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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioner: Julio Prado Vallejo.
Commission Member Prof. Robert K. Goldman, a national of the United States, did not take part in the discussion and voting on this case, in accordance with Article 17(2) of the Commission's Rules of Procedure.
Dated: 29 December 2003
Citation: Beazley v. United States, Case 12.412, Inter-Am. C.H.R., Report No. 101/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANTS: David Botsford and Walter Long
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I. SUMMARY

1. On February 19, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition dated February 18, 2002 from David Botsford and Walter Long, Attorneys in Austin, Texas (hereinafter "the Petitioners") against the United States of America (hereinafter the "United States" or "the State"). The petition was filed on behalf of Napoleon Beazley, an African American youth who was at that time incarcerated on death row in the state of Texas. The petition alleges that the United States is responsible for violations of Articles I, II, VII and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration") on the basis that Mr. Beazley was 17 years of age at the time of the offense for which he had been sentenced to death and that a jus cogens norm of international law prohibits the execution of an individual who was under the age of 18 at the time of commission of his or her crime. Despite precautionary measures adopted by the Commission on February 27, 2002 requesting that the State stay his execution pending the outcome of the proceedings before the Commission, Mr. Beazley's execution was carried out on May 28, 2002.

2. The State has opposed the petition on the basis that the petition fails to state facts that tend to establish a violation of the American Declaration and that it essentially duplicates a petition pending or already examined and settled by the Commission.

3. Owing to the exceptional circumstances of the case, the Commission decided to consider the admissibility of Mr. Beazley's petition together with the merits in accordance with Article 37(3) of the Commission's Rules of Procedure.

4. Upon considering the petition, the Commission declared as admissible the claims presented on behalf of Mr. Beazley in respect of Articles I, II, VII and XXVI of the American Declaration. Concerning the merits of the Petitioners' claims, the Commission concluded that the State acted contrary to an international norm of jus cogens as encompassed in the right to life under Article I of the American Declaration by executing Mr. Beazley for a crime that he was found to have committed when he was 17 years of age, and recommended that the State provide Mr. Beazley's next of kin with an effective remedy, which includes compensation. The Commission also considered that the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States by permitting Mr. Beazley's execution to proceed on May 28, 2002 notwithstanding the Commission's request that the State stay his execution pending the outcome of the proceedings before the Commission.

II. PROCESSING BEFORE THE COMMISSION

5. By note dated February 27, 2002, the Commission transmitted the pertinent parts of the petition to the State with a request for information within two months as provided for in Article 30(3) of the Commission's Rules of Procedure. In the same communication, pursuant to Article 25 of its Rules of Procedure, the Commission requested that the United States take the measures necessary to preserve Mr. Beazley's life pending the Commission's investigation of the allegations in his petition.

6. In a letter dated March 13, 2002, the State acknowledged receipt of the Commission's request for precautionary measures of February 27, 2002 and indicated that a response would be forthcoming as soon as possible. In a further communication dated April 18, 2002, the State provided the Commission with a letter dated March 20, 2002 from Howard G. Baldwin, Jr., First Assistant Attorney General of the State of Texas, responding to the Commission's February 27, 2002 note concerning Mr. Beazley's case. By communication dated April 19, 2002, the Commission transmitted the March 20, 2002 letter from Mr. Baldwin to the Petitioners with a request for observations within 30 days.

7. In a letter dated April 24, 2002, the Petitioners provided the Commission with a response to the State's April 18, 2002 communication, which included a copy of an Order of the Court of Criminal Appeal of Texas dated April 17, 2002 vacating a stay of execution that it had previously issued in Mr. Beazley's favor, as well as a copy of an Order of the trial court dated April 18, 2002 establishing a date for a hearing to set Mr. Beazley's execution date.

8. The Commission subsequently received information that Mr. Beazley's execution had been scheduled to take place on May 28, 2003. Consequently, by note dated May 25, 2002, the Commission reiterated to the United States its February 27, 2002 request for precautionary measures to preserve Mr. Beazley's life pending the Commission's investigation of the allegations in his petition. On May 28, 2003 the Commission received information that Mr. Beazley's execution had been carried out as scheduled.

9. In a note dated May 24, 2002 and received by the Commission on May 28, 2003, the State provided the Commission with its response to Mr. Beazley's petition. By communication dated May 29, 2002, the Commission transmitted the State's response to the Petitioners.

10. By notes dated December 6, 2002, the Commission informed the parties that, due to exceptional circumstances and in accordance with Article 37(3) of its Rules, the Commission had opened a case in respect of Mr. Beazley's complaint but had deferred its treatment of admissibility until the debate and decision on the merits of the matter, and requested any additional observations from the Petitioners on the merits of the case to be provided within a period of two months.

