

Amicus Curiae
by the International Commission of Jurists
relating to the interim measures of the
European Court of Human Rights
(46827/99 Mamatkulov and 46951/99 Abdurasulović v. Turkey)

I. Introduction

01. The International Commission of Jurists has the honour of submitting to the European Court of Human Rights for consideration and examination the present *Amicus Curiae* relating to the binding character of the interim measures provided for under article 39 of the Rules of the Court within the context of the Mamatkulov v. Turkey (46827/99) and Abdurasulović v. Turkey (46951/99) cases.

02. The International Commission of Jurists (ICJ) is an international non-governmental organization, founded in 1952 in Berlin, devoted to promoting understanding and observance of the rule of law and legal protection of human rights throughout the world. The ICJ is headquartered in Geneva, and has a limited composition of 45 members, all of whom are eminent jurists representing the various legal systems around the world. In carrying out its work, the ICJ relies on a network of more than 90 national sections and affiliated legal organizations. The ICJ enjoys consultative status with the United Nations Economic and Social Council, UNESCO, the Organization of African Unity and the Council of Europe. The ICJ maintains cooperative relations with the Organization of American States and, on numerous occasions, has been authorized to present *Amici Curiae* before the Inter-American Court and Inter-American Commission on Human Rights.

03. The ICJ works for the rule of international human rights law as well as for the observance by States of their international obligations in this area, in particular the decisions of courts and international mechanisms of human rights protection. Hence the legitimate interest of the ICJ in the present cases.

04. The ICJ considers that in light of the general principles of international law, treaty law and international jurisprudence, the interim measures provided for in article 39 of the Rules of the Court are of a compulsory character for the State concerned. In arguing to justify this opinion, this *Amicus Curiae* will address the following points: the jurisprudence and legal doctrine on this matter in the universal human rights system, (Point II) and in the inter-American system (Point III), the jurisprudence of the International Court of Justice (Point IV), the teleological interpretation of the interim measures (Point V) and our conclusions based on our presentation of the previous points (Point VI).

II. The interim measures and the universal system of human rights protection

05. The procedures for individual submission of a case to the Court for violation of a right and/or an obligation of a conventional origin foreseen under United Nations human rights treaties are liable to lead to the adoption of interim measures. In any

case, such measures are provided for in the rules of procedure of the various Committees charged with quasi-jurisdictional monitoring of the respective treaties.¹

1.- The interim measures and the United Nations Human Rights Committee.

06. The system of individual complaints concerning violations of rights set out in the International Covenant on Civil and Political Rights² also involves a set of "interim measures" (referred to additionally as « provisional measures »). These are provided for under article 86 of the Rules of Procedure of the Human Rights Committee.³

07. The problem of non-respect of the interim measures has been addressed repeatedly by the Human Rights Committee, in particular when the right to life and the right not to be tortured were involved. According to the jurisprudence of the Human Rights Committee, the non-respect of interim measures constitutes a breach by the State concerned of the legal obligations set out in the International Covenant on Civil and Political Rights and in its Optional Protocol, as well as of the duty of the State to cooperate with the Committee within the framework of the procedure for individual communications. For the Human Rights Committee, *a contrario*, the respect of the interim measures is obligatory.

08. In 1994, the Human Rights Committee dealt with the first case of refusal by a State to respect interim measures enjoining it to grant a stay of execution in a capital punishment case. The Committee adopted a formal decision on the matter, expressing its indignation regarding the fact that the State did not accede to the request addressed to it in accordance with article 86, and inviting it to make sure that such a situation not be repeated in the future. In its decision, the Committee recalled that "the State party, upon ratifying the Optional Protocol, undertook to cooperate with the Committee under the procedure [foreseen by the Protocol]" and emphasized "that the State party has failed to comply with its obligations, both under the Optional Protocol and under the Covenant."⁴

09. In 1998, following the execution of several persons by the authorities in Sierra Leone despite the adoption of interim measures ordering a stay of this execution, the Human Rights Committee adopted a decision in which it noted that as a result of this

¹ See article 63 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women); article 108 of the Rules of Procedure of the Committee against Torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); article 86 of the Rules of Procedure of the Human Rights Committee (International Covenant on Civil and Political Rights and its Optional Protocol); and article 94 of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination (International Convention on the Elimination of All Forms of Racial Discrimination).

² The system of individual complaints or communications is established by the Optional Protocol relating to the International Covenant on Civil and Political Rights.

³ Article 86 stipulates: " The Committee may, prior to forwarding its views on the communication to the State party concerned, inform that State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation. In doing so, the Committee shall inform the State party concerned that such expression of its views on interim measures does not imply a determination on the merits of the communication." United Nations document CCPR/C/3/Rev.6 of 24 April 2001.

