INTER-AMERICAN COURT OF HUMAN RIGHTS

CANTORAL BENAVIDES CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF SEPTEMBER 3, 1998

In the Cantoral Benavides Case,

the Inter-American Court of Human Rights, composed of the following judges :

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Judge
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge
Fernando Vidal-Ramírez, Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary

pursuant to Article 36(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objections interposed by the Republic of Peru (hereinafter "the State" or "Peru").

1 Judge Alirio Abreu-Burelli informed the Court that for reasons of *force majeure* he could not be present at the final deliberation and signing of this judgment.

I
INTRODUCTION OF THE CASE

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on August 8, 1996. It originated with petition No. 11.337 of April 18, 1994, received by the Secretariat of the Commission on April 20, 1994.

II
FACTS AS SET FORTH IN THE APPLICATION

2. In the following paragraphs, the Court will summarize the facts of the present case as set forth in the application submitted by the Inter-American Commission:

a) On February 6, 1993, Luis Alberto Cantoral-Benavides was arbitrarily detained and tortured by agents of the National Anti-Terrorism Bureau (hereinafter "DINCOTE") of the Peruvian National Police;

b) Cantoral-Benavides was tried in the Military Jurisdiction of Peru for the crime of treason. On March 5, 1993, the Naval Special Judge acquitted him, and on April 2, 1993, the Special Navy War Council, on appeal, upheld the decision of the Special Judge;

c) On August 11, 1993, the Supreme Council of Military Justice, in deciding the appeal for annulment of the Judgment of April 2, 1993, acquitted him and ordered his release. Nevertheless, due to a mistake in the execution of the judgment, his twin brother, Luis Fernando Cantoral-Benavides, who had been sentenced to a twenty-five year prison term, was released in his stead;

d) On September 23, 1993, the petitioners filed a writ of *habeas corpus* on behalf of Cantoral-Benavides, which was rejected by a resolution rendered that same day by the Twenty-Sixth Criminal Court of Lima;

e) On September 24, 1993, the Supreme Council of Military Justice decided an extraordinary motion for review of the Judgment of August 11, 1993, that was interposed by the Supreme Deputy Military Prosecutor and, thereby, ordered the case removed to civilian jurisdiction;

f) On October 22, 1993, the petitioners filed a motion for review of the Judgment of September 24, 1993, with the Supreme Court of Justice. There is a lack of precision in the terminology referring to the decision adopted by the Court. In its application, the Commission stated that the Court found that it lacked jurisdiction to hear the matter, (*cfr.* application, p. 17), while in its brief of observations on preliminary objections, the Commission stated that the appeal was declared inadmissible. (*cfr.* brief of observations, p. 19);

g) Cantoral-Benavides was tried in the regular courts for the crime of terrorism; on October 8, 1993, the Forty-Third Criminal Court of Lima issued a writ of inquiry; on October 10, 1994, the "faceless" Special Tribunal of the regular court system, on the basis of the same facts and charges sentenced him to a twenty-year prison term. A motion for annulment of the Court's ruling was filed with the Supreme Court of Justice, and on October 6, 1995, the earlier ruling was upheld.

h) On October 9, 1996, Cantoral-Benavides requested a reprieve from the *ad hoc* Commission created by Law 26,655. In application of the provisions of the aforementioned law, he was released under Supreme Resolution 078-97-JUS of June 24, 1997.

III
PROCEEDINGS BEFORE THE COMMISSION

3. On April 18, 1994, a petition on behalf of Cantoral-Benavides was transmitted via fax to the Inter-American Commission, and on April 20, 1994, the original copy of the petition was received at the Secretariat. On August 24, 1994, the Commission forwarded to the State the pertinent parts of the petition pursuant to Article 34 of its Regulations.

4. On September 7, 1994, Peru requested that the Commission refrain from taking up the present case because "the time period for filing the petition had expired, as it had been filed after the period of six months established by Article 46(1)(b) of the Convention."

5. On November 25, 1994, the petitioners informed the Commission that the proceeding before the regular court was pending the decision of the Supreme Court of Justice on the appeal for annulment of the Judgment of October 10, 1994 (*supra* 2.g) rendered by the "faceless special tribunal of the regular court system."

