

SECTION RECOMMENDATIONS AND REPORTS

American Bar Association Section of International Law and Practice Report to the House of Delegates Honduras Urged to Comply with Judgments of the Inter-American Court of Human Rights*

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association calls upon the U.S. Government to urge the Government of Honduras to comply fully and without delay with the August 1990 judgments of the Inter-American Court of Human Rights in the *Velásquez* and *Godínez Cruz* cases.

REPORT

I. Explanation of Recommendation

The purpose of this recommendation is to encourage the Government of Honduras to comply fully with two judgments of the Inter-American Court of Human

*This Recommendation and Report was adopted by the House of Delegates in August 1992. The Recommendation and Report was prepared by the Inter-American Law Committee, chaired by Andrew J. (Josh) Markus.

Rights.¹ The judgments, issued by the Court in 1990, ordered Honduras to compensate for monetary losses caused by its failure to pay two prior damages judgments within the deadline set by the Court.² Honduras subsequently paid the amount ordered in the original damages judgments, but has not compensated for the losses caused by its delay in making payment, as required by the August 1990 judgments.

It is critical that Honduras comply fully with these judgments, particularly since the Honduras cases represent the Court's first exercise of its contentious jurisdiction.³ If the Court's judgments in these first cases are not fully adhered to, the viability of the Inter-American human rights system will be seriously jeopardized.

II. Background

In 1981 and 1982, the families of two Hondurans who had disappeared after being forcibly detained by persons believed to be members of the Honduran army filed separate complaints against the Government of Honduras under the American Convention on Human Rights (hereinafter "the Convention").⁴ In separate judgments issued in 1988 and 1989, the Inter-American Court of Human Rights found Honduras responsible under the Convention for the "disappearances" of the two individuals, Manfredo Velásquez and Saúl Godínez Cruz. These two cases (referred to as the "*Velásquez*" and "*Godínez Cruz*" cases) represent the Court's first and only use to date of its contentious jurisdiction to

1. The Inter-American Court of Human Rights, located in San José, Costa Rica, was established by the American Convention on Human Rights. For a brief description of the Convention and the human rights system it created, see footnote 4.

2. The original orders to pay damages were rendered in July 1989 after the Court found Honduras legally responsible under the American Convention on Human Rights for the "disappearances" of two individuals.

3. The Court has both "contentious" and "advisory" jurisdiction. Under its contentious jurisdiction, the Court can adjudicate complaints filed by individuals against their governments alleging violation of the American Convention on Human Rights. Under its advisory jurisdiction, the Court can interpret human rights treaties at the request of governments or certain international organizations.

4. The Convention is open for signature and ratification by members of the Organization of American States (OAS). It was adopted in 1969 and entered into force in 1978. The Convention sets out a number of substantive rights, such as the right to life, humane treatment, freedom of expression, etc., and obligates States Parties to respect those rights. Under the Convention, individuals can file complaints against their governments alleging violation of a right recognized in the Convention. Complaints are submitted to the Inter-American Commission on Human Rights, an OAS body located in Washington, D. C., which is charged with promoting the observance and defense of human rights. If the Commission finds it impossible or impracticable to settle a case, it can refer the case to the Inter-American Court of Human Rights for adjudication. The Court, which was installed in 1979 in San José, Costa Rica, receives evidence, rules on whether the Convention has been violated, and can award damages against the defendant Government. Only those states that have both ratified the Convention and accepted the jurisdiction of the Court by separate instrument may be taken before the Court. To date, thirteen nations have accepted the Court's jurisdiction. Honduras ratified the Convention on September 8, 1977, and accepted the Court's jurisdiction without reservation on September 9, 1981.

hold a government liable for violations of the Convention.⁵ In both cases the Court ordered Honduras to compensate the families of the victims, and retained jurisdiction in order to set the form and amount of the damages.⁶

In subsequent Damages Judgments rendered in July 1989, the Court set the damages in the two cases at a total of 1.4 million lempiras (the currency of Honduras).⁷ Under the judgments, one-fourth of the damages were to be paid directly to the victims' widows, with the remaining three-fourths to be placed in trust for the victims' children "under the most favorable conditions permitted by Honduran banking practice."⁸ Payment was to be made within 90 days after the date of the judgments, or alternatively, in six monthly installments beginning within 90 days.⁹ Again in each judgment the Court retained jurisdiction over the cases to oversee execution of the judgments: "[T]he Court shall supervise the implementation of the compensatory damages at all of its stages. The case shall be closed when the Government has fully complied with the instant judgment."¹⁰

Honduras failed to commence payment by October 20, 1989, the deadline set by the Court. It later cited budgetary difficulties and the need for a legislative amendment to its national budget as the reasons for the delay.¹¹ In the meantime, the real value of the judgments had been halved due to a 50% decline in the purchasing power of the lempira.