⁴ Decision of 26 July 1994, *Case of Glen Ashby v. Trinidad and Tobago*, Communication No. 580/1994, Human Rights Committee Annual Report to the UN General Assembly Official documents – Forty-ninth Session, Supplement No 40 (A/49/40), United Nations, New York, 1994, paragraph 411.

action, "the State party has failed to comply with its obligations, both under the Optional Protocol and under the Covenant", because "the State party, upon ratifying the Optional Protocol, undertook to cooperate with the Committee under the procedure".⁵ According to this same juridical logic, in the case where a State had not complied with the provisional measures required, the Human Rights Committee concluded that if the State Party had observed these measures, " [its actions would] in any event, have been compatible with the State party's international obligations.."⁶ It is important to note that one of the Members of the Human Rights Committee, in the case of a person extradited despite interim measures stipulating that the extradition should be deferred, considered that "in extraditing [the person] without taking into account the...request [for interim measures], Canada failed to display the good faith which ought to prevail among the parties to the Protocol and the Covenant." ⁷

10. The Human Rights Committee has also considered that the absence of direct applicability of the International Covenant on Civil and Political Rights by national courts could not be invoked in order to elude the obligation to observe interim measures.⁸ Thus, in its decision concerning the case of *Robert v. Barbade*, the Human Rights Committee considered that by ratifying the Covenant and the Optional Protocol:

" Barbados has undertaken to fulfil its obligations thereunder and has recognized the Committee's competence to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant. While the Covenant is not part of the domestic law of Barbados which can be applied directly by the courts, the State party has nevertheless accepted the legal obligation to make the provisions of the Covenant effective. To this extent, it is an obligation for the State party to adopt appropriate measures to give legal effect to the views of the Committee as to the interpretation and application of the Covenant in particular cases arising under the Optional Protocol. This includes the Committee's views under rule 86 of the rules of procedure on the desirability of interim measures of protection, to avoid irreparable damage to the victim of the alleged violation..⁹

11. In a recent decision, the Human Rights Committee underlined the binding character of interim measures and stressed that:

⁵ Human Rights Committee, decision of 4 November 1998, Communications Nos. 839, 840 & 841/1998, *Gilbert Samuth Kandu-Bo, Khemalai Idrissa, Tamba Gborie, Alfred Abu Sankoh, Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King and Jim Kelly Jalloh v. Sierra Leone*, United Nations document CCPR/C/64/D/839, 840 & 841/1998, of 4 November 1998.

⁶ Human Rights Committee, Communications Nos. 575 & 576/1994, decision of 4 April 1995, *Lincoln Guerra and Brian Wallen v. Trinidad and Tobago*, United Nations document CCPR/C/53/D/575 & 576/1994, du 4 avril 1995, paragraphe 6.5.

⁷ Human Rights Committee, Communication No. 469/1991, *Charles Chitah Ng v. Canada*, United Nations document CCPR/C/49/D/469/1991, 7 January 1994, Appendix G "Individual opinion submitted by Mr. Francisco José Aguilar Urbina (dissenting)", paragraph 12.

⁸ Human Rights Committee, decision of 19 July 1994, Communication No. 489/92, *Peter Bradshaw v. Barbados*, United Nations document CCPR/C/51/D/489/1992, 19 July 1994, paragraph 5.3.

⁹ Human Rights Committee, decision of 19 July 1994, Communication No. 504/92, *Denzil Roberts v. Barbados*, Document des Nations Unies CCPR/C/51/D/504/1992, 10 August 1994, paragraph 6.3.

" By adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and Article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (Article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

Quite apart, then, from any violation of the Covenant charged to a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile [...] Having been notified of the communication, the State party breaches its obligations under the Protocol, if it proceeds to execute the alleged victims before the Committee concludes its consideration and examination, and the formulation and communication of its Views. It is particularly inexcusable for the State to do so after the Committee has acted under its rule 86 to request that the State party refrain from doing so. [...]

Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol."¹⁰

2.- Interim measures and the United Nations Committee against Torture

12. Article 108, paragraph 9, of the Rules of Procedure of the Committee against Torture provides for the adoption of interim measures in the procedures for individual petitions concerning violation of provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹

13. The Committee against Torture has pronounced on numerous occasions concerning the non-observance of interim measures by a State Party. Thus, in the case of a Peruvian citizen resident in Venezuela and extradited to Peru in spite of

¹⁰ Human Rights Committee, decision of 19 October 2000, Communication No. 869/1999, *M. Dante Piandiong, M. Jesus Morallos and M. Archie Bulan v. Philippines*, United Nations document CCPR/C/70/D/869/1999, paragraphs 5.1, 5.2 and 5.4.

