

## **SEPARATE AND PARTIALLY DISSENTING OPINION OF JUDGE FERNANDO VIDAL-RAMÍREZ**

1. I share in the pronouncement of the judgment for the reasons already expressed and which define of my status as Judge *ad hoc* Judge (Durand and Ugarte case), and also for the following reasons:

In deciding on the preliminary objections, the Court dismissed them and decided to continue with the consideration of the merits. At that time, I expressed my dissent with six of the seven preliminary objections proposed, and with the decision to go forward with the consideration of the merits, for the reasons then explained and considering that the right to compensation was the only remaining issue in the case.

However, by virtue of the decision of the Court, I have had to hear the matter of the merits and have formed a strong opinion regarding the violations of the American Convention, especially as regards the inclusion of civilians under the exclusive military jurisdiction, which is not permitted in Article 282 of the Constitution of 1979, and because of the recognition by the State that the conviction of Cantoral-Benavides took place without sufficient evidence, as stated in the decision that acquitted him.

2. I dissent from operative paragraph 6 of the judgment, which declares that the State violated Article 8(5) of the American Convention. My dissent is related to the trial conducted in the regular court.

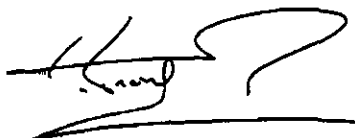
Article 8(5) of the American Convention is not absolute in nature and cannot be interpreted categorically, since, even though it states that the criminal process must be public, it also states that it does not necessarily have to be, adding the proviso that refers to the need to protect the interest of justice.

While the criminal process must be public, as contemplated in the Peruvian Constitution of 1979, the bringing of action against someone

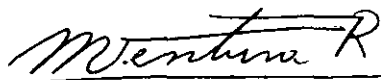
accused of terrorism need not necessarily be public, and the regular courts cannot be compelled not to protect the interests of justice.

3. I dissent from the judgment in that it declares that the State violated Article 9 of the American Convention.

Said Article 9 puts into words the principle *del nullum crimen sine lege, nulla pena sine lege*, which is part of the criminal legislation of the countries that make up the Inter-American System for the Protection of Human Rights. Said principle was also embodied in subsection d) of section 20 of Article 2 of the Constitution of 1979. While Decree Laws No. 25.475, No. 25.499 and No. 25.659 violate it in terms of submitting to the military jurisdiction those accused of aggravated terrorism, said crime was defined in said Decree Laws.



Fernando Vidal-Ramírez  
Judge *ad hoc*



Manuel E. Ventura-Robles  
Secretary