11. In a communication dated May 18, 2003, the Commission informed the State that the Commission had not received any additional observations from the Petitioners on the merits of the case, and requested that the State submit any additional observations that it had on the merits of the Petitioners' petition within a period of two months, in accordance with Article 38(1) of the Commission's Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

12. According to the information provided by the Petitioners, Napoleon Beazley, an African American youth, was convicted in March 1995 of the April 19, 1994 murder of John Luttig in the State of Texas, and was subsequently sentenced to death. Mr. Beazley was convicted for shooting and killing Mr. Luttig in the course of robbing the Luttigs' Mercedes Benz vehicle in the driveway of their home, in the presence of Mr. Luttig's wife, Bobby Luttig, and one of Mr. Beazley's co-defendants, Donald Coleman. Mr. Beazley appealed to the Texas Court of Criminal Appeals, which affirmed the conviction and sentence on February 26, 1997.[FN1]

[FN1] Beazley v. State, No. 72,101 (Tex. Crim. App. Feb. 26, 1997, unpublished).

13. With regard to the admissibility of the petition, the Petitioners argue that Mr. Beazley has exhausted his domestic remedies on the one issue that he has raised before the Commission, namely the contention that the United States is responsible for violations of Articles I, II, VII and XXVI of the Declaration and a peremptory norm of international law for having sentenced Mr. Beazley to death for a crime that occurred when he was 17-years-old.

14. In particular, the Petitioners claim that Mr. Beazley raised the jus cogens issue as a component of the Eighth Amendment analysis before the U.S. District Court for the Eastern District of Texas,[FN2] the U.S. Court of Appeals for the Fifth Circuit,[FN3] and the U.S. Supreme Court.[FN4] He subsequently raised the same issue in his second round of state post-conviction appeals, which the Texas Court of Criminal Appeals dismissed on April 17, 2002.[FN5] The Petitioners also note that Mr. Beazley sought redress through capital clemency

proceedings before the Texas Board of Pardons and Paroles, which were similarly unsuccessful.[FN6]

[FN2] *Beazley v. Director*, TDCJ-ID, No. 1:98-CV-1601 (E.D. Tex., 30 September 1999) (unpublished).

[FN3] *Beazley v. Johnson*, 242 F.3d 248 (5th Cir. 2001). Rehearing en banc denied March 15, 2001.

[FN4] *Beazley v. Johnson*, 122 S. Ct. 329 (October, 2001).

[FN5] *Ex parte Napoleon Beazley*, No. 36, 151-02 (Texas Crim. App. April 17, 2002, unpublished).

[FN6] Petitioners' petition of February 18, 2002, p. 7.

15. The Petitioners also indicate in their petition that the subject matter of their complaint is not pending settlement pursuant to any other applicable procedure presented to an international governmental organization. Finally, the Petitioners state that their petition was filed in a timely manner, as it was lodged within six months of the October 1, 2001 denial by the U.S. Supreme Court of Mr. Beazley's petition for a writ of certiorari.

16. With regard to the merits of their petition, the Petitioners contend that the State is responsible for violating Articles I, II, VII and XXVI of the American Declaration and an international norm of jus cogens for sentencing Mr. Beazley to death for a crime that occurred when he was 17 years of age.

17. The Petitioners argue in this connection that the prohibition against executing juvenile offenders constitutes a peremptory norm as defined under Article 53 of the Vienna Convention on the Law of Treaties, namely "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." [FN7] They also contend that a norm must meet four requirements in order to attain the status of a peremptory norm: (1) it is general international law; (2) it is accepted by a large majority of states; (3) it is immune from derogation; and (4) it has not been modified by a new norm of the same status. [FN8]

[FN7] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 352, Art. 53.

[FN8] Petitioners' petition of February 18, 2002, p. 12.

18. According to the Petitioners, the prohibition against the execution of persons who were under 18 years of age at the time of their offense meets the requirements of a norm of jus cogens. First, they state that the prohibition constitutes general international law, as reflected in numerous treaties, declarations and pronouncements by international bodies [FN9] as well as the laws of the vast majority of nations, including those of the inter-American system. [FN10]

[FN9] Petitioners' petition of February 18, 2002, pp. 13-16, citing, inter alia, the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171; United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989); the Geneva Convention Relative to the Protection of Civilian Persons in the Time of War, Aug. 12, 1949, 75 U.N.T.S. 286, the American Convention on Human Rights, OAS Official Records, OEA/Ser.K/XVI/1.1, doc. 65 rev. 1 corr. 2 (1969), United Nations Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) a 207, U.N., Doc. E/1984/84 (1984), The Question of the Death Penalty, Comm. on Hum. Rts., 57th Sess. Res. 2001/68 adopted April 25, 2001, The Death Penalty in Relation to Juvenile Offenders, United Nations Sub-Commission on the Promotion and Protection of Human Rights, 53rd Sess. Res. 2000/17, adopted August 17, 2000, U.N. Doc. E/CN.4/Sub.2/RES/2000/17 (2000); Letter from Walter Schwimmer, Secretary General, Council of Europe, to Gerald Garrett, Chairperson of the Texas Board of Pardons and Paroles (with copy to Texas Governor Rick Perry), July 23, 2001, concerning the case of Napoleon Beazley.