6. On February 15, 1995, the State asserted that the Commission did not have jurisdiction to consider the case due to "the non-exhaustion of domestic remedies." On March 2, 1995, the Commission, in response to the State, stated that it was not possible to raise that objection in "the situation in which a person has been tried and acquitted by the Military Court for the crime of 'Treason against the Fatherland' then finds himself being tried and in the process of being judged by the regular court for the same facts, under the legal title of the crime of 'Terrorism.' The Commission explained that the ground for its reasoning was that the proceedings in the latter instance violated Article 8(4) of the American Convention on Human Rights."

7. On March 5, 1996, the Commission approved Report No. 15-A/96 but decided not to notify Peru until the parties responded to an offer of friendly settlement, which was made the next day by the Commission in accordance with Article 48(1)(f) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention." The petitioners were willing to take part in the suggested proceeding under certain conditions. The State, for its part, requested and obtained an extension to respond to the possibility but did not later respond.

8. On May 8, 1996, the Commission transmitted to Peru, Report Number 15-A/96 which in the resolutory part resolved:

> 1. To declare that the Peruvian State is responsible for the violation of Luis Alberto Cantoral-Benavides' rights to personal liberty,

humane treatment and a fair trial as set forth in Articles 7, 5, and 8 respectively of the American Convention on Human Rights, all in accordance with the failure to comply with the obligations set forth in Article 1(1).

2. To recommend to the Peruvian State that, in consideration of the examination of the facts and law made by the Commission, it immediately release Luis Alberto Cantoral-Benavides upon receiving notification of this Report.

3. To recommend to the Peruvian State that it pay compensation to the claimant in the instant case, for the injury caused as a result of the denounced facts which have been verified by the Commission.

4. To request that the Government of Peru inform the Inter-American Commission on Human Rights, within a period of forty-five days, of any measures it has taken in the instant case in accordance with the recommendations contained in paragraphs 2 and 3 above.

5. To submit the present case to the Inter-American Court of Human Rights if, within the period established in the preceding paragraph, the State of Peru does not implement the recommendations made by the Commission.

9. On July 5, 1996, by means of note No. 7-5-M/204, the State transmitted to the Commission a copy of the report prepared by a Task Force composed of representatives of various ministries of the State (hereinafter "the Task Force") in which it stated that during the processing of the case it had indicated several times that there were ongoing judicial proceedings, and that, therefore, domestic remedies had not been exhausted. Moreover, it asserted that there had been a lapse in the right invoked pursuant to Article 46(1)(b) of the Convention. Finally, it maintained that it was not possible to respond to the recommendations contained in Report No. 15-A/96.

10. On August 8, 1996, the Commission submitted this case to the Court (*supra* 1).

IV
PROCEEDINGS BEFORE THE COURT

11. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights and Articles 26 et seq. of the Court's Rules of Procedure then in force[2]. The Commission submitted this case to the Court for a decision as to whether there has been a violation of the following articles of the Convention: 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), and of Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture. According to the application, these violations were suffered by Cantoral-Benavides due to the unlawful deprivation of his liberty by the State, following his arbitrary arrest and imprisonment, torture, cruel and inhuman treatment, violation of the judicial guarantees, and double jeopardy based on the same facts.

12. The Inter-American Commission named Carlos Ayala Corao and Jean Joseph Exumé as its delegates; Domingo E. Acevedo as its attorney; and as its assistants Iván Bazán-Chacón, Rosa Quedena, José Miguel Vivanco, Viviana Krsticevic, Ariel Dulitzky, and Marcela Matamoros, who according to information from the Commission to the Court would also act as representatives of the victim. By note of June 18, 1998, Ms. Matamoros informed the Court that she would not participate in the present case.

13. On August 23, 1996, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified the State of the receipt of the application and informed it of the time periods to answer the application, raise preliminary objections, and name its representatives. The State was also invited to designate a judge *ad hoc*.

2 Rules of Procedure approved by the Court at its Twenty-Third Regular Session, held January 9-18, 1991; amended on January 25, 1993, July 16, 1993 and December 2, 1995.

14. On September 6, 1996, Peru informed the Court that it had appointed Mario Cavagnaro-Basile as its agent. On June 4, 1998, it named Walter Palomino-Cabezas as its alternate agent.

15. On September 20, 1996, Peru raised seven preliminary objections and asked the Court to admit them or alternately to join them to the merits. Peru also requested an extended period to "interpose new objections in addition to the earlier ones," which request was not granted by the Court. The preliminary objections raised by the State are the following:

First Objection:

failure to exhaust the domestic remedies of Peru when the Inter-American Commission on Human Rights, in accordance with Art. 37 of its regulations, admitted the petition presented on behalf of the Peruvian citizen Luis Alberto Cantoral-Benavides.