¹¹ Article 108, paragraph 9 "In the course of the consideration of the question of the admissibility of a communication, the Committee or the Working Group or a special rapporteur designated under rule 106, paragraph 3, may request the State party to take steps to avoid a possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation. Such a request addressed to the State party does not imply that any decision has been reached on the question of the admissibility of the communication." (United Nations document CAT/C/3/Rev.2 of 13 July 1997).

interim measures stipulating that the expulsion or extradition be deferred, the Committee against Torture considered that the State " failed to comply with the spirit of the Convention".¹² The Committee also judged :

"that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee."¹³

14. In a recent decision concerning the extradition to India of an Indian national living in Canada despite interim measures requesting Canada to defer the extradition, the Committee against Torture reiterated this approach. It noted that the non-observance of the interim measures required "could, moreover, nullify the end result of the proceedings before the Committee."¹⁴

III. The inter-American system of human rights protection

15. Provisional or interim measures are provided for in the compulsory jurisdiction procedure of the Inter-American Court of Human Rights as well as in the procedures for individual petition of the Inter-American Commission on Human Rights. Nevertheless, the legal foundations for these measures vary: the provisional measures of the Court have their origin in the American Convention on Human Rights¹⁵, while those of the Inter-American Commission on Human Rights are provided for under the Commission's Rules of Procedure.¹⁶

16. The binding character of the provisional measures of the Inter-American Court of Human Rights is incontestable as a result of the provisions of the Convention itself.¹⁷ Furthermore, referring to the principle of effectivity, the Court has underlined on numerous occasions that observation of the provisional measures was necessary for the basic effectiveness of its decisions.¹⁸ In many rulings involving provisional measures, the Court noted that by reason of the fundamental objective of the American Convention on Human Rights, namely to guarantee effective protection of human rights, "the State Parties [were obliged] to refrain from taking actions that

¹² Committee against Torture, decision of 10 November 1998, Communication No. 110/1998 *Rosana Nuñez Chipana v. Venezuela*, United Nations document CAT/C/21/D/110/1998, of 16 December 1998, paragraph 8.

¹³ Ibidem.

¹⁴ Committee Against Torture, decision of 16 May 2000, Communication No. 99/1997, *T.P.S. v. Canada*, United Nations document CAT/C/24/D/99/1997, of 4 September 2000, paragraph 15.6.

¹⁵ Article 63 of the American Convention on Human Rights.

¹⁶ Article 29 of the (former) Rules of Procedure of the Inter-American Commission on Human Rights and article 25 of the new Rules of Procedure of the Inter-American Commission on Human Rights, in force as of 1 May 2001.

¹⁷ See the Prologue by the President of the Inter-American Court of Human Rights, M. Antônio Augusto Cançado Trindade, in Serie E: Medidas Provisionales N° 2 - Compendio: Julio 1996 -2000, Organization of American States – Inter-American Court of Human Rights, San José, Costa Rica, 2000, paragraph 15.

¹⁸ See, among others, Inter-American Court of Human Rights, ruling of 1 August 1991, *Chunimá v. Peru* paragraph 5, Serie E: Medidas Provisionales N° 1 Compendio: 1987-1996; rulings of 27 May, 19 June and 25 September 1999, *James et al. v. Trinidad and Tobago*, paragraphs 11, 6 and 12 respectively, Serie E: Medidas Provisionales N° 2 - Compendio: Julio 1996 -2000, Op. cit.

would run counter to the *restitutio in integrum* of the rights of the presumed victims."¹⁹

17. Beyond the binding character of the provisional measures due their nature as conventional instruments, several Presidents of the Inter-American Court of Human Rights have underlined the importance and the *raison d'être* of these measures. In the context of international disputes, their purpose is to preserve the rights of the parties, ensure the integrity and effectiveness of the decision on the merits, and avoid that the procedure be stripped of all meaning.²⁰ As Asdrúbal Aguiar, former member of the Inter-American Court of Human Rights, has stressed:

"These provisional measures [...] are the concrete expression of the principal of procedural law which requires that the balance between the parties in a litigation be guaranteed and which allows the court to give effect, in practice, to the consequences of the responsibility engaged in the contentious procedure."²¹

18. The binding scope of the provisional measures of the Inter-American Commission on Human Rights is linked to that of the recommendations the Commission has adopted within the framework of individual petitions. Traditionally, the Inter-American Court of Human Rights has considered that recommendations issued by the Commission were to be interpreted as such according to the ordinary meaning of the term.²² Nevertheless, the Court has judged that by reason of the principle of *pacta sunt servanda* and the duty to fulfill in good faith the obligations ensuing from a treaty, and more particularly if this involves a human rights treaty, the State has:

"the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is "*to promote the observance and defense of human rights*" ".²³

19. Although the Court only made reference to the recommendations of the Commission, an identical argumentation could be applied *mutatis mutandis* to the provisional measures of this same Commission. This is the interpretation made by the latter when, invoking the jurisprudence of the Court, it urged States to comply with its interim measures.²⁴

¹⁹ Inter-American Court of Human Rights, rulings of 25 May (paragraph 2.g) and of 25 September 1999 (paragraph 10), *James et al. v. Trinidad and Tobago*, Series E: Medidas Provisionales N° 2 - Compendio: Julio 1996-2000, Op. Cit. (Original in Spanish, free translation).

²⁰ See Héctor Fix-Zamudio, in Prologue, Series E: Medidas Provisionales N°1 Compendio: 1987-1996, Organization of American States – Inter-American Court of Human Rights, San José, Costa Rica, 1996, page iii, and Antônio Augusto Cançado Trindade, Op. Cit, page ix, paragraph 7.

²¹ Asdrúbal Aguiar, "Apuntes sobre las medidas cautelares en la Convención Americana sobre Derechos Humanos", in La Corte y el Sistema Interamericano de Derechos Humanos, Rafael Nieto Navia Editor, 1st. edition, San José, Costa Rica, 1994, page 19 (original in Spanish, free translation).

²² Judgments of 8 December 1995, *Caballero Delgado and Santana v. Colombia*, paragraph 22; and of 29 January 1997, *Affaire Genie Lacayo v. Nicaragua*, paragraph 93.

²³ Judgment of 17 September 1997, *Loayza Tamayo v. Peru* paragraph 80.

²⁴ Annual Report of the Inter-American Commission on Human Rights - 1998, Organization of American States document, OEA/Ser.L/V/II.102, Doc. 6 rev, of 16 April 1999, Chapter VII, Recommendation 15; and Annual Report of the Inter-American Commission on Human Rights - 1997, Organization of American States document

20. In two rulings involving provisional measures, the Inter-American Court of Human Rights implicitly recognized the binding character of the interim measures issued by the Commission. The Court considered that State Parties to the American Convention on Human Rights:

"must implement, in good faith, (*pacta sunt servanda*), all of the provisions of the Convention, including the provisions relating to the functioning of the two supervisory bodies of the Inter-American System [the Court and the Commission]; and, in accordance with the fundamental purpose of the Convention, which is that of guaranteeing the effective protection of human rights (articles 1.1, 2, 51 and 63.2), the State Parties must refrain from undertaking actions which run counter to the *restitutio in integrum* of the rights of the presumed victims."²⁵

IV. Provisional measures and the International Court of Justice

21. The adoption of provisional measures is also provided for within the framework of judicial settlement of international disputes by the International Court of Justice. Article 41 of the Statute of the Court²⁶ stipulates:

"1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council."

22. For many years, the legal scope of the provisional measures was the subject of controversy.²⁷ The debate was centered on the import of the phrases "power to indicate" ("*pouvoir d'indiquer*" in the French version), in the first paragraph of article 41, and "measures suggested" ("*indication*") in the second paragraph. Basing itself on an analytical or strictly linguistic interpretation, an important part of legal doctrine arrived at the conclusion that given the use of the phrase "measures suggested" in English, the provisional measures were not of a binding character.

23. The International Court of Justice has indicated in a number of cases that the purpose of the provisional measures is to preserve the respective rights of the parties in dispute.²⁸ Thus, in an order, the Court specifically stated that the indication of provisional measures :

OEA/Ser.L/V/II.98, Doc. 6, of 17 February 1998, Chapter VII, recommendation 12.

²⁵ Inter-American Court of Human Rights, rulings of 25 May (paragraph 2.g) and of 25 September 1999 (paragraph 10), *James et al v. Trinidad and Tobago*, Serie E: Medidas Provisionales N° 2 - Compendio: Julio 1996-2000, Op. Cit. (Original in Spanish, free translation).

²⁶ The Rules of the Court, in its Part III, Section D "Incidental Proceedings", regulates interim protection in articles 73 to 78.

²⁷ See, for example, N. Quoc Dinh, P. Daillier and A. Pellet, *Droit international Public*, L.G.D.J., 5th edition., Paris, 1994, pages 852-853; and J. Sztucki, *Interim Measures in the Hage Court. An Attempt at a Scrutiny*, Deventer-Kluwer, pages 35-60 and 270-280

²⁸ See, among others, the ruling of 27 June 1986, *Nicaragua v. United States of America*, paragraphe 289.