[FN10] Petitioners' petition of February 18, 2002, p. 17, noting that Article 4(5) of the American Convention prohibits the death penalty for persons under the age of 18 at the time the crime was committed, that the United States is the only OAS member state that has signed but not ratified the American Convention, and that of the 25 member states that have ratified the American Convention, only Barbados made a reservation to Article 4(5) but has subsequently established 18 as the minimum age for capital punishment. See Crime Prevention and Criminal Justice: Capital Punishment and the Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, Report of the Secretary General, U.N. ESCOR, Economic and Social Council, Subst. Sess., U.N. Doc. E/2000/3, para. 90 (2000).

19. In addition, the Petitioners contend that the prohibition against executing persons who were under 18 years of age at the time of their offense is accepted by all states except one and is therefore accepted by a "very large majority of States, even if over dissent by 'a very small number' of states." The Petitioners note in particular that the United States is the only state in the OAS that currently imposes the death penalty for persons under the age of 18 and is the only country in the world that has not accepted the international norm against the execution of juvenile offenders. They note in this regard that almost every nation has ratified the UN Convention on the Rights of the Child, with the sole exceptions of the United States and Somalia,[FN11] and that the Convention has been the catalyst that has prompted many countries in the past ten years to change their laws raising the eligibility for the death penalty to 18.[FN12] The Petitioners also claim that only 6 states parties to the Convention on the Rights of the Child, the Democratic Republic of the Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen, have executed juvenile offenders since 1991, but have also changed their laws or denied that executions of juvenile offenders have taken place.[FN13] The Petitioners add that even if it is the case that verifiable executions took place not only in the United States but also in Iran and the Democratic Republic of the Congo, this should not be considered to deprive the norm of its preemptory status, as other norms considered to fall within this category, such as torture, have also been demonstrably violated by states.[FN14]

[FN11] Petitioners' petition of February 18, 2002, p. 18, citing Status of the Convention on the Rights of the Child, Report of the Secretary General, U.N. ESCOR, Hum, Rts. Comm. 54th Sess., Agenda Item 20, para. 2, U.N. Doc. E/CN.4/1988/99 (1997).

[FN12] Petitioners' petition of February 18, 2002, p. 19, citing Crime Prevention and Criminal Justice, *supra*, at 21, para. 90.

[FN13] Petitioners' petition of February 18, 2002, pp. 19-20, citing Amnesty International, The United States of America: Too Young to Vote, Old Enough to be Executed, AI Index: AMR 51/105/2001, July 2001; Amnesty International Press Release (June 7, 2001) (Yemen); Amnesty International (Irish Division) Press Release (Dec. 13, 2001) (Pakistan); Summary Record of the 6th Meeting of the Sub-Commission on the Promotion and Protection of Human Rights, 52nd Sess., August 4, 2000, E/CN.4/Sub.2/2000/SR.6, para. 39 (2000) (Nigeria); Summary Record of the 53rd Meeting of the Commission on Human Rights, 56th Sess., April 17, 2000, E/CN.4/2000/SR.53, paras. 88 and 92 (2000) (Saudi Arabia); Amnesty International, Children and the Death Penalty: Executions Worldwide Since 1990, ACT 50/10/2000; UN Press Release, Commission on Human Rights Starts Debate of Specific Groups and Individuals, April 11, 2001 (Iran); Amnesty International, Dem. Republic of Congo, Killing Human Decency, AI Index: AFR 62/11/00, May 31, 2000 at 12. [FN14] Petitioners' petition of February 18, 2002, p. 22, citing Amnesty International Report 2001, Annual Summaries 2001, AI Index: POL 10/006/2001 (finding that in 2001, 125 states violated the prohibition against torture).

20. Further, the Petitioners claim that the prohibition against executing persons who were under 18 years of age at the time of their offense is a non-derogable norm. In this regard, the Petitioners refer to the International Covenant on Civil and Political Rights, which provides that there shall be no derogation from Article 6, which in turn prohibits the imposition of the death penalty on juvenile offenders. Finally, the Petitioners state that the prohibition of the juvenile death penalty has been universally accepted by all but one country.

21. Based upon the above submissions, the Petitioners argue that there is no question that the prohibition against the execution of persons who were under 18 at the time of the offense has attained the status of a universal *jus cogens* norm and therefore constitutes a gross violation of the right to life under Article I of the American Declaration and violates the equality provision of Article II of the Declaration and the right to special protection of children under Article VII of the Declaration and constitutes cruel, infamous or unusual punishment under Article XXVI of the Declaration.

