the violation of human rights by the overwhelming majority of the mass media constitutes another mechanism which fosters impunity. With a few brave exceptions, the mass media avoid challenging official government versions of such violations or limit themselves to printing and disseminating these versions. In the worst cases, the media covers up the responsible perpetrators, supplies false information and justifies these repressive methods in the name of emerging democracy. In this way, it seeks to prepare public opinion to take it for granted and accept that certain social sectors are targets of repression.

28. The repression of popular movements, including the intimidation of victims and impeding them access to judges and courts, constitutes yet another mechanism of impunity. In such circumstances, the repression seeks to label any protest, demonstration or challenge to the government as a "crime".

29. Amnesty leads to an official amnesia which seeks to deny the past, especially the Crimes against Humanity which occurred. The self-amnesties of departing military governments, accepted or ratified by the incoming civilian governments are especially anti-judicial; they are the consequence of rushed negotiations which violate the relevant precepts of International Law concerning the non-derogability of Crimes against Humanity.

30. Recourse to referenda and elections have in fact been manipulated in order to convert them into other mechanisms of impunity. The Uruguayan experience indicates that existing power structures, by manipulating public opinion through the mass media, can neutralize the moral and legal goals of a civil society.

31. The continuation of the National Security Doctrine and its acceptance by sectors of civilian society constitute barriers to overcoming impunity. In many cases, the installation of democratic governments does not alter the Armed Forces' dedication to this ideology, which is reinforced by the new neo-liberal orthodoxy present in economic affairs. The National Security Doctrine and neo-liberalism only prolong repression and impunity. In short, the lack of political will represents a hidden obstacle in the struggle for the establishment of justice.

32. Low levels of economic and social participative democracy translate into additional spaces for defenders of impunity. This does not deny the important achievements of popular organizations and defenders of human rights. Nonetheless, the struggle against impunity is linked to the advancement of the democratic process which is in turn impeded precisely by the practice of impunity.

33.In the face of all this, we should ask ourselves: What is the result of the democratization process of the 1980's? Upon close examination, it can be seen that the "democracies" resulting from this process are limited and conditional democracies. The armies, returning to their barracks, are never far from power, and could return to take power at any moment. For the time being, the power is being shared, the type and the weight of both elements varies.

34. Democracy is limited, to the point that it cannot stand up to national proposals in economic, political, social or cultural matters which would allow the transformation of fundamental factors that lead to widespread violations of human rights. Democracy is all too often identified with the ritual of elections. Passive popular participation in elections is necessary to the maintenance of a system, in which civilian society cannot have any real influence in critical and important decisions.

All of this brings us to the point where we examine the root causes of impunity.

2. ELEMENTS OF ANALYSIS

2.1. Causes of Crimes Against Humanity and of Impunity

35. With so many similarities between the situations in Latin American countries, despite the particular characteristics of each, and given the fact that they coincide in time, the causes can be analyzed and explained in a general way, spanning all of Latin America. Among the multitude of causes, three appear to be fundamental: The World Economic System, the nature of the Latin American State and the influence exercised by the United States in the region.

a. The World Economic System

36. The dictatorships that developed in one form or another on the continent between 1964 and 1985, and the "new democracies" established since, cannot be disassociated from the contemporary characteristics of the economic order. At first authoritarian regimes arose, most of a military nature, where the Armed Forces were transformed into instruments of national consensus. The State identified itself with the military institution. This process corresponds to the internationalization of economies. Internalization modified the forms of State intervention, as a means of diffusion of market relations in society. In effect, the new demands of the global economy were based more and more on the accumulation and the valorization of international capital.

37. In order to respond to this new situation, Latin American countries had to open up to a flow of important foreign investments as the only solution to assure a transition from an economic policy based on imports to one focused on exports. This change in economic policy also demanded a transformation in the instruments of control and in the regulation of the economy, with the consequent centralization of monetary and financial power and with the State having a central role in economic regulation.

Therefore, to the extent that the State became a fundamental instrument in linking national economies to the emerging international economic mechanisms, the degree of intervention depended on the level of development of the local productive forces and of the international context in which it was integrated.

These transformations made Latin American countries follow a logic of supply, forcing them to adopt an externally imposed production model, in the face of which they have also had to develop a new structure for demand. All this has resulted into social exclusion, depriving the lower social strata of access to various consumer goods. On the political level, this new power structure recreated the former class alliances and permitted an alliance of privilege between the dominant classes of these countries and the international bourgeoisie. These relations were consolidated to such a point that they provoked the opposition of the subordinate and lower classes.

38. The protagonists of these new models of economic policy established new forms of management in order to stimulate productivity and the profitability of business, which was achieved at the expense of social equality sought by populist regimes. The process was characterized by a high degree of militarization of civil society, developed to varying degrees in each country.

39. During this period the concentration of capital on a global scale intensified. The high availability of euro and petro-dollars that followed the oil crisis of 1974 turned into an accelerated

flow of loans to underdeveloped countries, creating the phenomenon of external debt[1]. The crisis of the 1980's modified the conditions for the offers of creditors and their interest rates. The roles of underdeveloped countries and of Latin America in general changed rapidly. From importers of capital, through investments and public aid, they became exporters of capital whose target were the countries of central capitalism. From 1982 on, this process reversed itself, signifying during this decade an annual transfer of financial resources of 20 to 30 million dollars, depending on the year[2]. In 1990, the payment of interest on debt reached almost 30% of the income from export[3].

Under the schemes of the international financial bodies (IMF and World Bank), a new model of accumulation was developed, conditioned by burdensome programs of adjustment, the keystone to the creation of new financial resources. It was necessary to print more currency in order to respond to the debt obligations; at the same time a trend began which excluded many countries at the periphery from the process of internationalization production in order to extract more energy products, basic mineral resources, food-stuffs and labor (migrations). Nonetheless, these products lost their exchange value: after 1960, raw agricultural products lost 30% of their value, food production 27% and minerals 14%.

Various procedures are responsible for this flux. New lines of credit were offered to pay the outstanding debts. In many cases, the process of privatization meant denationalizations. In short, this economic and social system became more and more internationalized. Latin American countries were confronted by the logic of the accumulation of centralized capitalism which impedes the establishment of an endogenous model of development. Every society is faced to internalize this external market structure in their own economic, social and cultural spheres.

40. The dominant classes of the continent play a role in this process through capital flight. In 1989, it was estimated that in only ten countries of the continent (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Uruguay, and Venezuela), this flight reached 243 billion dollars, or almost 70% of the external debt[4]. Thus, linked to the capitalist power centers, the Latin American bourgeoisie was characterized by a subordinate economic practice that set off strong social conflicts and ultimately produced a real threat against the people.

41. In effect, the demands of these economic programs call for well-defined social policies, with disastrous social and political consequences. In order to reduce budgets, governments reduce spending on education and health, thereby increasing illiteracy rates and infant mortality. They eliminate consumer subsidies, causing a rise in the price of basic products and in unemployment. The very logic of the "global system" prevents a significant reduction in military spending. It was the lower classes who paid the price for these economic adjustments and it is therefore not surprising that this provoked reactions known as "IMF disturbances" in various Latin American countries, resulting in dozens of deaths.

42. Not only did the fiscal and social conditions of the underclasses, already precarious for several centuries, not change, but they worsened notoriously during these past few years. The figures of various national reports have proven this. In Guatemala and in Honduras, 77% of the population live in extreme poverty. Infant malnutrition reaches 62% in the former and 75% in the

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1See the decision of the hearing of the Permanent Peoples' Tribunal on the policies of the International Monetary Fund and the World Bank, Berlin, September 26-29, 1988.