In August 1990 the Court issued further rulings on damages (the "Interpretation Judgments") in response to the Inter-American Commission's request that measures be taken to protect against erosion of the real value of the judgments. In the Interpretation Judgments the Court ordered Honduras to compensate for the losses caused by its delay in making payment and to pay interest from October 20, 1989. The Court also interpreted the phrase "under the most favorable conditions permitted by Honduran banking practice" to require the trust funds to be comprised of assets that would preserve their purchasing power, such as U.S. dollars, guaranteed securities, or real estate.

By letter of October 17, 1990, the Government of Honduras informed the Court that it found the Interpretation Judgments "unacceptable" and would not comply

5. In a third case submitted to the Court together with the *Velásquez* and *Godínez Cruz* cases, the Court ruled that there was insufficient evidence to hold Honduras responsible for the disappearance of two Costa Rican nationals. See *Fairén Garbi and Solís Corrales*, Judgment of March 15, 1989, ¶ 163.2.

6. *Velásquez*, Judgment of July 29, 1988, ¶ 194(5), (6); *Godínez Cruz*, Judgment of January 20, 1989, ¶ 203(5), (6).

7. *Velásquez*, Compensatory Damages, Judgment of July 21, 1989, ¶ 57; *Godínez Cruz*, Compensatory Damages, Judgment of July 21, 1989, ¶ 55.1. At the time the Damages Judgments were issued, 1.4 million lempiras was worth approximately \$280,000.

8. *Velásquez*, Compensatory Damages, ¶ 58; *Godínez Cruz*, Compensatory Damages, ¶ 53.

9. *Velásquez*, Compensatory Damages, ¶ 57; *Godínez Cruz*, Compensatory Damages, ¶ 52.

10. *Velásquez*, Compensatory Damages, ¶ 59; *Godínez Cruz*, Compensatory Damages, ¶¶ 54, 55.5.

11. See letter of October 17, 1990, from Honduras' Ambassador to Costa Rica, Edgardo Sevilla Idiáquez, to the Secretary of the Inter-American Court, Manuel Ventura Robles.

with them.¹² It argued that the original Damages Judgements fixed the damages at \$1.4 million lempiras without reference to any need to maintain the real value of the judgment. Honduras noted that the Interpretation Judgments more than doubled the nominal value of the damages. Furthermore, the Government maintained that the Court's interpretation of the phrase "under the most favorable conditions permitted by Honduran banking practice" was "exaggerated" in that it required maintenance of the real value of the trusts that were to be created for the victims' children. According to the Government, Honduran law does not require a trustee to perform this function.

The Court replied to Honduras' rejection of the judgments in a letter of November 12, 1990.¹³ In that letter, the Court maintained that the losses caused by Honduras' delay in making payment should be borne by the Government, not by the beneficiaries. The Court pointed out that if the Government were able to pay the nominal amount ordered in the original judgments without paying for the decrease in value caused by its delay, the damages' real value would eventually become so small that it would be merely symbolic. The Court further stated that its interpretation of the Damages Judgments as requiring maintenance of the purchasing power of the trust could only be considered "exaggerated" if the Central Bank of Honduras, as fiduciary agent, was incapable of performing this function. The Court also cited Article 68(1) of the Convention which states: "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Finally, the Court invoked the general international law principle of *pacta sunt servanda*, which obligates states to perform their treaty obligations in good faith, and cited Honduras' specific acceptance of this duty through Article 26 of the Vienna Convention on the Law of Treaties, to which Honduras is party.¹⁴

In late 1990 Honduras paid to the victims' families the amount of lempiras specified in the *original* Damages Judgments that had been due by October 20, 1989. It did not pay interest from that date, as ordered by the Interpretation Judgments; nor did it compensate for the loss caused by the decrease in value of the lempira since the time the judgments were due. Accordingly, pursuant to Article 65(1) of the Convention,¹⁵ the Court in its 1990 Annual Report informed the OAS General Assembly that Honduras had failed to comply with its judgments of August 17, 1990. The Government of Honduras has since advised representa-

12. *Id.*

13. See letter dated November 12, 1990 from Judge Hector Fix-Zamudio, President of the Inter-American Court, to Ambassador Edgardo Sevilla Idiáquez.

14. Article 26 of the Vienna Convention states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

15. Article 65(1) directs the Court to "specify . . . the cases in which a state has not complied with its judgments."

tives of the United States Government and the American Bar Association that the matter of full compliance with the judgments remains under consideration.