B. Position of the State

22. In its May 24, 2002 response to the Petitioners' petition, the United States requests that the Commission declare the petition inadmissible under Articles 34(a)-(b) and 33 of its Rules of Procedure, on the grounds that it does not state facts that tend to establish a violation of the American Declaration, is manifestly groundless or out of order, and essentially duplicates a petition already examined and settled by the Commission, namely the petition in the Case of Jay Pinkerton and James Terry Roach.[FN15] In support of these arguments, the State indicates that it incorporated into this proceeding and relies upon its October 18, 2001 response to the petition

in Case No. 12.185 (Michael Domingues), as well as its December 17, 2001 observations on the Commission's October 15, 2001 report in the same matter, in which the State asserts that it fully briefed the juvenile death penalty issue.

[FN15] Jay Pinkerton and James Terry Roach, Case No. 9647, Inter-Am. Comm. H.R. 1987.

23. The State's arguments in the two documents referred to above are, in turn, described and addressed in detail in the Commission's final report in the case of Michael Domingues, published in the Commission's 2002 Annual Report.[FN16] In addition, the text of the State's response to the Commission's report in the Domingues case is published on the Commission's web site.[FN17] These arguments have been considered by the Commission for the purposes of the present petition and can be summarized as follows.

[FN16] Case No. 12.185, Report No. 62/02, Michael Domingues v. United States, Annual Report of the IACHR 2002.

[FN17] See Observations of the United States Government on the Report of the Inter-American Commission on Human Rights made on October 15, 2001 in Case No. 12.185 (Michael Domingues), at <http://www.cidh.org/Respuestas//USA.12185.htm>.

24. The United States has first argued that the petition fails to satisfy the criteria for admissibility under Article 33(b) of the Commission's Rules of Procedure[FN18] because its "subject matter essentially duplicates a petition pending or already examined and settled by the Commission," namely the 1987 Case of Jay Pinkerton and James Terry Roach,[FN19] in which the Commission found that, while there was a jus cogens norm prohibiting the execution of children, there did not exist a norm of customary international law establishing 18 to be the minimum age for the imposition of the death penalty.

[FN18] Article 33(1)(b) of the Commission's Rules of Procedure provides: "1. The Commission shall not consider a petition if its subject matter: (b) essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member."

[FN19] Case 9647, Resolution No. 3/87, Case of Jay Pinkerton and James Terry Roach (United States), Annual Report of the IACHR 1986-87.

25. The United States also contended that neither the state practice identified by the Petitioners, nor the legal standards cited in their observations, were sufficient to establish either a customary or jus cogens prohibition of the execution of juvenile offenders. In support of its position, the State asserted that reliance upon the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child as evidence of State practice is misplaced, in part because the negotiating histories of each

of the conventions indicates that the inclusion of the provision concerning the juvenile death penalty was not based upon custom or on consensus,[FN20] and because they were adopted subsequent to the American Declaration.[FN21] The State also argues in this connection that its reservation to Article 6(5) of the ICCPR is valid and effective as a matter of international law, and that the status of Article 6 of the ICCPR as a non-derogable right has no correlation with the centrality of that right to the treaty and therefore does not preclude a state from entering a reservation to Article 6.

[FN20] The State cites in this regard authorities indicating that Article 4(5) of the American Convention on Human Rights was approved with only a two-vote margin, with 40% of the assembled States abstaining from voting in favor of the provision, that Article 6(5) of the International Covenant on Civil and Political Rights was adopted by fifty-three votes to five with fourteen abstentions, and that Article 37 of the Convention on the Rights of the Child was adopted with the express understanding that states retained the right to ratify the Convention with a reservation to that article. The State also asserts that Article 68 of the Fourth Geneva Convention by its terms only applies to international armed conflicts and therefore cannot be considered a demonstration of custom in time of peace.

[FN21] State's observations of December 17, 2001 p. 4, citing Case of Roach and Pinkerton, supra, Dissenting Opinion of Dr. Marco Gerardo Monroy Cabra, para. 6.

26. Further, the United States suggested that UN organs have through their negotiating processes recognized that there is no customary international law prohibition on the execution of juvenile offenders.[FN22] The State cited in this regard the UN General Assembly's May 10, 2002 outcome document following its Special Session on Children, in which the General Assembly called upon governments that had not abolished the death penalty to "comply with the obligations they have assumed under relevant provisions of international human rights instruments",[FN23] without invoking any customary norms in making this appeal for state compliance.