2 ECLA, 19906, Table 16, p. 33.

3 ECLA, ibidem, Tables 17, 18 and 19.

4 Intrapados Grap, Washington D.C. cited by the American Economy Review, 3rd year, Number 3, September 1989, p. 14.

latter. Illiteracy grew in Guatemala to include 70% of the population. Unemployment in several countries reached 30 or 40% of the active population. At the same time, the import of luxury consumer items grew, often facilitated by an agricultural exports model favoring limited groups; the concentration of lands or agrarian capital increased, provoking land conflicts as is the case in Brazil. Often, the alliance made by the financial mechanisms, between the bourgeoisie and the drug traffickers, reinforcing a class structure which is dangerous to try to question, as in the case of Colombia.

This real "culture of privilege" provokes popular reactions which are subject to repression and which, in many countries, have turned into armed movements to face the total closure of society.

43. It can be concluded that economic adjustments based on monetarist measures are anti-popular and anti-democratic. The new civilian regimes, successors of the dictatorships in Latin America, have little scope for action. However, faced with a continuation of Crimes against Humanity and the efforts made during the dictatorial regimes to assure their impunity, the “new democracies” constitute, in fact, a new political form destined to guarantee the current phase of the accumulation model. In this context, one can speak of “limited democracies”.

The repression, the militarization of societies and the difficulty of negotiations with the armed groups in Central America and in Colombia indicate that other factors play a role.

It is therefore also necessary to analyze the nature of the Latin American State.

b. Nature of the State

44. Without a doubt, the democracies of Latin America are a consequence of the dependent relationship existing between them and the outside world: the imposition of a world market run by the World Bank and by the International Monetary Fund, and integration in the Pan-American military system. However, it would be an error to ignore the internal sources of repression, even when all developments have a place within an international context.

45. Marcos Kaplan correctly defined the Latin American State’s development after independence, as “Leviathan the Creole”, heir of the colonial era, a State which is imposed from above. As Thomas Hobbes defined it, it is the “mortal” or secularized “God” who has been imposed upon man, incapable of controlling his common social and political destiny. A clear separation exists between the dominators and dominated masses. Within this context differences should also be noted, for example between Central America, so conditioned by its geo-political situation, and the countries of the Southern Cone.

46. The imported representative constitutional model, did not, except in a general manner, prevent the exercise of power from being monopolized by the agrarian and urban elites. Political parties - parties of the elite organizations characterized by diverse forms of clientelism - did not seek to involve a large part of the population into their programs. Instead of integration and mediation, there came domination, violence and with it, impunity. This impunity was functional in the imposition and cohesion of a system of domination without a broad modern central apparatus. A rupture existed between the State and the elites on the one hand, and society, in the broadest sense of the term, on the other.

47. After relatively stable regimes (as in Chile, Uruguay, Costa Rica and Radical Argentina/the Argentina governed by the Radical Party), and diverse experiences of populism, the time came again for an authoritarian and utilitarian State, the resurgence of “Leviathan the Creole” re-adapted to the demands of the global market. The new reality of the National Security State is a reincarnation of “Leviathan the Creole”.

Certainly, this “Leviathan” is no longer what it was or what it could have been. The State abdicated from the global market in order to become its agent, and thus it maintains its repressive function, guaranteeing the established order and its rhythm of modernization in the midst of the international system. Weak in its role as promoter of an independent project, due to its lack of political will, it was nevertheless vigorous in its repressive function.

48. There are some who think that a “distinction” should be made for countries where the monopoly of State repression seems to disappear before the paramilitary groups. It is true if we start from the normative idea according to which one of the primary functions of the State is that of protecting its citizens against all kinds of violence and crimes. However, reality does not correspond to this logic, no matter the arguments sustaining that logic. The logic of the State as guardian of law is replaced by a logic of another order.

49. Open State violence, no longer accepted, is criticized in the international arena. Democracy is better. But under this cloak, networks of repressive forces are developing or are being maintained; a troubling complex of agents of violence: the “paras”, private armies of drug mafia or businessmen, paid killers paid by landowners, etc. In this context, the role played by public servants essentially consists in guaranteeing impunity, allowing repression to survive within the prescribed limits of a limited democracy.

We are not saying that everyone, be it ministers, civil servants and judges, are accomplices. There are, on various sides, critical positions and reform projects, but the system we have analyzed is solid and works: it continues to make people disappear, to practice torture, to kill.

50. We are faced with a double reality: on the one hand it consists of “State against society” and it establishes the violence of criminal forces, out of fragments of this society which appears broken. It is a question of a “private violence”, but coordinated with para-state repression, authorized by the impunity guaranteed by public authorities. On the other hand, there exist various forms of what we could call war:

- war against traditional society. This can be seen in the extremely serious case of Guatemala, where repressive strategies were considered genocide and ethnocide in a prior hearing of the Permanent Peoples’ Tribunal;
- war against civil society, constituted by organizations which pursue the installation of necessary bases for the functioning of a real democracy from below, and indispensable in the struggle for the respect of human rights, such as the labor movements, religious-based communities, environmental movements, etc.;
- war against the most disfavored and marginalized sectors through a partial and perverse modernization.

An attempt is made to silence this "non-functional" society within the framework of a "democracy" administered from above and aimed at preserving the established order.

51. These situations are not exactly identical in all countries, but in all of them there are more or less marked trends in this direction. Lately, however, faced with the contradictory needs of the international financial system and the popular sectors, the Latin American states have entered a crisis that forces them to seek mediation with democratic forces. This contradictory policy causes instability with consequent new repressions, but the organized action of popular groups that are conquering new spaces creates a new dynamic, signaling, even though difficulties still lie ahead, a better future.

c. Influence of the United States in the Region

52. History offers a long and impressive chronology of interventions by the United States in Latin America. The traditional policy of the United States has been to establish a widespread influence economically, financially, militarily, and politically in the hemisphere, and to exclude the influence of other States.

In order to maintain this influence, the United States, in spite of international law and of obligations originating in treaties, insists on the right to intervene in Latin American countries, particularly those of the Caribbean and Central America, with armed forces if it so desires, to set up governments under its control. Often the interventions, sometimes justified, ironically, by the duty to protect human rights (the Roosevelt corollary to the Monroe Doctrine) or to establish democracy (Woodrow Wilson), have been characterized by massive brutalities and the imposition of military dictatorships.

53. In recent years, after the Cuban revolution, and in response to the Cold War, the United States redoubled its efforts to establish its influence and control over the countries in the hemisphere, paying special attention to the goal of maintaining control over the armed forces, police forces and intelligence services.

This period was marked by the open and armed intervention in the Dominican Republic in 1965, in covert form in Brazil in 1964 and in Chile in 1973, in collaboration with the armies of the respective countries, with the specific intent of ousting democratically elected governments and supporting subsequent military dictatorships closely linked to Washington in the fight against "Communists" of the hemisphere. This struggle in Brazil and Chile has served as a pretext for mass violations of human rights.

During the 1980's, the revolution in Nicaragua and insurgency of the contras, as well as the war in El Salvador, offered the opportunity to the Reagan administration to begin a new program of interventions in Latin America, strengthening the bonds between the national security forces in all of the countries of the hemisphere. The program consisted of low intensity warfare against Nicaragua and open invasions in Grenada (1983) and Panama (1989), each time resulting in massive human rights violations.

54. This tribunal asks: What is the legal responsibility of the United States for the commission of crimes and violations by the national security forces and their impunity in Latin America today, considering its policy of influence in Latin American countries and its actions to preserve it?

55. It is certain that the United States has a large capacity to exercise an important influence over the conduct and over the policies of other States in what is referred to as human rights practices. This power derives from two complementary factors: the self-attribution of a role of world arbitrate and as a model of reference in the human rights community, since at least the Nüremberg trials; the concrete dominant influence within international and regional organizations: The United Nations and the Organization of American States. It is possible to affirm that this influence has increased as a result of the Gulf War and the end of the Cold War, events which have left the United States as the only remaining superpower.

56. The United States has used its economic influence in Latin America directly, and used its domination within financial institutions (WB and IMF) to modify and control the economic policies of the Latin American States. It is clear that this power of economic influence could be exercised to control and direct favorable practices concerning human rights, but this has not occurred.