Second Objection:

lapse of the application as to the allegations of illegal and arbitrary arrest, torture and illegal treatment by agents of DINCOTE, and the subsequent judgment of Luis Alberto Cantoral-Benavides in a military court.

Third Objection:

lapse of the application to the extent that it declares that the Peruvian State is responsible for the violation of Article 7 of the Convention to the detriment of Luis Alberto Cantoral-Benavides, for ordering the release of his twin brother, instead of ordering his release in compliance with the August 11, 1993 Judgment of the Supreme Council of Military Justice.

Fourth Objection:

lapse of the part of the application that requests that the Court declare the Peruvian State responsible, because the proceedings

against Luis Alberto Cantoral-Benavides for the crime of treason against the fatherland in the exclusive military jurisdiction and then for terrorism in the regular jurisdiction, violated to his detriment the rights and guarantees of legal due process, including the right to be heard by an independent and impartial tribunal (Article 8(1) of the Convention), the right to the presumption of innocence of the accused (Article 8(1) and (2) of the Convention), the right to a defense (Article 8(2)(d)), the right not to be compelled to be a witness against himself and not to be coerced in any way, (Article 8(2)(g) and (3) of the Convention), the guarantee that prohibits double jeopardy (Article 8(4) of the Convention), and that as a consequence of the violation of the rights set forth in Articles 5, 7, 8, and 25 of the Convention, it has also violated Article 1(1) of the aforementioned Convention as regards the duty to respect the rights and freedoms therein and to ensure and guarantee their free and full exercise to all persons subject to its jurisdiction.

Fifth Objection:

lack of a prior demand, non-exhaustion of domestic remedies, lack of standing, lack of jurisdiction, and the lapse of the part of the application which requests that the Court declare that the Peruvian State has violated Article 2 of the Convention by not modifying the anti-subversion laws which are contrary to the aforementioned Convention.

Sixth Objection:

lapse of the part of the application that demands that the Peruvian State make reparations to Luis Alberto Cantoral-Benavides, by compensating him and ordering his release.

Seventh Objection:

lack of competence as to the application in its entirety.

16. By note of September 26, 1996, in accordance with a request from Peru, the Secretary asked the Commission to remit, "all documents pertaining to the petition presented on behalf of Cantoral-Benavides, includ-

ing resolutions, pronouncements, decisions, and charges" concerning the September 7, 1994, and February 15, 1995 notes from Peru and the November 25, 1994 note from the petitioners, referring respectively, to the alleged lapse, non-exhaustion of domestic remedies, and the information remitted by the petitioners that a motion for annulment was pending in the regular court.

On October 25, 1996, the Commission responded that "it had not adopted a specific resolution, pronouncement, or decision with respect to those documents. The only pronouncement of the Commission regarding the file and the documentation in it was expressed in Report 15-A/96 which was approved by the ICHR at its Ninety-First Regular Session in February of this year."

17. Moreover, in the same note, the Secretary of the Court asked the Commission, in accordance with Peru's request, to remit any documentation pertaining to a writ of *habeas corpus* filed on behalf of Cantoral-Benavides.

18. By note of October 1, 1996, the Secretary asked the State to request a report from the Supreme Court of Justice of Peru as to whether Cantoral-Benavides or some person representing him, interposed a motion for review of the final judgment of October 6, 1995. Said document was not submitted by Peru.

19. On October 4, 1996, the State named Fernando Vidal-Ramírez as judge *ad hoc*.

20. On October 30, 1996, the Commission submitted its written brief on the preliminary objections raised by the State and requested that the Court dismiss them all.

21. On November 13, 1996, the State requested an extension of the period to answer the application, which the Court granted until December 16, 1996.

22. On December 12, 1996, Peru submitted its answer to the application.

23. On March 9, 1998, the President summoned Peru and the Commission to a public hearing to hear their oral arguments on the preliminary objections raised in this case. The aforementioned hearing took place on June 8, 1998.

There appeared

for the Government of Peru:

Walter Palomino-Cabezas, alternate agent
Ana Reátegui-Napurí, counsel, and
Jennie Vizcarra-Alvizuri, counsel

for the Inter-American Commission on Human Rights:

Domingo E. Acevedo, delegate
Marcela Matamoros, assistant and
Iván Bazán, assistant.