[FN22] State's observations of December 17, 2001, p. 5, citing UN Human Rights Commission Resolution 2001/45 (Apr. 23) (Extrajudicial, summary or arbitrary executions); CHR Res. 2001/75 (Apr. 25) (Rights of the Child). According to the State, these two resolutions were adopted by consensus and called upon all states in which the death penalty has not been abolished to "comply with their obligations as assumed under relevant provisions of international human rights instruments, including in particular articles 37 and 40 of the Convention on the Rights of the Child and articles 6 and 14 of the International Covenant on Civil and Political Rights." The State also indicates that these resolutions were adopted over an alternative resolution that would have recognized as prohibited under customary international law the execution of persons who were under 18 years of age at the time of their offense. UN Doc. E/CN.4/2001/2 at 14.

[FN23] State's observations dated June 25, 2002, referring to United Nations Special Session on Children, "A World Fit for Children," Plan of Action, para. 44(8), available at <<http://www.unicef.org/specialsession/>>.

27. The State argued that there exists no general and consistent state practice based on *opinio juris* sufficient to establish a customary international legal prohibition of the execution of juvenile offenders. The State contends in this regard that there is no uniform state practice regarding the execution of juvenile offenders. Further, the State emphasized that *opinio juris* is a necessary element of customary international law and that the domestic practice of states alone is not sufficient, such that it must be demonstrated that states have discontinued the process of executing juvenile offenders out of a sense of legal obligation rather than, for example, out of courtesy, fairness or morality.[FN24]

[FN24] State's observations of December 17, 2001, p. 6, citing Ian Brownlie, *Principles of Public International Law* (5th ed., 1998), at 7; *Restatement of the Foreign Relations Law of the United States* (Third), § 102(2).

28. Exception was also taken by the State to the suggestion that the United States practice demonstrates a trend toward the lack of acceptance of the application of the death penalty to those under 18 years of age. The State contended in particular that judicial and legislative authorities cited, such as the 1988 U.S. Supreme Court decision in *Thompson v. Oklahoma* and the legislative amendments in Florida and Montana do not support the existence of a customary international norm prohibiting the execution of persons under 18 years of age, and noted that certain federal law, namely the U.S. Uniform Code of Military Justice, "permits the use of capital punishment for crimes committed by members of the military under the age of 18 for the crimes specified therein."

29. The State also disputed any reliance on the Optional Protocol to the Convention on the Rights of the Child Concerning Children in Armed Conflict, in part because Article 1 of the Protocol requires states parties to take "all feasible measures" to ensure that members of their armed forces under the age of 18 do not take a "direct part in hostilities," and therefore does not prohibit in its entirety the involvement of juveniles in armed conflict and cannot be considered a related international legal development that supports an absolute prohibition on the execution of juvenile offenders.[FN25]

[FN25] In support of its position, the State cites the instrument of ratification of the Protocol deposited with the UN by the United Kingdom, which states that "article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: (a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and (b) by reason of the nature and urgency of the situation: (i) it is not practicable to withdraw such persons before deployment; or (ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or safety of other personnel." *Multilateral Treaties deposited with the Secretary General*, Vol. I, p. 299, *Optional Protocol to*

the Convention on the Rights of the Child Concerning Children in Armed Conflict, Declaration of the United Kingdom of Great Britain and Northern Ireland (status as at 31 Dec. 2000).

30. The United States has argued that it is not bound by any international norm prohibiting the execution of juvenile offenders, because it has consistently asserted its right to execute juvenile offenders, by making reservations to treaties, filing briefs before national and international tribunals, and making public statements.[FN26] Correspondingly, the state contends that even if a norm of customary international law establishing 18 to be the minimum age for the imposition of the death penalty had evolved since the Commission's decision in the Roach and Pinkerton Case, the United States is not bound to such a rule.

[FN26] State's observations of December 17, 2001, p. 11, citing the US reservation to Article 6(5) of the International Covenant on Civil and Political Rights, taken after the Roach and Pinkerton decision, United Nations Multilateral Treaties Deposited with the Secretary General: Status as at 31 December 2000, UN Doc. ST/LEG/SER.E/19 (2001); Vienna Convention on the Law of Treaties, 1155 UNTS 332, 333, Art. 20(4)(b) .

31. Finally, the State has contended that there exists no jus cogens prohibition on the execution of juvenile offenders, as the precise nature and scope of the concept of jus cogens is a much disputed topic, and that there is no support for the contention that the alleged prohibition of imposing a sentence of death on an offender who is under 18 years of age has similar force to the norms that have most commonly been cited as jus cogens prohibitions, such as piracy and genocide.

IV. ADMISSIBILITY

32. The Commission has considered the admissibility of the present complaint pursuant to Articles 30 and 34 of its Rules of Procedure and makes the following determinations.

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

33. The Commission is competent to examine the petition in question. Under Article 23 of the Rules of Procedure of the Commission, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration. The alleged victim, Napoleon Beazley, was a person whose rights were protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure. The United States has been subject to the jurisdiction of the Commission since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter.

34. Inasmuch as the Petitioners have filed complaints alleging violation of Articles I, II, VII and XXVI of the American Declaration, the Commission is competent *ratione materiae* to examine the complaint.