57. More directly, the United States, through the imposition or support of the National Security Doctrine has favored the development of, and in fact created, the military forces and

security forces which exist in Latin America today. The influence of the United States over the military and political system is exercised through request missions by military advises, CIA stations, and institutions and organizations dedicated to training and indoctrination. The armed forces of Latin America are in large part funded and equipped by the United States, which means that it has, through long association, a direct knowledge of the actions by these forces. It is thus clear that the United States has an important responsibility in respect to the serious violations of human rights of which the military and police forces have been implicated of many times. The failure to prevent these crimes, nor even attempting to do so, and the failure to reveal them, can be considered a crime, by the refusal to assume a precise legal obligation. In a country like Honduras, for example, where the influence of the United States is absolute, this homicidal practice can be identified as form of indirect, and almost direct, participation in the exercise of impunity.

58.The publication of annual reports on the subject of human rights by the State Department indicates two things: a) that the United States is perfectly informed, and b) that there is a selective use of this documentation to avoid the risk of condemnation of Latin American States considered to be friends and potential allies. This practice results in providing a stimulus for new violations and becomes a method to guarantee impunity for violators.

59.The practice of classifying as “secret” the information that the United States possesses concerning gross violations of human rights in Latin America - even more when there is direct or indirect participation by officials of the United States - represents an abuse of the classification system, destined to protect the security of the United States. It’s used to conceal information that refers to gross violations of human rights purports to be justified by a concern for the “security” of other States, while its objective is the protection of its sources and the intelligence methods of the United States, and its relation with the security forces that have committed the crimes. These arguments represent an obvious abuse of the classification system, and do not justify the non-observance of international law, which requires not to fail in one's obligations.

60. In the context of the definition of the role of law, it is very important to consider the judicial practice of the United States in relation with “National security”, and the management of foreign relations which are often confused with “National Security”. The U.S.A. courts refuse to examine cases involving the Executive being called into question for its conduct in matters of foreign relations, based on the argument that the Executive can only be obliged on the basis of a law precise and only for matters concerning budgetary control. This position configures a form of de facto impunity on the part of the Executive with regard to "National Security / foreign relations". Obviously, the model of executive responsibility induces similar practices by the governments of Latin America and by its security forces, when it is possible to invoke reasons of “National Security”. The conduct of the Iran-Contra case, with its implications for Latin America, and the relations of the United States with the security forces of the countries in the region - by the Court and Congress of the United States - can be considered a direct demonstration of the impunity guaranteed to US officers, who have violated national and international law norms and also a reference model for services of Latin America security. In summary, even when the analysis is limited to the system of security relations, the role of the United States has been very negative in relation to the gross violations of human rights in Latin America. Even more, the abuse of the system of classification of information and the manipulation of rules of law relative to the national security of the United States has made it much more difficult to reveal and investigate these gross violations.

2.2 The effects of Crimes Against Humanity and Impunity

61. Together with the global situation described earlier, the effects of a real state of criminality, carried out by the State itself or by quasi-official groups, are varied.

62. Firstly, a places social fabric can be destroyed. Violence is exerted upon well-identified social groups: farmworkers, workers and the urban poor who are repressed at times without ever being involved with any organized movement. In Brazil, those marginalized by society, hundreds of minors in particular, are also the victims of organized assassinations. The indigenous population is the specific object of massacres bordering on genocide - as was reported by the sentence of the Permanent Peoples' Tribunal on the Brazilian Amazon, on 12-13 October 1990; indigenous people are confined to "model villages" or so-called "development poles" after being expelled from their land. At the same time, significant social groups of civil society, like union members, journalists, university officials, theologians and the religious community, have been victimized by arrests, torture and assassinations.

63. Various revolutionary movements were born as a result of the institutional violence, and in some cases, they succeeded in taking power. Several of these movements find themselves in the midst of war, which sadly brings with it all of the consequences that a war brings to an affected population. State powers refuse to offer acceptable conditions to resolve the fundamental problem, which is itself the objective of the struggle which these movements are fighting for. Some, as is the case of the Shining Path [Sendero Luminoso] in Peru, use terrorism as a means of action as part of an attitude of near-desperation, suffering deaths and massacres, without creating a real alternative.

64. Another important consequence is the establishment of a real "culture of violence". Violence starts appearing normal, and death for political reasons loses its full dimension, especially for the mass media which publish these facts daily. The fear of reporting crimes and responsibilities translates into the silence of the people involved. In this way the destruction of the social fabric leads to cultural disintegration.

65. In short, the social disintegration caused by the model of economic accumulation imposed by today's market laws, with the consequent violations of human rights, is spectacular and dramatic. It is therefore essential to work to search for alternatives based on other principles.

66. Institutionalized impunity can endanger the rights and political spaces acquired by civil society. As the disrespect for democratic governments that do not confront impunity increases, the democratic process is held back, resulting in the damaging of the same ideals of democracy and of the social process in general. Appropriate conditions are therefore established to promote and accept the false alternatives of a populist, tyrannical and neo-authoritarian character. At the same time, families are being affected by the pain, frustration and feeling of helplessness in obtaining justice.

2.3. Legitimation of Crimes Against Humanity and Impunity

67. The reasons of the state, presented by the governments of Latin American countries said to be in "democratic transition" in order to justify the impunity of governments of National Security or of their own agents, are rejected by this Tribunal.

68. A first set of justifications repeats the same arguments of the National Security States. For example: it is not possible to limit the defense of institutions because, if attacked by subversion with criminal methods, it will be necessary to respond with the same methods; national interests are above individual revenge interests.

69. A second set concerns the need for “national reconciliation”. However, two considerations demonstrate the arbitrary character of the recourse to this concept.

70. From the sociological point of view, when one speaks of national reconciliation, they are not referring solely to the field of interpersonal relations. Every person is integrated in a social group and, by belonging to it, enters the process of reconciliation. This is why three conditions are indispensable:

- social groups must meet on an equal, even if relative, level;
- injustices must be redressed;
- the social and economic foundations of a dialogue must be re-established;

71. From a Christian point of view, forgiveness, considered within the socio-political sphere, demands above all: public recognition of guilt; corrective measures that prevent the recurrence of the crimes, and reparation to the victims.

An official document of the Catholic Church explains this principle: “It is obvious that a great demand of forgiveness does not cancel the objective demands of justice. Justice, clearly understood, constitutes, so to speak, the end of forgiveness. In no passage of the evangelical message, forgiveness, nor even mercy from which it derives, signifies indulgence towards evils, towards scandal, towards disaster, towards slander. Instead, the reparation of evil or of the scandal, the indemnification of the injured party, the reparation for the abuse, are the conditions of forgiveness. The completion of the conditions of justice are indispensable, above all so that love may show its true countenance” (Pope John Paul/Giovanni Paolo II, Dives in Misericordia, November 1980).

72. Nonetheless, insisting on the argument of reconciliation, the implicit defenders of impunity say, when they are questioned about violations of human rights and the impunity of those who commit them, that their governments cannot allow foreign interference which affects the self-determination and sovereignty of their country.

They do not mention that they forget this argument when they promote the economic denationalization of their countries, submitting them to the interests of international financial capitalism, at the expense of their people who sink deeper into poverty and misery.

73. They say that the construction of a democratic country requires forgetting the past, so that everyone can participate in this process without resentment.

They do not say that the past that they want to forget is the history of their involvement in a policy of violations of human rights.

74. They say that national interests are more important than the individuals’ interest in revenge.

They do not say that they call “national interests” their own interests and those of the hegemonic powers; that the victims of Crimes against Humanity are not only the persons tortured, disappeared or assassinated by agents of the State National Security, but all humanity whose dignity is denied.

75. They say that the disrespect of human rights was a consequence of a phase the country went through in which excesses were committed by some of its agents.