" has as its object to preserve the respective rights of the parties pending the decision of the Court, and presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings; and [...] that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court ".²⁹

24. The International Court of Justice put an end to this controversy in its judgment of 27 June 2001 - Lagrand Case. Basing itself on the principle of customary law taken from article 33 of the Vienna Convention on the Law of Treaties, according to which the clauses of a treaty are to be interpreted taking into account the object and purpose of the treaty, the International Court of Justice concluded that the provisional measures were legally binding. The Court recalled the jurisprudence of the Permanent Court of International Justice according to which there exists a:

"principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute"³⁰.

25. The International Court of Justice, in its judgment of 27 June 2001, specified that:

" The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein, and in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved. It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding, inasmuch as the power in question is based on the necessity, when the circumstances call for it, to safeguard, and to avoid prejudice to, the rights of the parties as determined by the final judgment of the Court. The contention that provisional measures indicated under Article 41 might not be binding would be contrary to the object and purpose of that Article."³¹

V. A teleological interpretation of interim measures

26. An interpretation of the scope of interim or provisional measures cannot be dissociated from the procedure during the course of which they are provided for and

²⁹ Order of 13 September 1993, Case relating to the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), General list No. 91, paragraph 35.

³⁰ Permanent Court of International Justice, Order of 5 December 1939, *Electricity Company of Sofia and Bulgaria*, P.C.I.J. series A/B, No. 79, p. 199.

³¹ International Court of Justice, Judgment of 27 June 2001, *Lagrand Case, Germany v. United States of America*, General list N° 104. Paragraph 102.

the main legal act (decision on the merits) which they are aimed at protecting. To make the determination of the legal scope of interim measures dependant only on a consideration of their conventional or statutory basis would empty these measures of all substance and ignore their purpose and intent. Moreover, such a restrictive interpretation would seriously undermine the international procedures established by the treaties, and would have grave consequences for the fulfillment of the international obligations arising from them.

27. The interpretation of conventional norms has to be undertaken with a view to the principle of good faith and considering the object and purpose of the treaty as well as the effectiveness principle. This also applies with regard to regulatory provisions, which must be interpreted in light of the conventional norms with which they are connected. In this regard, *a fortiori*, when it is a matter of human rights treaties, teleological interpretation plays an important role.

28. Interim or provisional measures are regulated differently, depending on whether they involve the procedures for individual petition under the United Nations system or the Inter-American Court or Inter-American Commission on Human Rights, or the judicial settlement of disputes before the International Court of Justice. In some cases, they are provided for in the treaty itself and in others in the rules of procedure. That said, it is nonetheless the case that, in all of these procedures, the interim or provisional measures have the same object and purpose: namely, to protect the balance of the parties *pendente litis* and to guarantee the integrity and effectiveness of the final decision by the international organ. In support of the binding character of the interim or provisional measures, the international organs invoke both the object and purpose of these measures – either as the main argument³² or as a secondary or related argument³³ – and the principle of *pacta sunt servanda*.

29. Interim or provisional measures are an institution of international procedural law recognized within the framework of international disputes. The object and purpose of these measures is to preserve the rights claimed by the parties to the procedure until the dispute is settled by the competent international organ, as well as to ensure the integrity and effectiveness of the decision on the merits, while avoiding that harm be done to the rights claimed by the parties *pendente litis*, which would annul the effects of the action taken by the competent organ. Interim or provisional measures enable the State concerned to fulfill its obligation and to conform to the final decision of the international organ and, if need be, to proceed to reparation of the principle fact, which includes restitution when this is possible.

30. There is no doubt as to the binding character of interim or provisional measures *a fortiori* in a case where the treaty itself confers *expressis verbis* a compulsory legal character on the final decision of the international organ. Indeed, the parties concerned must refrain from taking any measure liable to have prejudicial repercussions on the execution of the legally binding decision. Such is the case with the interim measures provided for in article 39 of the Rules of the European Court Court of Human Rights, whose definitive judgments are legally binding by virtue of

³² This is the case with the Human Rights Committee, the Committee against Torture and the Inter-American Commission on Human Rights.

³³ This is the case for the Inter-American Court of Human Rights.

article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

VI. Conclusions

31. For the reasons stated above, the International Commission of Jurists considers that the interim measures provided for in article 39 of the Rules of the European Court of Human Rights are binding.

32. All State Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms who are served with a request for interim measures, have the legal duty to respect these measures and to abstain from any act or omission which would be detrimental to the integrity and the effectiveness of the final judgment of the Court.