35. The Commission is competent *ratione temporis* to examine the complaints because the petition alleges facts that occurred on and after March 1995, when Mr. Beazley was sentenced to death. The facts alleged, therefore, occurred subsequent to the date on which the United States' obligations under the American Declaration took effect.

36. Finally, the Commission is competent *ratione loci*, given that the petition indicates that the alleged victim was under the jurisdiction of the United States at the time the alleged events occurred, which reportedly took place within the territory of that State.

B. Duplication

37. The Petitioners have indicated that the subject matter of Mr. Beazley's complaint is not pending settlement pursuant to any other applicable procedure presented to an international governmental organization.

38. The State, on the other hand, has objected to the admissibility of the petition on the ground of duplication. It claims that in the Roach and Pinkerton Case, the Commission addressed the same issue as that contained in the present complaint, and concluded that, while there was a *jus cogens* norm prohibiting the execution of children, there did not exist a norm of customary international law establishing 18 to be the minimum age for the imposition of the death penalty.

39. The Commission has previously considered that a prohibited instance of duplication under the Commission's procedures involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof.[FN27] Accordingly, claims brought in respect of different victims, or brought regarding the same individual but concerning facts and guarantees not previously presented and which are not reformulations, will not in principle be barred by the prohibition of duplication of claims.[FN28]

[FN27] See e.g. Case 11.827, Report No. 96/98, Peter Blaine (Jamaica), Annual Report of the IACHR 1998, para. 43.

[FN28] *Id.*, para. 45.

40. In the present case, the record indicates that Mr. Beazley has not previously lodged a complaint with the Commission, raising the legality of his death sentence under the American Declaration or otherwise. As this petition cannot be said to involve the same parties as those in the Roach and Pinkerton Case, the Commission finds no bar to the admissibility of the Petitioners' claims under Article 33 of the Commission's Rules of Procedure.[FN29]

[FN29] See similarly Case No. 12.285, Report N° 62/02, Michael Domingues (United States), Annual Report of the IACHR 2002, para. 102.

C. Exhaustion of Domestic Remedies

41. Article 31(1) of the Commission's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. In accordance with Article 31(2) of the Commission's Rules, however, the requirement under Article 31(1) does not apply when, inter alia, the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them. The jurisprudence of the inter-American system also makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means. According to the Inter-American Court, the requirement is thus considered a means of defense and, as such, waivable, even tacitly. Further, a waiver, once effected, is irrevocable.[FN30] In the face of such a waiver, the Commission is not obliged to consider any potential bars to the admissibility of a petitioner's claims that might have properly been raised by a state relating to the exhaustion of domestic remedies.

[FN30] I/A Court H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

42. In the present case, the State has failed to provide any observations or information respecting the admissibility of Mr. Beazley's claims, and has thereby implicitly or tacitly waived its right to object to the admissibility of the claims in the petition based upon the exhaustion of domestic remedies requirement. Moreover, the record before the Commission indicates that Mr. Beazley raised the issue in this petition as a component of his proceedings before the courts of the State of Texas[FN31] and before the U.S. federal courts,[FN32] up to and including the U.S. Supreme Court,[FN33] prior to his execution on May 28, 2002.

[FN31] See Ex parte Napoleon Beazley, No. 36, 151-02 (Texas Crim. App. April 17, 2002, unpublished).

[FN32] See Beazley v. Director, TDCJ-ID, No. 1:98-CV-1601 (E.D. Tex., 30 September 1999) (unpublished); Beazley v. Johnson, 242 F.3d 248 (5th Cir. 2001). Rehearing en banc denied March 15, 2001.

[FN33] Beazley v. Johnson, 122 S. Ct. 329 (October 2001).

43. Accordingly, based upon the information before it, the Commission considers that Mr. Beazley's complaint is admissible under the terms of Article 31 of the Commission's Rules of Procedure.

D. Timeliness of the Petition

44. Pursuant to Article 32(1) of the Commission's Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted. In the present case, the Petitioners' petition was lodged on February 19, 2001 and therefore within six months from the date of the denial by the U.S. Supreme Court of Mr. Beazley's petition for a writ of certiorari on October 1, 2001. The State has not specifically contested the timeliness of the Petitioners' petition. Consequently, the Commission concludes that the Petitioners' petition is not barred from consideration under Article 32 of the Commission's Rules of Procedure.

E. Colorable Claim

45. The Commission has outlined in Part III of this Report the substantive allegations of the Petitioners, as well as the State's responses to those allegations. After carefully reviewing the information and arguments provided by the parties in light of the heightened scrutiny test applied by the Commission in capital punishment cases,[FN34] and without prejudging the merits of the matter, the Commission considers that the petition states facts that tend to establish a violation of rights under the American Declaration and is not manifestly groundless or out of order. Accordingly, the Commission concludes that the Petitioners' petition is admissible under the terms of Article 34 of the Commission's Rules of Procedure.