They do not say that human rights violations were not episodic events, but rather the result of a policy determined by the National Security Doctrine, which extolled the use of all measures (imprisonment, kidnapping, torture and death), to assure the power of the privileged classes and the hegemony of the United States on the continent.

76. They say that in practice the punishment of those who committed Crimes against Humanity during the dictatorship would have a higher political cost than the concrete results that could be obtained.

They do not say that impunity for these crimes allows their recurrence.

77. They say that if the subversives of democratization are pardoned, the agents of the State implicated in crimes committed in the fight against subversion should also be pardoned.

They do not say that amnesty is a legal institution through which the State decriminalizes the acts committed by those who have rebelled against it for political reasons, and that it is a legal aberration to regard crimes against citizens in the name of the National Security Doctrine as non-existent by the state, resulting in a flagrant case of self-amnesty.

Neither do they say that amnesty was of no use to those tortured, detained and killed, and that if it favored the political prisoners persecuted and condemned, in all respects amnesty favored the governments and its agents much more.

78. They say that Crimes against Humanity are a thing of the past.

They do not say that torture continues to be practiced against the poor suspected of crimes; that the physical elimination of those accused of crimes continues; that the assassinations and other crimes committed against children, indigents, indigenous peoples and blacks are generally not investigated nor the perpetrators identified, that the agents of security continue to see poor people as suspects and enemies.

79. They say that they cannot be responsible for the external debt of their countries, nor for the consequent impoverishment of their people.

They do not say that they have not taken any measures to ascertain responsibility of previous governments for the contracted debts nor verify the legality of such debt or point out who benefited from them.

80. They say that they seek national reconciliation.

They do not say that they will not take necessary measures to improve the social conditions referred to that will permit true reconciliation.

3. FOUNDATIONS OF LAW

3.1. International Law and the Protection of Basic Human Rights

81. Firstly it should be stated that human rights are a matter of international law, whose regulation does not fall solely within the jurisdiction of the State. Customary international law imposes on States the obligation to respect human rights.

Among these rights, one can identify a nucleus of fundamental rights whose safeguarding constitutes an imperative norm of international law, because - as affirmed by the International Court of Justice in its decision in the Barcelona Traction case -*"Given the importance of the rights in question, all States can be considered as having a legal interest in protecting these rights; such obligations are treated as obligations erga omnes".* The core of such fundamental human rights is composed, at a minimum, of the right to life, physical integrity, security and liberty of the human person (Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, arts. 6, 7, 8, para. 1 and 2; American Convention of Human Rights, arts. 4, 5, 6, 7, para. 1).

The evolution of customary international law in this area has been consolidated in three different normative fields.

82. Rules on the responsibility of states: they classify as *"international crimes the serious and widespread violation of an international obligation of essential importance to the safeguarding of human beings, such as those which prohibit slavery, genocide, apartheid"* (Art. 19 of the Draft Articles on State Responsibility).

This classification implies, for the State that violated said obligation, responsibility before the entire international community. It is enforceable by any state and often results in the application of sanctions. It constitutes an "*obligation so essential for the protection of fundamental interests of the international community, that the violation is recognized as a crime by that community in its entirety"* (Art. 19 of the Draft on State Responsibility). In light of this principle, and on the condition that it is *a gross, large scale violation and essential* for the protection of the human being, the following can qualify as international crimes, inasmuch as they constitute a systematic practice perpetrated by or in complicity with public powers:

- the forced and involuntary disappearance of persons;
- torture and cruel, inhuman, degrading treatment; and,
- extra-judicial executions.

83. Likewise, within this core of fundamental rights, and within the context of the progressive development of international law, one must note the specificity of the violation of the right to justice, which can constitute a gross and systematic violation of human rights, and whose guarantee is essential to protect the right of the human being.

This is based on the following legal reasoning:

The relationship between human rights and application of justice is twofold. On the one hand, the right to justice is dedicated to, in general, civil and penal causes, setting the conditions of due process. On the other hand, a specific right to justice exists in the case of human rights violations. Human rights are considered by relevant international instruments to be essentially justiciable. Article 8 of the Universal Declaration of Human Rights, article 18 of the American Declaration, article 13 of the European Convention, article 2 of the International Covenant on Civil and Political Rights, and article 25 of the American Convention, establish this as such. In accordance with these articles, all human rights violations should be brought to justice. If the

violation implies a criminal infraction, there exists an international obligation, not only a national one, to judge and punish it. The international instruments on human rights bestow, as a consequence, a human right to justice in the event of the violation of these rights.

84. The obligation to render justice in the case of human rights violations rests primarily on national tribunals. But, if through this route, reparation and corresponding punishment are not obtained, the victim can resort to international procedures provided for in the instruments. Justice, in the case of human rights violations, is so inherent to that it is established at the international level as absolutely peremptory.

85. Within the Inter-American system, this right to justice in the case of human rights violations is strengthened by article 27 of the American Convention. This article establishes that, even in exceptional cases in which the life of the nation is threatened, the judicial guarantees indispensable for the protection of the right to life, physical integrity and other rights are non-derogable; they cannot be suspended.

86. In accordance with the above, the denial of justice constitutes by itself an infraction of international obligations and, concretely, a violation of human rights by the head of State in cases of violations of these rights. Justice, which imposes an international obligation in this area, must be understood in its natural and obvious sense. It is the functioning of an established tribunal, impartial and independent and which discerns, judges, and renders an enforceable decision, and which, in criminal cases punishes those responsible in accordance with national and international law, which entered into force before the crime being judged was committed.

87. The notion of human rights was therefore conceived by international instruments as an integral and inseparable part of the legal order. A right whose transgression is not justiciable is an imperfect right. On the contrary, human rights are basic rights and as such, it is not possible that a legal order based precisely on these rights does not consider their "justiciability".

This is yet more certain if a distinction is made between more and less fundamental human rights, given that the former, such as the right to life and to physical integrity, form the core of every contemporary legal order. In this case, the lack of legal protection is not conceivable, except by destroying the very notion of the legal order. If it is the case, if fundamental human rights necessarily require judicial protection, the result is that the right to justice in the case of violations of such basic rights constitutes part of the nucleus of non-derogable rights, as expressly established by article 27 of the American Convention, previously cited.

88. In this context, there is no legal possibility that the violations of the most basic human rights, those which are understood to be Crimes against Humanity, will not be brought to trial and their perpetrators punished. In short, impunity for violations of fundamental human rights is itself a violation of human rights by the State when such acts are not brought to trial. Consequently, impunity is a violation of basic human rights that forms a central part of non-derogable rights. Accordingly, the Tribunal is of the opinion that the international obligation of a State to judge and punish those responsible for violations of basic human rights, and in particular, those responsible for Crimes against Humanity, is an imperative norm of international law which constitutes *Jus Cogens.*

89. No legal order can be consistent if it leaves on the margin of its *ius puniendi,* substantively and procedurally, the most serious offences of the law it protects, while punishing the less serious ones.

90. Humanitarian law applicable to situations of armed conflict: Essential obligations of protection on the basis of the Hague Convention of October 18, 1907, which establishes in every

case “the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience”, and that evolved and were solidified in the Geneva Conventions of 1949, and in Additional Protocols I and II of 1977.

Although called in the Geneva Conventions, these norms, according to the decision of the International Court of Justice in Nicaragua vs U.S.A., July 16, 1986, regarding U.S. military activities in and against Nicaragua, are norms of customary international law. They involve an absolute obligation for all belligerents in both international and non-international conflicts regarding the minimum humanitarian norms of article 3 common to the four Geneva Conventions, under which these are prohibited at any time and place, with respect to persons not participating directly in hostilities, including members of the armed forces who have laid down their arms and persons who have remained out of combat as a result of sickness, injury, detention or any other cause:

a) assaults on life or physical integrity, especially homicide in all forms, mutilations, cruel treatment or torture;

b) the taking of hostages;

c) assaults on personal dignity, especially degrading and humiliating acts;

d) death convictions handed down and executions carried out without prior judgment by a court regularly constituted, provided with the guarantees considered indispensable by civilized peoples

The Characterization of Crimes against Humanity

91. For the first time, principles recognized in the Statute and the verdict of the Nuremberg Tribunal defined certain serious acts against “any civilian population” perpetrated in times of war as Crimes against Humanity. The notion of Crimes against Humanity has evolved in international law as an independent concept detached from the situation of war. Currently, the Crime of Humanity Crimes can be perpetrated "both within the framework of an armed conflict" and outside it (International Law Commission, doc. A/CN4/398, page 7.)