ANALYSIS

Honduras' position as stated in its October 1990 letter was essentially that it would not comply with the August 1990 Interpretation Judgments because it believed they were wrongly decided.¹⁶ This position is inconsistent with one of the essential underpinnings of any viable legal system—i.e., that given appropriate jurisdiction, a court's decision is enforceable against the parties, regardless of their consent. It also violates Honduras' obligations as a State Party to the Convention. Honduras assumed an unqualified duty to comply with the Court's decisions when it ratified the Convention and recognized the Court's jurisdiction.¹⁷ This duty is not excused when a State Party *disagrees* with a ruling of the Court.¹⁸ Such an exception would deprive the Court of any real authority and render the rights recognized in the Convention illusory.

Honduras' exception to the Interpretation Judgments not only lacks legal relevance, it is without merit as well. The argument that the Interpretation Judgments "modified" the original Damages Judgments to increase their nominal value is not well-taken. The Interpretation Judgments did not change the *real* value of the judgments—they merely required Honduras to compensate for the losses caused by its delay in making payment.

It was appropriate for the Court to assess this loss against the party that caused it instead of against the victims' families. If the Court had accepted Honduras' position, Honduras would have *benefitted* at the families' expense by violating the Damages Judgments' deadline for payment. In fact, Honduras' position would have allowed it to delay payment until inflation diminished the real value of the judgment to a token amount. Such a result would be contrary to the purpose of

16. Honduras has not expressly contested the Court's *authority* to issue the Interpretation Judgments. To the extent that Honduras' objections to the judgments might be read as an implied challenge to that authority, the objections are not meritorious. The Court expressly stated in both the judgments on the merits and the Damages Judgments that it retained jurisdiction in the case to supervise payment of damages. In addition, Article 67 of the Convention empowers the Court to interpret its own judgments. Finally, it is a well-established principle of international law that international tribunals have authority to rule on the limits of their own jurisdiction. *See, e.g., Nottebohm Case*, International Court of Justice, I.C.J. Rep. 111, 119, 120 (1953); *Interpretation of the Greco-Turkish Agreement of December 1st*, P.C.I.J., Ser. B, No. 16 at 20 (1928) ("As a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction.").

17. *See* Article 68(1) of the Convention, quoted at the top of page 7.

18. Honduras is also bound to comply with the Court's decision as a party to the Vienna Convention on the Law of Treaties, and by the fundamental international law principle of *pacta sunt servanda*. *See* footnote 13 and accompanying text. In addition, as a party to the Charter of the Organization of American States, Honduras has agreed in general to the principle of "the faithful fulfillment of obligations derived from treaties and other sources of international law." (OAS Charter, Article 5.)

the judgments, which was to fully compensate the victims' families for the harm done to them.¹⁹ It would also encourage future judgment debtor nations to ignore the Court's payment deadlines.

It is particularly important that Honduras comply fully with the Interpretation Judgments since the *Velásquez* and *Godínez Cruz* cases represent the Court's first use of its contentious jurisdiction. If the first State Party ever to be taken before the Court were to fail to comply fully with the Court's judgments, both the credibility of the Court and the viability of the entire Inter-American human rights system would be seriously jeopardized. If that system is to realize its goal of protecting individual rights through the rule of law, States Parties to the Convention must abide fully by their commitments to accept the Court's rulings as binding. Without such acceptance, any legal system risks ineffectiveness, if not total failure.

The Government of Honduras is to be commended for ratifying the Convention. It is likewise to be commended for being one of only 13 OAS states to accept the Court's jurisdiction. It participated in the proceedings before the Court, and has partially satisfied the Damages Judgments. What is important now is that Honduras complete its compliance with the Court's judgments honorably. It can and should do so.

RECOMMENDED ACTION

It is recommended that the American Bar Association: (1) respectfully urge Honduras to comply fully and without delay with the August 1990 Interpretation Judgments of the Inter-American Court of Human Rights; and (2) call upon the United States Government to respectfully urge the Government of Honduras to so comply. The President of the American Bar Association should send copies of this resolution to the following individuals: the President of Honduras; the Foreign Minister of Honduras; the President of the Inter-American Court of Human Rights; the President of the Inter-American Commission on Human Rights; the President of the United States; the Secretary of State; the Assistant Secretary of State for Inter-American Affairs; the Assistant Secretary of State for Human Rights and Humanitarian Affairs; the U.S. Permanent Representative to the OAS; the President of the 1992 OAS General Assembly; and the Executive Secretary of the OAS.

Gerold W. Libby, Chairman
Section of International Law
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19. The Court stated in paragraph 27 of the Interpretation Judgments that "fair compensation" under Article 63(1) of the Convention should attempt to provide "full restitution" to victims or their families for the injuries suffered as a result of a violation of the Convention. The Court further stated that such restitution is provided by a certain *real* value of damages. *Id.*, para. 32.