[FN34] According to the Commission's established jurisprudence, it will review and decide capital punishment cases with a heightened level of scrutiny, to ensure that any deprivation of life that occurs through the application of the death penalty complies strictly with the requirements of the applicable inter-American human rights instruments. See Report No. 57/96 (Andrews v. United States), Annual Report of the IACHR 1997, paras. 170-171; Report N° 38/00 (Baptiste v. Grenada), Annual Report of the IACHR 1999, paras. 64-66; Report N° 41/00 (McKenzie et al. v. Jamaica), Annual Report of the IACHR 1999, paras. 169-171.

F. Conclusions on Admissibility

46. In accordance with the foregoing analysis of the requirements of Articles 30 to 34 of the Commission's Rules of Procedure, and without prejudging the merits of the matter, the Commission decides to declare as admissible the claims presented on behalf of Mr. Beazley in respect of Articles I, II, VII and XXVI of the American Declaration and continue with the analysis of the merits of the case.

V. MERITS

47. The Petitioners contend that the United States is responsible for violations of Articles I and II of the American Declaration, due to the fact that Mr. Beazley was 17-years-old at the time of the crime for which he was convicted and sentenced to death. The Petitioners argue in this connection that the prohibition constitutes general international law, as reflected in numerous treaties, declarations and pronouncements by international bodies as well as the laws of the vast majority of nations, including those of the inter-American system. For its part, the United States relied upon the arguments it submitted in the recent case of *Michael Domingues v. United States* before this Commission to the effect that it does not.

48. The Commission recalls that in its recent decision in *Michael Domingues v. United States*,^[FN35] it found that the state of international law had evolved since the Commission's determination in 1987 of the case of *Roach and Pinkerton*, so as to prohibit as a *jus cogens* norm the execution of persons who were under 18 years of age at the time of their crimes. In reaching this conclusion, the Commission canvassed international legal and political developments and state practice over the 14 year period between the period of 1987 and 2001 concerning the execution of juveniles. This evidence included the promulgation and ratification of treaties, United Nations resolutions and standards, domestic practice of states, and the practice of the United States. Based upon these developments, the Commission concluded as follows:

[FN35] *Michael Domingues v. United States*, Case 12.285, Report 62/02, Annual Report of the IACHR 2002, available on the IACHR web site at <http://www.cidh.org/annualrep/2002eng/USA.12285.htm>.

84. In the Commission's view, the evidence canvassed above clearly illustrates that by persisting in the practice of executing offenders under age 18, the U.S. stands alone amongst the traditional developed world nations and those of the inter-American system, and has also become increasingly isolated within the entire global community. The overwhelming evidence of global state practice as set out above displays a consistency and generality amongst world states indicating that the world community considers the execution of offenders aged below 18 years at the time of their offence to be inconsistent with prevailing standards of decency. The Commission is therefore of the view that a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime.

85. Moreover, the Commission is satisfied, based upon the information before it, that this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*, a development anticipated by the Commission in its *Roach and Pinkerton* decision. As noted above, nearly every nation state has rejected the imposition of capital punishment to individuals under the age of 18. They have done so through ratification of the ICCPR, U.N. Convention on the Rights of the Child, and the American Convention on Human Rights, treaties in which this proscription is recognized as non-derogable, as well as through corresponding amendments to their domestic laws. The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights

standards. Indeed, it may be said that the United States itself, rather than persistently objecting to the standard, has in several significant respects recognized the propriety of this norm by, for example, prescribing the age of 18 as the federal standard for the application of capital punishment and by ratifying the Fourth Geneva Convention without reservation to this standard. On this basis, the Commission considers that the United States is bound by a norm of jus cogens not to impose capital punishment on individuals who committed their crimes when they had not yet reached 18 years of age. As a jus cogens norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise.[FN36]

[FN36] Id., paras. 84, 85.

49. In the present case, Mr. Beazley was executed by the state of Texas on May 28, 2002, more than 7 months following the Commission's October 15, 2001 preliminary report in the Domingues Case. The Commission therefore adopts for the purposes of this report its findings in the Domingues Case, and concludes that at the time of Mr. Beazley's execution, the United States was likewise bound by a norm of jus cogens prohibiting the carrying out of the death penalty on individuals who committed their crimes when they had not yet reached 18 years of age.

50. Consequently, the Commission finds that by executing Mr. Beazley for a crime that he was found to have committed when he was 17-years-old, the United States is responsible for violating Mr. Beazley's right to life under Article I of the American Declaration.

51. Finally, the Commission considers it important to address the United States' failure to comply with the Commission's February 27, 2002 request for precautionary measures to preserve Mr. Beazley's life pending the Commission's investigation of the allegations in his petition, which the Commission reiterated on May 25, 2002. In this connection, the Commission has previously observed that its ability to effectively investigate and determine capital cases has frequently been undermined when states have scheduled and carried out the execution of condemned persons, despite the fact that those individuals have proceedings pending before the Commission.

52. To prevent this unacceptable situation, the Commission requests precautionary measures from states in capital cases to stay a condemned prisoner's execution until it has had an opportunity to investigate his or her claims. The Commission has expressed the view in this regard that OAS member states, by creating the Commission and mandating it through the OAS Charter and its Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving that mandate. As the Commission has emphasized on numerous occasions, it is beyond question that the failure of an OAS member state to preserve a condemned prisoner's life pending review of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals.

For these reasons, the Commission has determined that a member state disregards its fundamental human rights obligations under the OAS Charter and related instruments when it fails to implement precautionary measures issued by the Commission in these circumstances.[FN37]

[FN37] See Case 12.243, Report N° 52/01, Juan Raul Garza v. United States, Annual Report of the IACHR 2000, para. 117; IACHR, Fifth Report on the Situation of Human Rights in Guatemala, Doc. OEA/Ser.L/V/II.111 doc.21 rev. (6 April 2001), paras. 71, 72. See similarly International Court of Justice, Case Concerning the Vienna Convention on Consular Relations (Germany v. United States of America), Request for the Indication of Provisional Measures, Order of 3 March 1999, I.C.J. General List, No. 104, paras. 22-28; United Nations Human Rights Committee, Dante Piandiong and others v. The Philippines, Communication No. 869/1999, U.N. Doc. CCPR/C/70/D/869.1999 (19 October 1999), paras. 5.1-5.4; Eur. Court H.R., Affaire Mamatkulov et Abdurasulovic c. Turkey, Reqs. Nos. 46827/99, 46951/99 (6 February 2003), paras. 104-107.

53. In the present case, Mr. Beazley's execution was carried out, notwithstanding the fact that he had lodged a petition with the inter-American human rights system and the Commission had requested precautionary measures from the State to stay Mr. Beazley's execution. By permitting Mr. Beazley's execution to proceed in these circumstances, the Commission considers that the United States undermined the efficacy of its process to fully address Mr. Beazley's complaint, deprived Mr. Beazley of his right to petition effectively in the inter-American human rights system, and caused Mr. Beazley serious and irreparable harm, and consequently failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States. The Commission views the State's omissions in this regard as extremely grave and calls upon the United States to take all steps necessary to comply with the Commission's requests for precautionary measures in other present and future complaints before the inter-American system.

VI. PROCEEDINGS SUBSEQUENT TO REPORT 53/03

54. The Commission examined this case in the course of its 118th regular session and on October 9, 2003 adopted Report N° 53/03 pursuant to Article 43(2) of the Commission's Rules of Procedure.

55. By note dated October 29, 2003, the Commission transmitted Report N° 53/03 to the State, and requested that the Government of the United States inform the Commission within two months as to the measures adopted to comply the recommendations made to resolve the situation denounced.

56. The Commission did not receive a response from the State to its request for information within the time period specified in its October 29, 2003 note.

VII. CONCLUSIONS

57. The Commission, based on the foregoing considerations of fact and law, and in the absence of a response from the State to Report N° 53/03, ratifies the following conclusions.

58. The Commission hereby concludes that the Petitioners' claims are admissible as to the alleged violations of Articles I, II, VII and XXVI of the American Declaration.

59. The Commission also hereby concludes that the State has acted contrary to an international norm of jus cogens as reflected in Article I of the American Declaration by sentencing Napoleon Beazley to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

VIII. RECOMMENDATIONS

60. In accordance with the analysis and conclusions in the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS HEREBY REITERATES ITS RECOMMENDATIONS TO THE UNITED STATES THAT IT:

1. Provide the next-of-kin of Napoleon Beazley with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

IX. NOTIFICATION AND PUBLICATION

61. In light of the above, and given the exceptional circumstances of the present case, where the determined violations concern the application of laws that permit the execution of persons under 18 years of age and where the State has not informed the Commission of any measures adopted to comply with its recommendations, but rather has maintained and reiterated its arguments in the Case of Michael Domingues, the Commission has decided pursuant to Article 45(2) and (3) of its Rules of Procedure to set no further time period prior to publication for the parties to present information on compliance with the recommendations,[FN38] to transmit this Report to the State and to the Petitioner's representatives, to make this Report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until they have been complied with by the United States.

[FN38] See similarly Domingues Case, *supra*, para. 114; Case 11.753, Report 52/02, Ramón Martínez Villareal v. U.S., Annual Report of the IACHR 2002, para. 102.

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Done on the 29th day of the month of December, 2003. José Zalaquett, President; Clare Roberts, First Vice-President; Susana Villarán, Second Vice-President; Julio Prado Vallejo, Commissioner.