92. It should be pointed out that a "Crime against Humanity" is a crime of international law. This means that its content, its nature and the conditions of its responsibility are established by international law, regardless of what the domestic law of States may establish.

93. With respect to its contents, in the current process of codifications undertaken by the International Law Commission, Crimes against Humanity include: genocide; apartheid; slavery or any form of servitude, especially forced labor; the expulsion of a population from its territory or its forced transfer and “all other inhuman acts perpetrated against parts of a population or against individuals for social, political, racial, religious or cultural reasons, and especially, assassinations, deportations, exterminations, massive persecutions or the massive destructions of property” (International Law Commission, A/CN4/419, page 11). The motive of the author is a necessary element, meaning the intent to cause harm to a person or group of persons for the reasons indicated, in addition, it must appear that the act "forms part of systematic plan to commit such acts" (United Nations General Assembly, A/411/10, pages 120-121.)

Other inhuman acts that qualify as Crimes against Humanity are the forced disappearance of persons (a qualification recognized by the Resolution of the OEA, the Parliamentary Assembly of the Council of Europe, and the Inter-American Convention on Forced Disappearance of Persons by the Inter-American Commission of Human Rights); torture and other cruel, inhuman and degrading acts.

94. In regard to their legal nature, and in conformity with International Law, Crimes against Humanity:

- have no statute of limitations (art. 5, Draft Code of Crimes Against the Peace and Security of Humanity; Convention on the Statute of limitations for War Crimes and Crimes Against Humanity (General Assembly Resolution 2391 XXII 1968).

- are attributable to the individual who commits them, whether or not an agent of a State. Consistent with the principles recognized in the Statute of the Nüremberg Tribunal, any person who commits an act of this nature "is internationally responsible for the act and subject to punishment. Consistent with this, the Draft Code of Offences against the Peace and Security of Mankind establishes that, "every individual who commits a Crime against Humanity shall be held responsible for such a crime and shall incur a punishment for it".

95. As for the conditions of responsibility, and in conformity with the aforementioned texts of international law:

- the fact that an individual has acted as head of State or as an authority of the State does not exempt him from international responsibility; nor does the fact that he acted in compliance with superior orders, if he had the possibility of not following such an order.

- the fact that the domestic law of the State does not impose any penalty for an act constituting a Crime against Humanity, does not exempt one who has committed such crimes from responsibility under international law.

96. Finally, and insofar as the system of suppression of Crimes against Humanity is concerned, current International Law entrusts the responsibility for it to the States.

Consistent with international law, this system of suppression is characterized by the following:

The power to punish is conferred:

- on a State in whose territory such crimes have been committed (based on Resolution 3 (I) 1945 of the General Assembly on the Extradition and Punishment of War Criminals; article VI of the Genocide Convention; General Assembly Resolution 3074 (XXVIII) point 5);

- on an International Tribunal, that may be established (article VI of the Genocide Convention; International Law Commission, Draft Code of Crimes against the Peace and Security of Humanity, article V of the Convention on the Suppression and Punishment of the Crime of Apartheid);

- on any State that has jurisdiction over the perpetrators by virtue of its domestic law (article V of the Apartheid Convention).

Currently in the codification process carried out by the International Law Commission, a universal system is established which grants jurisdiction to those judicial bodies present anywhere a guilty party might be arrested, reserving the establishment of international criminal jurisdiction (United Nations General Assembly, A/41/10, page 135); this system of universal jurisdiction is the same that was also established by the Convention against Turkey and other Cruel, Inhuman and Degrading ill-treatment, art. 5; and in the Inter-American Convention for the Prevention and Sanction of Torture, art. 12).

97. The exclusion of the possibility of granting territorial asylum "to any person about whom there may exist a basis for believing that they have committed a Crime against Humanity" (Resolution n.3074 (XXVIII) on Principles of International General Assembly Cooperation in the Identification, arrest, extradition and punishment of Persons guilty of War Crimes or Crimes against Humanity, art. 1, para. 2, Declaration on Territorial Asylum).

The possibility of refusing extradition is excluded by invoking the "political" character of the crimes perpetrated (Resolution 3074 (XXVIII), art. VIII Convention against Genocide; and art. XI Apartheid Convention).

98. The principle “nullum crimen sine lege”, with regard to the punishment of Crimes against Humanity, is established in an article of the Universal Declaration of Human Rights according to which “no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.” (see also, art. 8, Draft Code of Crimes against the Peace and Security of Humanity).

99. In no case does the punishment of the guilty person excuse the State from responsibility for the perpetration of Crimes against Humanity.

The three above-mentioned norms of international law coincide with the safeguarding of the fundamental nucleus of human rights. Responsibility falls on the State, on the individual perpetrator and on the accomplice or accessory to such acts.

3.2. The Obligation of the State to Punish Gross and Systematic Violations of Human Rights Constituting Crimes Against Humanity

100. The Tribunal put forth the following question: Does an obligation exist, consistent with current developments of international law, which imposes upon States the obligation to investigate, judge and punish, through its courts of law and consistent with the rules of due process, gross and systematic violations of fundamental rights?

It was thought that the answer to this question was essential to examine the validity, under the international legal order, of a refusal by a State to fully exercise its criminal jurisdiction, through pardons, open or hidden amnesties, or practices that establish a factual impunity.

101. As already pointed out, the Court considered that some norms that recognize fundamental human rights have the character of imperative norms of General International Law (Jus Cogens) and that their violation is likely to constitute Crimes of Humanity.

By virtue of all the aforementioned considerations in keeping with the favorable progressive development of international law, the Tribunal concluded that, according to customary international law, there exists a general obligation of States to investigate, judge, and punish those guilty of gross and systematic violations of fundamental human rights amounting to Crimes against Humanity.

102. Furthermore, in accordance with general principles of international law, the Tribunal understood that, by virtue of the principle of supremacy of international law, the domestic law of States may not modify, through the acts of public powers in any way, including pardons and amnesties, the judicial nature of Crimes against Humanity, which are not subject to a statute of limitations; nor is it competent to exempt the State from its obligations, derived directly from International Law, to repress and sanction such violations.

103. On the other hand, since norms related to Crimes against Humanity have the character of Jus Cogens and as such, may not be altered by any agreement to the contrary, the Tribunal considers that it is even less possible to recognize the legal validity of unilateral acts by States which tend to leave them without effect within their respective jurisdictions. As a result, the Tribunal must point out that such unilateral acts do not bind other States or the international community as a whole.

104. Next, the Tribunal examined the norms of international human rights law, international humanitarian law and international criminal law, as found in international conventions and treaties, in order to attempt to determine if these instruments reflect the existence of the obligation under examination.

The Tribunal holds that the main conventional norms applicable in this respect are:

- articles IV and V of the Convention on the Prevention and Punishment of the Crime of Genocide;
- article 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- article IV of the International Convention on the Suppression and Punishment of the Crime of Apartheid;
- article IV of the Convention on the Non-Applicability of statutory Limitations to War Crimes and Crimes against Humanity.

In a broad interpretation, not limited by this theme, the Tribunal held that they must take into account, within their own sphere of application, penal norms relative to the suppression of serious violations of article 3 common to the four Geneva Conventions of 1949 and Additional Protocol II of 1977, to the extent those international instruments are applicable.

105. The conclusion that is inescapable according to the Tribunal, is that in all of the cases foreseen by the norms previously cited, the State Parties have undertaken the non-derogable obligation to ensure an exhaustive investigation through the courts of law and with full respect of judicial guarantees. This obligation involves the search, arrest and judgment of people against whom there is evidence of guilt and, if they are found guilty, their punishment.

106. With respect to the victims and their violated rights, this obligation includes that of satisfying their right to the full knowledge of the truth and the best and most complete possible rehabilitation, reparation, and indemnification.

In addition to the specific obligations established by the aforementioned conventions and treaties, the Tribunal pointed out that both in the universal system, and in the Inter-American system for the protection of human rights, there exists the general obligation of the State to exercise jurisdiction when violations of human rights occur.

This obligation includes the duty to guarantee a proper legal order of a state of law, as expressly established in the International Covenant on Civil and Political Rights (articles 2(1) and 2(2), and in the American Convention on Human Rights (article a(1)).

In this sense, the Tribunal agrees completely with the criterion of the Inter-American Court of Human Rights, which in two cases relating to disappearances (the Velásquez Rodríguez and Godinez Cruz cases), held that the Pact of San Jose, in its article 1(1), contains a general obligation agreed to by the States Parties in relation to every one of the rights of persons protected, to respect and guarantee such rights. The result of this obligation to guarantee these rights is that every claim that there has been some injury to these rights, also necessarily implies that this general obligation has been violated.

Said obligation includes the necessary exercise of the judicial jurisdiction of the State. As a consequence of the obligation to guarantee legal order, “The States should prevent, investigate and punish all violations of rights recognized by the Convention. Furthermore, they should seek to restore, if possible, the infringed right, and to provide reparations for the injuries produced by the violations of human rights" (Verdict in re Velásquez Rodríguez, para. 166).

107. The Tribunal completely agrees with the judgment of the Inter-American Court which states that “The State has the legal obligation to reasonably prevent human rights violations,

to seriously investigate within its means violations which have been committed within the sphere of its jurisdiction in order to identify those responsible, to impose upon them the appropriate punishment, and to assure the victim adequate compensation" (in re Velásquez Rodríguez, paragraph 174).

108. As a result of what has been expounded, the Tribunal considered that the measures of granting pardons and of forgetting, under the guise of open or concealed amnesties or through pardons or any act of public power, from which impunity can result, violates at the very least the following obligations of States under international law:

a) The general obligation to investigate and punish violations of human rights according to customary international law (recognized, among other precedents, in Principle 8 of General Assembly Resolution 3074 (XXVIII) of December 3, 1973 on Principles of International Cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

b) The general obligation to respect and guarantee human rights according to Conventional International Law (art. 2(1) of the International Covenant on Civil and Political Rights, and art. 1(1) of the American Convention on Human Rights).

c) The specific obligation to punish torture, established in article 4 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture (especially article 6).

d) The specific obligation to prosecute those alleged to be responsible for summary executions (paras. 18 and 19 of the Related Principles for Efficient Prevention and investigation of Extralegal, Arbitrary or Summary Executions, confirmed through United Nations General Assembly Resolution 44/162 of December 15, 1989).

e) The specific obligation to compensate victims of human rights violations, established in article 9(5) of the International Covenant on Civil and Political Rights, article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 63(91) of the American Convention on Human Rights, Basic Principles of Justice for Victims of Crime and Abuse of Power (point 11), adopted by United Nations General Assembly Resolution 40/34 of November 29, 1985.

f) State obligations towards other States in the framework of diplomatic protection consistent with recognized international jurisprudence which has established, based on extensive data the criterion that "...the responsibility of the State can result (...) not only from a lack of attention over the prevention of injurious acts, but also for the lack of diligence in the criminal prosecution of responsible parties, and in the application of the required civil penalties" (Recueil des sentences arbitrales de l'ONU, Vol. II, page 645).

g) Obligations established by Humanitarian law, with a broad interpretation of the concept of grave breaches for violating the norms of behavior that must be observed "at any time and in any place" or "in all circumstances", established in Article 3 common to the four Geneva Conventions of 1949 and in Additional Protocol II (article 4, paras 1, 2 and 13).

109. In correlation with the violation of the obligations which international law imposes on States, the Tribunal confirmed that the techniques of impunity undermine a set of human rights, including at least the following:

a) the right to recognition as a juridical person before the law, recognized in similar form in the Universal Declaration (art. 6), the International Covenant on Civil and Political Rights (art. 16) and the American Convention on Human Rights (art. 3);

b) the right to equality before the law and non-discrimination in its applications, recognized by the Universal Declaration (article 7), the International Covenant on Civil and Political Rights (article 26) and the American Convention on Human Rights (article 24);

c) the right to an effective judicial remedy recognized by the Universal Declaration (article 8), the International Covenant on Civil and Political Rights (article 2(3)) and article 25 of the American Convention on Human Rights, such as this right has been broadly developed in this verdict (see above);

d) the right to a fair trial, contained in the Universal Declaration (article 10), the International Covenant on Civil and Political Rights (article 14(1)) and the American Convention on Human Rights (article 8(1)) (see above);

e) the right to know the truth, established in customary international law as a result of the extensive practice of the Central Tracking Agency of the International Committee of the Red Cross (ICRC) and whose reaffirmation by treaty is found in article 32 of Additional Protocol I of 1977 to the Geneva Conventions of 1949, which establishes as a general principle in the section dedicated to disappeared and killed persons, "the right of their families to know the causes of death".

The Tribunal solemnly reaffirms that this fundamental human right should be recognized not only in times of war, but even more so in times of peace and shares the indications formulated by the Inter-American Court of Human Rights in the cases related to the disappearances of Angel Manfredo Velásquez Rodríguez and of Saul Godinez Cruz (paragraphs 181 and 191 of the respective decisions), and by the last report of the United Nations Commission on Human Rights' Working Group on Forced Disappearances in relation to pardons and amnesties.

4. VERDICT

110. Taking into account the arguments, considerations and evaluations expressed in light of the facts established in the preliminary hearings which have preceded the present hearing of this Tribunal, and outlined in Chapter II above, and based on the fundamentals of asserted international law, and the Universal Declaration of the Rights of Peoples, in articles 4 and 27, the Tribunal:

111. First: notes the causal relationship between the intervention of the United States in Panama and the situation of impunity relating to acts of serious violations of fundamental human rights carried out in conjunction with and as a consequence of the aforementioned intervention.

Declares that the State of Panama is presently responsible for the violation of its obligation, in accordance with international law, to prosecute and punish those guilty of these acts.

Declares that the United States of America is responsible for the violation of this obligation as an accomplice.

112. Second: Notes the existence of gross violations of international humanitarian law and the perpetration of Crimes against Humanity, both by the military and state security forces of Peru, and by groups who have taken up arms, namely the Communist Party, the Shining Path, and the Tupac Amaru Revolutionary Movement.

Notes also the situation of impunity for gross violations of fundamental human rights involving Crimes against Humanity.

Declares that the State of Peru is responsible for violating the obligation under international law to prosecute and punish those guilty of such infractions and violations.

113. Third: Notes the direct relationship between the foreign policy of the United States and the application of the National Security Doctrine in most of the countries of Latin America.

Notes the existing relationship in these States between the application of the National Security Doctrine and the policy which implicates gross and systematic violations of fundamental human rights constituting Crimes against Humanity: as well as the practice of impunity for those responsible for such violations.

Declares that the United States is responsible for supporting the violations of human rights in Latin America constituting Crimes against Humanity and is an accomplice in violating the obligation under international law to punish those responsible for the commission of such Crimes against Humanity.

114. Fourth: The Tribunal notes that the acts of legislative, executive and judicial branches of the other States involved and outlined in the established facts, are mechanisms of impunity for the gross and systematic violations of fundamental human rights, constituting Crimes against Humanity;

Declares that such acts are attributable to the following States involved: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guatemala, Honduras, Uruguay, and Paraguay, and that at the present time, these countries are responsible for violating their obligations under international law to prosecute and punish the gross and systematic violation of fundamental human rights, involving Crimes against Humanity.