24. By note of August 18, 1998, the Secretariat, following the instructions of the Court, requested that Peru, pursuant to Article 44 of the Regulations, provide as best evidence a duly certified copy of the judicial document containing the date that the alleged victim was officially notified of the judgment of September 24, 1993, and a copy of the law that governs all procedural aspects of the extraordinary remedy of review in both the military and regular jurisdicitions. The aforementioned documents were not remitted by the State.

V
JURISDICTION

25. The Court has jurisdiction under Article 62(3) of the Convention, to hear the preliminary objections raised by Peru in the instant case. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the jurisdiction of the Court on January 21, 1981.

VI
EXHAUSTION OF DOMESTIC RESOURCES

26. The Court observes that the objections basically relate to three procedural questions: the alleged failure to exhaust domestic remedies (first and seventh objections); the alleged lapse in the filing of the complaint and the application (second, third, fourth, and sixth objections), and the alleged absence of a prior demand with respect to the alleged violation of Article 2 of the Convention (fifth objection).

27. The Court proceeds to consider the preliminary objections pertaining to the failure to exhaust domestic remedies.

28. As to this objection, the State has argued that:

a) domestic remedies had not been exhausted when the complaint was lodged with the Commission or when the application was filed with the Court;

b) when this complaint was lodged and the release of Cantoral-Benavides was requested, a criminal proceeding was ongoing in Peru before the Forty-Third Criminal Court of Lima, pursuant to Decree-Law No. 25,475 and its supplementary norms, which was the appropriate forum to determine his legal status;

c) Cantoral-Benavides, or another person in his name, could have filed a motion for review of the October 6, 1995 Judgment, in accordance with Articles 361 et seq. of the Code of Criminal Procedure; and

d) the writ of *habeas corpus* filed on behalf of Cantoral-Benavides on September 23, 1993, did not exhaust domestic remedies.

29. As to this objection, the Commission argued that:

a) when the complaint in this case was lodged, the rules contained in Article 46(2)(a)(b) of the Convention were applicable,

since from the moment when Cantoral-Benavides was detained there was no appropriate remedy that he could have interposed, as he was tried pursuant to Decree-Laws No. 25.659 and 26.248, which prohibit the filing of a writ of *habeas corpus* on behalf of those tried for the crime of terrorism or treason against the fatherland;

b) as the State has the burden of proof, it should identify an appropriate remedy to protect the legal right that was infringed and the effectiveness of that remedy. The Commission added that Peru "on raising the objection did not indicate or identify a specific remedy that the accused should have exhausted." Also according to the Commission "it is illogical and legally anomalous to require of a person that raises the issue of double jeopardy, as he has in this case, to exhaust the domestic remedies in the proceeding that said person objects to *ab-initio* and completely;"

c) by promulgating "amnesty" laws No. 26.479 and 26.492, Peru renounced the duty to investigate and sanction those responsible for crimes such as the concealment of the mistake in the execution of the August 11, 1993 Judgment of acquittal, and the torture and other illegal treatment of Cantoral-Benavides that violated fundamental rights in the present case;

d) on October 22, 1993 the petitioners filed an appeal for revision of the Judgment of September 24, 1993, which was declared inadmissible that same day by the Supreme Court of Justice (*supra* 2.f). According to the Commission this attempt satisfied the prerequisite for resort to the international forum.

30. As to the first and seventh preliminary objections, the Court observes that the question of non-exhaustion of domestic remedies is purely one of admissibility. On this point, the Court determines that the State has not specified in an unambiguous manner the remedy which would exhaust the domestic proceedings and the effectiveness of that remedy. In this respect, it must be pointed out that in accordance with the principle of good faith that must prevail in an international proceeding, it is necessary to avoid any ambiguous statement that could result in confusion.

31. As has been stated in the jurisprudence of the Court, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (*Velásquez Rodríguez Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 1, para. 88; *Fairén Garbi and Solís Corrales Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No 2, para. 87; *Godínez Cruz Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 3, para. 90; *Gangaram Panday Case, Preliminary Objections,* Judgment of December 4, 1991. Series C No. 12, para. 38; *Neira Alegría et al. Case, Preliminary Objections,* Judgment of December 11,1991. Series C No. 13, para. 30; *Castillo Páez Case, Preliminary Objections,* Judgment of January 30, 1996. Series C No. 24, para. 40; *Loayza Tamayo, Preliminary Objections,* Judgment of January 31, 1996. Series C No. 25, para. 40).