Declares that, as a consequence, these States are currently guilty of violating the fundamental human right to justice.

V. PROPOSALS TO MODIFY THE FACTORS WHICH FAVOR IMPUNITY FOR CRIMES AGAINST HUMANITY IN LATIN AMERICA

This Tribunal proposes:

A. To the Competent Organs of the United Nations:

115. To adopt, as soon as possible, an effective conventional instrument to eradicate the practice of forced disappearance of persons.

116. To apply some of the measures mentioned in Chapter VII of the Charter of the United Nations (action in the case of threats against the peace, breaches of peace or acts of aggression) in cases of gross and systematic violations of fundamental human rights.

117. To include impunity as a point of utmost priority on the agenda of human rights organs of the System of Protection of Human Rights. In particular, impunity ought to receive priority at the World Conference on Human Rights, which the United Nations is preparing for 1993.

B. To Governments in general:

118. To cancel the "agreement" granting diplomatic protection in their countries to military or civilian personnel implicated for their direct role, complicity or omission in Crimes against Humanity.

119. To cooperate in the identification, detention, extradition and punishment of the perpetrators of Crimes against Humanity, exercising universal jurisdiction identified in effective international law currently in force.

C. To the European Economic Community:

120. To condition economic aid from the European Community to Latin America on the respect for human rights and the observance of the obligation to punish violations of gross and systematic violations of human rights constituting Crimes against Humanity.

D. *To the Government of the United States of America:*

121. To ratify without any reservations the human rights conventions and treaties it has not yet ratified, which means most of these conventions and treaties, and in particular the American Convention on Human Rights.

122. To abolish its military missions in Latin America and prohibit them in the future, including stations established by the C.I.A. in Latin American countries.

123. To end all forms of assistance given by the Agency for International Development and other agencies of its government for the training of security forces and organizations in Latin American countries.

124. To pay just compensation to all the Panamanian victims of its illegal invasion.

E. *To the Congress and People of the United States of America:*

125. To withdraw from legislation those laws which were intended to legitimize the "Cold War", particularly those which authorized covert actions by North American agencies in other countries.

126. To reject the attempts by the Bush administration to extend the doctrine of the "absolute privilege of State secrecy", to protect the government and its agents from all responsibility for illegal acts.

127. To drastically limit the use of the so-called "injury to National Security", as a means of suppressing evidence, in cases which frequently result in impunity.

128. To disseminate information in all sectors of the North American society, on the role that the United States government plays in supporting Crimes against Humanity in Latin America and the impunity of the same, explaining how in this process North American standards of human rights and even domestic laws have been violated.

F. To the governments of Latin America, especially:

129. To ratify without reservations all universal and regional human rights treaties, as well as the instruments of international humanitarian law. Where these instruments have been ratified with reservations, to retract these reservations.

130. To approve and ratify the Draft Inter-American Convention on the Forced Disappearance of Persons and the Declaration on the same subject by the United Nations.

131. In accordance with the political and legal systems of each country, to carry out the constitutional, legislative, judicial and administrative reforms necessary to reverse the measures of impunity already adopted and to improve the protection and the promotion of human rights.

Among the legislative reforms, to include among others, the forced disappearance of persons as a separate crime with penalties corresponding to the degree of seriousness of the crime; and to punish the crime of torture with penalties corresponding to its seriousness.

132. To suspend, where it exists, the jurisdiction of the so-called Military Courts over al l matters not strictly disciplinary or military in nature.

133. To ask the United Nations to initiate missions for the promotion and protection of fundamental human rights.

134. To set up absolutely impartial and independent commissions to establish the truth with respect to the gross and systematic violation of human rights. This does not signify however, their obligation to try these cases in their courts.

G. *To the Coalition against Impunity and to all the non-governmental organizations who may wish to join in this action*:

135. To draw up a periodic list, using information obtained from reliable sources, of persons alleged to be responsible for forced disappearances, torture and summary executions, as well as of persons against whom legal proceedings have been initiated for such crimes. To supply information to the governments of the world and diplomatic services so that such persons may be denied the "agreement" to provide them diplomatic protection, or political or diplomatic asylum, and that, for those who have been convicted their extradition may be facilitated, and that government may cooperate in the identification, judicial extradition and punishment of those responsible for Crimes against Humanity.

136. To develop a campaign to obtain an advisory opinion from the Inter-American Court of Human Rights on the compatibility with the American Convention on Human Rights of the pardons and amnesties for those responsible for gross and systematic violations of fundamental human rights. In addition, to ensure that more cases of such violations be submitted for consideration by the Court.

137. To formulate a Combat against Impunity Program, which would extend throughout the last decade of this century.

138. Provide systematic information and, if possible, make direct contacts with the United Nations Special Rapporteurs on Summary Executions, Torture and country-specific Rapporteurs and Experts. In addition, to pursue the same procedure with the Working Group on Forced and Involuntary Disappearances of Persons, all with the goal that the consequences of impunity be considered within their specific mandates.

139. To direct special communications to the Inter-American Commission of Human Rights of the Organization of American States, on the consequences of impunity.

140. To organize campaigns to encourage, with the competent organs of the United Nations and the Organization of American States, and the governments of the world, especially the United States of America and the Latin American governments, to adopt the proposals and recommendations contained in this chapter.

H. *To Organizations of Jurists and Lawyers:*

141. To give special attention to those seeking advisory opinions, in cases that can be put before international bodies concerning human rights violations that result from amnesties, pardons, and de facto impunity.

142. To likewise give attention to cases that can be put before national courts in third countries.

143. To provide necessary assistance to conscientious objectors who refuse to do their military service in armed forces that are guilty of a systematic practice of gross violations of human rights.

144. To provide access to advice about diplomatic protection, when this can be done on the basis of the nationality of the victims.

145. To ensure follow-through on proceedings before tribunals in third countries initiated on these grounds.

I. *To the churches, democratic forces, humanitarian entities, political parties, educators and communicators:*

146. To work, in their respective areas, for the eradication of impunity for Crimes against Humanity, by means of denunciations, objective information, the teaching of values aimed at rebuilding respect for human dignity, and the participation in campaigns against the monstrous impunity which prevails.

VI. APPEAL TO SOLIDARITY WITH THE POPULATIONS OF LATIN AMERICA

The Permanent Peoples' Tribunal held the 'Deliberating Session of the Trial on the Impunity of Crimes of Humanity in Latin America' in Bogotá, Colombia, from the 22nd to 25th of April 1991.

This session represents the end of a long journey. This journey began in November 1989, with numerous preparatory sessions, where complaints were heard from the people of Colombia, Uruguay, Argentina, Paraguay, Brazil, Peru, Guatemala, Honduras, Ecuador, Bolivia, Panama and Chile. These sessions offered a global diagnosis of the Latin American situation, referring not only

to the countries above but also to others, where, due to various reasons, it was not possible to hold a session.

Throughout these 18 months the Permanent People's Tribunal came to understand the unknown and repressed truth of the Latin American people. The Tribunal came to understand this truth through hearing and acknowledging extensive documentation, rigorous analysis and dramatic testimonies on the current situation in Latin America. Each session made clearer to us the painful realization that the most important truths about the lives and deaths of these people are hidden from most of humanity, thus making it incredibly hard to create change. The concealment of the truth is one of the most fundamental mechanisms of impunity and is therefore also a sustainer of crime and repression. For this reason, the Tribunal, speaker of the voices of the oppressed, feels the responsibility to release this hidden truth and proclaim it to the conscience of the world.

In its sentence, the Tribunal identified many things: the causal relationships existing between the different forms of economic, political, cultural and military domination which the Latin American people have been subjected to through structurally unjust international relations, the most subtle attacks against life and the Crimes of Humanity committed which remain completely unpunished due to the support of these same structures of domination. Such unjust structures are not only indirect explanations for crimes and impunity, but are themselves structurally a crime, causing the slow and pervasive death of social classes subjected to hunger, unemployment and lack of both health and educational resources.

The "democratization" process of the 1980s which replaced military regimes in Latin America in no way represented the overcoming of violence and impunity. The repressive structures present during previous dictatorships have been kept alive under legal disguises. In addition, impunity has been guaranteed with pardons, amnesties, acquittal laws, institutional and extra-institutional mechanisms of concealment, extensive applications of the Military Forum, of secrecy and of actions clandestinely presented as requirements of "National Security". This need for secrecy and the hiding of the truth, which accompanies the entire history of violence, is particularly accentuated in the current context of "democratization" present in Latin America.

Militarist regimes try to justify themselves by affirming, amongst other things, the need to repress both guerrilla groups and drug traffickers. This need, however, frequently becomes a pretext for attacking many people, including peasants, the indigenous, student organizations, trade unions, women's movements, human rights committees and basic communities. Furthermore, a certain ideology of national reconciliation, supported by important sectors of the Churches, effectively contributes to concealing crimes and justifying their impunity.

The mass media is strongly conditioned by their ties with economic, political and military powers, which prevents them from offering a space for denunciation without lies. They thus have an enormous responsibility in the concealment and impunity of crimes. The Tribunal reminds them that hiding the Crimes of Humanity is equivalent to being an accomplice to them.

Globally, the multi-nationality of information is an essential element of the system of repression, lies and manipulation of consciences. The recent Persian Gulf War is a typical example of the pervasiveness of violence and its concealment from the eyes of the world. The strict military censorship prevented the very people in whose name this violence was being conducted "democratically" from being informed of the atrocious realities of the war. They did not want to repeat the mistake made with the Vietnam War, when more readily available objective information provoked a movement of indignation and protest in the national and international consciousness, to the point of imposing a political change on the North American administration. In contrast, in

the Gulf War once a mass consensus was reached it was hidden from the people. This shows again how violence, in order to develop freely, feeds and survives on lies.

One of the mechanisms through which Latin American "democracies" hide the truth and guarantee impunity is through the creation of a climate of fear, which is used to try to intimidate families of victims, hoping to make them desist from their search. This atmosphere of terror is additionally used to prevent the presentation of witnesses and to stop the investigations of judges and lawyers. All of this generates a state characterized by the lack of legal and social protection of people. Nevertheless, this state of violence and fear which these populations live in has not managed to bend or weaken their resistance; on the contrary, these populations demonstrate an extraordinary strength. This implies on the part of the militants the courage to constantly expose their lives in the defense of human rights and in solidarity with every person and group affected by the repression. They do not allow themselves to be weakened by the deep wound created through the violent deaths or disappearances of their loved ones. They also believe that perseverance in the commitment to truth and justice is the most consistent form of fidelity to those who, for their struggle, suffered violence, persecution and death.

The presence of the *desaparecidos*, continually evoked by the Committees of Mothers and Families across the continent, has become an impressive symbol of this resistance. Many of the testimonies presented before the Tribunal were not only trustworthy denunciations of crimes and impunity, but also impressive testimonies of militancy and strength. In a situation of so much abjection and infamy, they make it possible to preserve hope in humanity and in its future. Many of these witnesses knew that speaking would constitute a serious risk and that their very lives could be threatened. For this reason, these sessions of the Tribunal became significant moments of resistance and struggle.

In the name of these militants and witnesses, and of the populations they represent, we make this pressing appeal for universal solidarity. It is an urgent appeal because it concerns people, groups and populations who find themselves, day and night, in danger of death. Faced with such a gravely unjust situation, the mere silence of states and populations who are not directly involved in the violence but nevertheless still have a voice, constitutes a form of gravely guilty complicity.

If this violence unleashed against populations needs to be hidden to guarantee its impunity and continuity, it is because its emergence would cause shame, indignation and resistance in the universal consciousness. Violence thus pays homage to the moral conscience of humanity, which, if it knew it, would condemn it. These crimes are possible because people do not know they occur. The American people are unaware of the massacres that their armed forces, their secret services and their military advisers are committing in their name. Even European populations do not know the criminal enterprises that they have been involved in through their submission and connections to North American politics.

The Permanent Peoples' Tribunal has no power over the guilty it condemns; it bases its efficiency on the power of truth which, as the voice of the people, wants to cry out to the conscience of the world. However, we know that this same cry of the people can be stifled and hidden if it fails to awaken a broad movement of solidarity, a true mobilization of consciences. We therefore urgently address the medias of Latin America, United States, Europe and the rest of the world to tell the truth and nothing but the truth. We hope that they have the strength to affirm the truth even if it puts them in a risky position, as to tell the truth is to accuse the powerful in defense of the weak.

We also turn to all those who, due to their educational mission, have the responsibility of molding the conscience of the new generations, who perhaps have the best chance of changing

people's attitude towards history so that they have the courage to tell the truth about society and the world. We hope that they will invite people not to

conform docilely in this society, but to discover new horizons of solidarity, co-operation and internationalism and to identify their own future with the world's future too.

It is an invitation also addressed to the Churches, asking them to recognize their share of historical responsibility in hiding the crimes and legitimizing the oppression suffered by the populations of the continent. Gathering the messages of their martyrs, like Msgr. Oscar Arnulfo Romero, the Jesuit fathers of El Salvador and the Colombian indigenous priest Alvaro Ulcué amongst many others, could play a part in recovering the elementary human dignity of their people which has been thoroughly destroyed.

We know that in order to build an alternative to this system of violence the mobilization of consciences is necessary and fundamental, but not altogether sufficient. A complex political and economic strategy, of a national and international character, is also indispensable. For this reason, the Permanent Peoples' Tribunal addresses all the Governments of Latin America, Social, Political, Parliamentary Organizations, Popular Movements, Churches and human rights bodies and launches an appeal to eradicate the impunity of Crimes against Humanity committed against people. This Tribunal heard, in the Deliberating session, a cry that arose from the profound and traumatizing experiences of these victims. They have the right to truth and justice: their deep cry must be heard.

It is impossible to build a real democracy on impunity. We are concerned about the failure to comply with both the laws in force in countries and the Pacts, Protocols, Conventions and Treaties of International Law signed by the State. We also address the popular peasant, indigenous, workers, students, intellectuals and humanitarian organizations, inviting them to strengthen solidarity and coordinate their actions in defense of the life and rights of individuals and peoples to be protagonists of their history, participating in the construction of real democracies.

We appeal to the United States government for their responsibility for creating a system of oppression and domination of the peoples of Latin America, a complex ideological machine, such as the Doctrine of Homeland Security, which has served as the basis for so many crimes and so much impunity. We demand from it the right of people to self-determination and the withdrawal of their military forces, their advisers and their bases in the various countries of Latin America. We appeal to the people of the United States to strengthen their solidarity with the Latin American populations and to ask their government for profound political changes towards poor countries. At the same time, we recognize the solidarity with these peoples shown by many social sectors in the United States.

We demand from the international community the political will to strengthen and develop fairer behavior with the populations of Latin America. We want to point out and recognize the courage and moral strength of people who do not flinch in the face of aggression and violence and who have the courage to organize and resist. They are an example of human dignity. With our appeal, we want to help save the majority of humanity from oblivion at this historic crossroad. Especially, we want the people to have their say in building a truly new, free and united world.

We do not want to end this appeal without expressing our recognition of the Colombian people and their organizations working to create and build a peace based on the right to truth and justice, consolidating their path towards the construction of an authentic democracy. The journey is long and painful, but despite its contradictions, defeats, disappointments, the Latin American people are determined not to give up this struggle; to defeat the impunity of the Crimes of Humanity so that these facts may never happen again.

Despite everything, Latin America continues to be a continent of hope.