32. As to the aforementioned preliminary objections, it has been established that in the course of the criminal proceedings before the exclusive military jurisdiction two judgments were issued, one on March 5, 1993, by the Special Naval Court and the other on April 2, 1993, (*supra* 2.b) by the Special War Council; two subsequent judgments were issued by the Supreme Court of Military Justice, one on August 11, 1993 (*supra* 2.c), that decided the motion for annulment of the Judgment of April 2 and the other on September 24 of the same year (*supra* 2.e) that decided an extraordinary remedy of review of the Judgment of August 11, 1993. Finally, a judgment of the Supreme Court of Peru on October 22, 1993 (*supra* 2.f). declared a motion for review of the Judgment of September 24, 1993, to be inadmissible. It is proved that the September 24, 1993 Judgment of the Supreme Council of Military Justice had the effect, provided for in the judgment, of placing Cantoral-Benavides under the jurisdiction of the regular courts, with the result that he was subjected to another criminal trial. Under these circumstances, it is shown that the criminal proceedings before the military jurisdiction had concluded.

33. It is worthwhile to note that when the Supreme Council of Military Justice decided that Cantoral-Benavides should be tried in the regular courts, he was not released despite having been acquitted. On September 23, 1993, the attorneys for Cantoral-Benavides filed a writ of *habeas corpus,* which was dismissed on September 29 of the same year by the Twenty-

Sixth Criminal Court of Lima (*supra* 2 (d)). They then also filed a motion for review on October 22, 1993, that was brought before the Supreme Court of Justice. It is demonstrated, therefore, that Cantoral-Benavides made use of all the domestic remedies, including the writ of review, which is extraordinary in character. With the judgment of the Supreme Court, domestic remedies were exhausted. Consequently, the Court dismisses the first and seventh preliminary objections raised by the State.

34. As to the argument of Peru concerning the alleged failure to exhaust domestic remedies, based on the failure to file a writ of review against the October 6, 1995 Judgment of the Supreme Court of Justice in the civilian jurisdiction, as it has been established already (*supra* 33) that domestic remedies were exhausted with the October 22, 1993 Judgment of the Supreme Court of Peru, the Court dismisses the argument of the State.

VII
LAPSING

35. The Court will now consider the second, third, fourth, and sixth preliminary objections pertaining to the alleged lapse of the complaint to the Commission and of the application to the Court.

36. As to this point, the State argues that:

> a) on the date the complaint was lodged with the Commission or when the Commission transmitted the pertinent parts of it to Peru, the six month period from the date on which the alleged victim was notified of a final judgment as established by Articles 46(1)(b) and 47(a) of the American Convention and by Article 38 of the Regulation of the Commission had already expired, inasmuch as in this case this period should be counted "from the end of the trial in the Exclusive Military Jurisdiction with the execution of the Judgment of August 11, 1993, or September 24, 1993." The State also argued that the Commission was opportunely informed of that circumstance on September 7, 1994;

b) the lapse does not only refer to the trial of Cantoral-Benavides in the military court but also to his alleged arbitrary and illegal arrest, his alleged torture and illegal treatment at the hands of members of DINCOTE on February 6, 1993, and his alleged arbitrary detention due to the order to release his twin brother, Luis Fernando Cantoral-Benavides, instead of ordering his freedom in accordance with the judgment rendered on August 11, 1993 by the Supreme Court of Military Justice; and

c) it is also untimely to make the demand in the application, Section I.(7) Purpose of the Application, for compensation, as the period to make this demand had already expired.

37. As to this point, the Commission argued that:

a) when the State made its allegations concerning lapse it was confused as to the manner in which the time periods should be calculated, since the petition was lodged with the Commission on the date of April 18, 1994, four days before the expiration of the six month period, as counted from the Judgment of October 22, 1993; the original text of the petition was received on April 20, 1994, within the period established by Article 46(1)(b) of the Convention, and the Commission transmitted this petition to Peru on August 24, 1994;

b) Peru contradicted itself when it alleged, on the one hand, that domestic remedies had not been exhausted at the time that the petition was lodged with the Commission and, by maintaining on the other, that when the petition was filed the time period to do so had expired.

c) Peru could have interposed objections of untimeliness in the proceedings before the Commission, but it did so only subsequently before the Court; and

d) The fourth objection is not preliminary in character, but rather refers to a question on the merits.

38. As to the State's allegation of lapse, which underlies the second, third, fourth, and sixth objections, the Court observes that it is contrary to the allegation of failure to exhaust domestic remedies. These contradictory claims in the allegations to the Court do not contribute to judicial economy.

39. The Court having further found that domestic remedies were exhausted on October 22, 1993, when the Supreme Court of Justice of Peru decided the motion for review (*supra* 33), concludes that the alleged lapse is unfounded, since the petition was lodged with the Commission on April 18, 1994, which is within the period of six months set forth in Article 46(1)(b) of the American Convention. Given that the second, third, fourth, and sixth objections are all based on the factual assumption that the period set forth in the aforementioned Article 46(1)(b) of the Convention had expired, the Court dismisses them.

40. By means of Official Letter No. 7-5-M/255 of September 7, 1994, the State informed the Commission of the alleged lapse of the complaint. Nevertheless, that Court has determined that said complaint concerning the combination of violations, which are now alleged by the Commission before the Court was lodged within the period set forth in Article 46(1)(b) of the Convention.

VIII
ABSENCE OF A PRIOR DEMAND

41. The Court will proceed to consider the preliminary objection concerning the lack of a prior demand interposed by the State.

42. The fifth objection pertains to the failure to demand that the State adapt the domestic anti-terrorist legislation to the America Convention. The State maintains that the question of the compatibility or lack of compatibility of the anti-terrorist laws with the American Convention is "a domestic affair within the exclusive competence of the Peruvian authorities, and that in no way can it be dealt with in a judicial proceeding such as the present one that concerns a particular person."

43. The Commission claims that, independent of the basis of the objection, the Court has addressed this issue in Advisory Opinion OC-13, and refers it back to paragraphs 26, 27, 28 and 30.

44. Peru maintains that the alleged violation of Article 2 of the American Convention, for failure to adapt the anti-terrorist laws of Peru to the Convention, was not raised by the petitioners before the Inter-American Commission, nor was it transmitted by the Commission to the State or included in Report No. 15-A/96. According to the State, no "prior demand" was made and, therefore, it is inadmissible for the Court to consider it.

45. The Court finds the argument of Peru to be unacceptable, inasmuch as the Court can, in effect, examine in the context of a concrete case, the substance and legal effects of a domestic law from the viewpoint of the international norms for the protection of human rights to determine the compatibility of the law with those norms.

46. Although the Commission has not raised the alleged violation of Article 2 of the Convention in the application to the Court, the Court is authorized to examine the issue *motu proprio*. Article 2 of the Convention, like Article 1(1), sets forth a general obligation-that is added to the specific obligations as to each of the protected rights- and the Court, as the judicial organ of supervision of the Convention, has the official duty to determine its fulfilment by the States Parties. The Respondent State can not, by means of a preliminary objection, attempt to negate this authority which is inherent to the jurisdiction of the Court. Therefore, the Court dismisses the fifth preliminary objection interposed by the State.

IX

47. Now, therefore,

THE COURT,

DECIDES:

by five votes to two

1. To dismiss the preliminary objections interposed by the State of Peru.

   Judges de Roux-Rengifo and Vidal-Ramírez Dissenting.

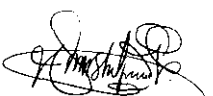
   By six votes to one

2. To proceed with the consideration of the merits of the case.

   Judge Vidal-Ramírez Dissenting.

Judges de Roux-Rengifo and Vidal-Ramírez informed the Court of their Dissenting Opinions, both of which are attached hereto.

Done in English and Spanish, the Spanish text being authentic, in San José, Costa Rica, on this third day of September, 1998.



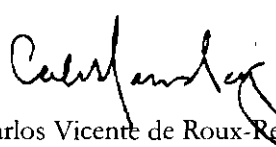
Hernán Salgado-Pesántes
President

Antônio A. Cançado Trindade

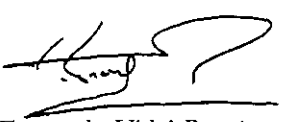
Máximo Pacheco-Gómez

Oliver Jackman

Sergio García-Ramírez



Carlos Vicente de Roux-Rengifo



Fernando Vidal-Ramírez

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary