I. SUMMARY

1. On April 1, 1993, the Inter-American Commission on Human Rights (the "Commission") received a petition from Timothy Cooper on behalf of the Statehood Solidarity Committee (the "Petitioners") against the Government of the United States (the "State" or "United States"). The petition indicated that it was presented on behalf of the members of the Statehood Solidarity Committee and all other US citizens resident in the District of Columbia. [FN1]

[FN1] An appendix to the Petitioners' April 1, 1993 petition named 22 members of the Statehood Solidarity Committee, all of whom were identified as residents of the District of Columbia: Linda Allen, James Stroud, Mark Thompson, Josephine Butler, Christopher Echols, Lorrie Johnson, Mauro Montoya, James Belnap, Nancy Belnap, Michael Bustamonte, Jo Cooper, Carla Darby, Susan Griffin, Charles Mayo, Terrell Jones, Rena Johnson, Bob Artiste, John Capozzi, Pamela Hughes, James Dixon, James Johnson, and Gloria Freeman.

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2. The petition alleged that all efforts to invoke available internal remedies had failed, that all domestic remedies had been exhausted, and therefore that the petition was admissible. The petition also alleged that the United States was responsible for violations of Articles II (right to equality before law) and XX (right to vote and to participate in government) of the American

Declaration of the Rights and Duties of Man in connection with the inability of citizens of the District of Colombia to vote for and elect members of the U.S. Congress.

3. The State has contended that the Petitioners' petition is inadmissible for failure to exhaust domestic remedies before the courts in the United States. It also argues that the complaint fails to state claim under Articles II or XX the American Declaration. According to the State, the special status given to the District of Columbia was based on geography alone rather than any individual characteristics such as race, gender, creed and the like, and therefore does not constitute a human rights violation. The State also contends that the residents of the District of Columbia are not excluded from the political process in the United States, and that the inability of District of Columbia residents to select voting members of Congress involves issues of constitutional law and federal structure that should be left in the realm of political debate and decision-making.

4. As set forth in this report, having examined the information and arguments provided by the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the present petition in respect of Articles II and XX of the American Declaration. In addition, after having examined the merits of the Petitioners' claims, the Commission concluded that the State is responsible for violations of the Petitioners' rights under Articles II and XX of the American Declaration by denying the Petitioners an effective opportunity to participate in their federal legislature.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Following the lodging of the Petitioners' petition on April 1, 1993, the Commission, by communications to the State and to the Petitioners dated May 28, 1993 and September 16, 1993, granted the Petitioners a hearing on their complaint, scheduled to take place on October 4, 1993. In addition, on or about September 1, 1993 the Petitioners delivered to the Commission a document entitled "Communication to the Inter-American Commission on Human Rights from the Petitioner, the Statehood Solidarity Committee, Concerning the Admissibility of its Petition of April 1, 1993." The Commission subsequently transmitted the pertinent parts of this document to the State by note dated November 14, 1994.

6. The hearing before the Commission was convened on October 4, 1993. During the proceeding, the Petitioners presented oral submissions regarding the admissibility and merits of the complaint, and provided the Commission with documents regarding attempts to exhaust domestic remedies and the exercise of Congressional authority over the District of Columbia. Following the hearing, the Petitioners delivered to the Commission a further document concerning the exhaustion of their complaints dated October 12, 1993 and entitled "Memorandum on Exhaustion."

7. Subsequently, on October 18, 1993 the Commission decided to open Case Nº 11.204 in respect of the Petitioners' complaint and transmitted the pertinent parts of the petition to the State, with a request that the State provide information with respect to the communication within 90 days as established by the Commission's prior Regulations. [FN2]By note of the same date, the Commission informed the Petitioners that these steps had been taken and that they would be advised of any reply that the State might make.

[FN2] During its 109th special session in December 2000, the Commission approved the Rules of Procedure of the Inter-American Commission on Human Rights, which replaced the Commission's prior Regulations of April 8, 1980. In accordance with Article 78 of the Rules of Procedure, the Rules entered into force on May 1, 2001.

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8. By communication dated January 14, 1994, the State requested an extension of time to February 15, 1994 in order to prepare a response to the Petitioners' petition. Subsequently, by communication dated February 15, 1994, the State requested a further extension of time to March 17, 1994 to review the Petitioners' petition and to prepare a response, and in a further communication dated March 18, 1994, requested an extension of time to April 18, 1994 within which to respond to the Petitioners' petition. By note dated March 29, 1994, the Commission granted the State's request.

9. By note dated April 25, 1994, the State delivered to the Commission observations on the Petitioners' petition. In a note dated May 13, 1994, the Commission transmitted the pertinent parts of the State's observations to the Petitioners, with a response requested within 30 days.

10. In a letter dated June 13, 1994, the Petitioners requested an extension of time of one month within which to respond to the State's April 25, 1994 observations, which the Commission granted by note dated July 14, 2000.

11. The Petitioners subsequently delivered to the Commission by communication dated July 18, 1994 a response to the State's observations on their petition. In a note dated July 21, 1994, the Commission transmitted the pertinent parts of the Petitioners' response to the State, with observations requested within 60 days.

12. In a communication dated September 19, 1994, the State requested that certain discrepancies between the Petitioners' response and documents in the State's possession relating to the case be clarified and that the State be granted an extension of time of 60 days from the date of clarification of those discrepancies within which to reply to the Petitioners' response.

13. By note dated November 14, 1994, the Commission provided the State with responses to its requests for clarification and granted the State an extension of time of 60 days within which to reply to the Petitioners' response. Subsequently, in a communication dated December 23, 1994, the State requested a further extension of time to January 27, 1995 within which to reply to the Petitioners' response.

14. In a letter to the Commission dated December 20, 1994, the Petitioners requested a second hearing in the matter, which the Commission granted by note dated January 20, 1995. This hearing was subsequently held on February 3, 1995 during the Commission's 88th Period of Sessions. Representatives of the Petitioners and the State attended the hearing and made representations to the Commission on the admissibility and merits of the petition. In addition, the Petitioners presented several witnesses in support of their claims, including District of

Columbia House of Representatives Delegate Eleanor Holmes Norton, George Washington University Professor Kenneth Bowling and American University Professor Jamin Raskin.

15. By communication dated February 7, 1995, the Petitioners provided the Commission with additional information on domestic proceedings before the U.S. courts concerning Congressional representation of District of Columbia residents, receipt of which the Commission acknowledged by note dated February 23, 1995.

16. By further note to the Petitioners dated February 23, 1995 and as part of its consideration of the case, the Commission requested certain information respecting the exhaustion of domestic remedies in connection with the Petitioners' claims. The Petitioners responded to the Commission's request by communication dated April 18, 1995, the pertinent parts of which the Commission transmitted to the State by note dated April 21, 1995, with a response requested within 30 days. In a note dated May 17, 1995, the Commission reiterated its request for information from the State.

17. In communications dated September 19 and September 20, 1995, receipt of which the Commission acknowledged in a note dated October 11, 1995, the Petitioners delivered to the Commission further information on the merits of their complaint.

18. By letter dated November 7, 1995, the Petitioners delivered to the Commission further observations in the case, the pertinent parts of which the Commission subsequently transmitted to the State by note dated December 14, 1995, with a response requested within 30 days. In a further note dated June 5, 1996, the Petitioners provided the Commission with additional information concerning Congressional authority over the District of Columbia.

19. In a communication dated September 11, 1996, the Commission reiterated its request to the State for information concerning the case, with a response requested within 30 days. By communication dated October 17, 1996, the State informed the Commission that it had nothing further to add to the Petitioners' observations by way of response.

20. By subsequent communications dated September 18, 1996, December 3, 1996 and December 10, 1996, the Petitioners delivered additional observations to the Commission concerning the decisions of domestic courts in the cases of Darby v. United States and Albaugh v. Tawes. In a further communication dated April 30, 1997, the Petitioners delivered to the Commission additional observations in the case, the pertinent parts of which the Commission subsequently transmitted to the State on September 19, 1997, with a response requested within 30 days.

21. The Petitioners provided the Commission with additional information concerning the exhaustion of domestic remedies in relation to the case of Frank E. Howard v. State Administration Board of Election Laws et al. in a communication dated January 19, 1998. In a further letter to the Commission dated December 4, 1998, the Petitioners delivered to the Commission a document entitled "Memorandum on Exhaustion," which the Commission subsequently transmitted to the State by note dated August 17, 1999, with a response requested within 30 days. Similarly, by communication dated April 25, 2000, the Petitioners provided the

Commission with additional information respecting their petition, which the Commission subsequently transmitted to the State by note dated April 27, 2000, with a response requested within 30 days.

22. In a note dated June 22, 2000, the State responded to the Commission's communication of April 27, 2000, in which it reiterated its position that the situation described in the Petitioners' petition did not involve a human rights violation and was therefore inadmissible under Articles 37 and 41 of the Commission's Regulations, and that the State had nothing further to submit on the case. The Commission transmitted the pertinent parts of the State's response to the Petitioners by note dated June 23, 2000, with a response requested within 30 days.

23. By letter dated October 17, 2000, the Petitioners provided the Commission with additional information respecting their petition. The letter indicated in particular that on October 16, 2000, the U.S. Supreme Court had affirmed a U.S. District three-judge court decision in two related cases, Adams v. Clinton and Alexander et al. v. Daley, denying D.C. residents full Congressional representation and equal protection under the law. By communication dated October 23, 2000, the Commission acknowledged receipt of the Petitioners' communication.

24. Subsequently, in a letter dated February 26, 2001, the Petitioners delivered additional observations on the admissibility of the claims in their petition. By note dated May 22, 2001, the Commission transmitted the pertinent parts of the Petitioners' observations to the State, with a response requested within 30 days. In a further letter dated August 15, 2001, the Petitioners delivered to the Commission a memorandum on remedies for the complaints raised in their petition.

25. In notes to the State and the Petitioners dated August 21, 2001, the Commission placed itself at the disposal of the parties pursuant to Article 41 of its Rules of Procedure with a view to reaching a friendly settlement of the complaint. The Commission requested a response to its offer within 10 days, in default of which it would continue with consideration of the matter. By letter dated August 24, 2001, the Petitioners informed the Commission that in light of the past reticence of the United States to engage in any meaningful dialogue with the Statehood Solidarity Committee with regard to their case, they were of the view that accepting the Commission's proposal would only serve to delay the resolution of the matter and therefore that they declined the Commission's offer.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

1. Admissibility

26. The Petitioners contend that their case is admissible in accordance with the Commission's Rules of Procedure. With respect to the issue of exhaustion of domestic remedies, the Petitioners claim that all efforts by them to invoke available remedies have failed and therefore that all local remedies have been exhausted.

27. In particular, the Petitioners claim that as early as 1846, the residents of the District of Columbia have attempted to invoke political and judicial mechanisms to remedy their absence of representation in the U.S. Congress, [FN3] and that numerous legislative means and accommodations have since been attempted in order to address the issue of representation in the District. [FN4] The Petitioners indicate that more recently, District residents were permitted to elect a non-voting delegate to the House of Representatives in 1970, and in 1973 Congress enacted limited "home rule" for the District, permitting the popular election of a mayor and city council, but retaining the exclusive authority of Congress over the affairs of the District. The Petitioners further note in this regard that an attempt was made in 1992 to provide the District's non-voting delegate in the House of Representatives with the power to vote on all substantive legislation before Congress by enhancing under the House Rules the delegate's voting power in the Committee of the Whole. However, according to the Petitioners this effort failed to afford the delegate with an effective vote, by depriving the delegate of a vote when his or her vote may be "decisive" on a matter.

[FN3] Petitioners' Petition of April 1, 1993, pp. 5-6 (indicating that in 1846, a petition was presented in Congress on behalf of the retroceding Alexandria city and county of Virginia “decrying” their absence of representation in Congress).

[FN4] Id., pp. 4-5 (describing numerous political structures developed within the District of Columbia between 1802 and 1973, including a mayor and a twelve member city council appointed by the US President in 1802, the granting to the District by Congress of a non-voting delegate to the House of Representatives in 1971, and a Presidentially-appointed commission in 1874.).

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28. Other political and legislative efforts referred to by the Petitioners to secure Congressional representation for District of Columbia residents include a "Voting Rights Amendment" to the U.S. Constitution proposed in 1978, that sought to provide voting representation to the residents of the District of Columbia, but which failed to achieve the required ratification of 3/4 of State legislatures. Also according to the Petitioners, attempts were made in 1992 and 1993 through bills in the House of Representatives and Senate to create a state out of the non-federal areas of the District of Columbia, without success.

29. The Petitioners have also provided information with respect to unsuccessful efforts made through the domestic courts to obtain a remedy for their absence of representation in Congress.

30. The Petitioners refer in this regard to decisions of the U.S. Supreme Court that have concluded that the power of Congress over the District of Columbia is expansive. [FN5]They cite in particular that Court's decision in the case Binns v. United States, [FN6] in which the Supreme Court proclaimed that "Congress, in the government of the territories as well as the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution". [FN7]

[FN5] Petitioners' Observations of April 18, 1995, p. 2.

[FN6] Binns v. U.S., 194 U.S. 486 (1904).
[FN7] Id., at 491-2. The Petitioners also refer to the U.S. Supreme Court's earlier decision in Loughborough v. Blake, 18 U.S. 317 (1820).

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31. The Petitioners have also relied upon cases in which individual claimants have specifically challenged Congressional authority over the District, based upon the absence of effective representation of District residents in the House of Representatives and Senate. In particular, the Petitioners refer to the case of E. Scott Frison et al. v. U.S. et al., [FN8] in which the claimants charged that the United States had denied the citizens of the District of Columbia the right to vote in elections for Senators and Members of the House of Representatives and sought to preclude Congress from taking any actions that reduced the "status, autonomy, or fiscal support" of the District. In a January 31, 1995 judgment, the Court affirmed that it lacked jurisdiction over the subject matter of the litigation and noted that "under the Constitution the people of the District of Columbia - which is not a State - are not entitled to vote for Senators or Representatives." A motion for reconsideration was denied on May 12, 1995, and the U.S. Court of Appeals for the District of Columbia dismissed the claimants' appeal on October 4, 1995.

[FN8] E. Scott Frison et al. v. U.S. et al., Civil Action Nº 95-0007HGG (U.S.D.C. for D.C., 1995).

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32. The Petitioners have also cited the case of Darby v. U.S., [FN9] in which the claimant, a member of the Statehood Solidarity Committee, argued that courts established by Congress under Article 1, section 8 of the U.S. Constitution were created unconstitutionally, because, inter alia, District of Columbia residents were denied the right to representation in Congress in violation of their Fourteenth Amendment [FN10] rights. According to the Petitioners, the Court rejected the claimant's arguments based upon the fact that the "scope of Congressional power over the District of Columbia is expansive," and also rejected the claim that the residents of the District of Columbia were entitled under the U.S. Constitution to a republican form of government. The Petitioners indicate that the claimant also failed on appeal, and that the U.S. Supreme Court denied certiorari on December 9, 1996. Along a similar line, the Petitioners referred to the cases of Hobson v. Tobiner, [FN11] and Carlina v. Board of Commissioners of the District of Columbia, [FN12] in which residents of the District of Columbia alleged violations of their constitutional rights, including their rights under the Ninth, [FN13] Tenth [FN14] and Fifteenth [FN15] Amendments to the U.S. Constitution. According to the Petitioners, the courts found these constitutional claims to be insubstantial, in part because they considered questions regarding the republican form of government for the District of Columbia to be political and not judicial in nature and therefore for the consideration of Congress and not the courts.

[FN9] Darby v. U.S., Case Nº 94-CM-632, August 22, 1996 (U.S.C.A. for D.C.), cert. denied December 9, 1996, Case Nº 96-6667 (USSC).

[FN10] The Fourteenth Amendment to the U.S. Constitution provides: “Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

[FN11] Hobson v. Tobiner, 255 F Sup 295 (1966).

[FN12] Carlina v. Board of Commissioners of the District of Columbia, 265 F Supp. 736 (1967).

[FN13] The Ninth Amendment to the U.S. Constitution provides: “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

[FN14] The Tenth Amendment to the U.S. Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

[FN15] The Fifteenth Amendment to the U.S. Constitution provides: “Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. Section 2. The Congress shall have power to enforce this article by appropriate legislation.”

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33. Most recently, the Petitioners have cited the consolidated cases of Lois E. Adams v. Clinton and Clifford Alexander et al. v. Daley, [FN16] in which the claimants, 75 residents of the District of Columbia together with the District of Columbia itself, challenged the denial of their right to elect representatives to the Congress of the United States as violating their rights to equal

protection of the law and to a republican form of government under the provisions of the Fifth [FN17] and Fourteenth [FN18] Amendments to the U.S. Constitution. In rejecting the claim, the U.S. District Court for the District of Columbia indicated that it was “not blind to the inequities of the situation the plaintiffs seek to change.” It nevertheless held that "long standing judicial precedent, as well as the Constitution's text and history, persuade us that this court lacks authority to grant plaintiffs the relief they seek." According to the Petitioners, the Court also confirmed previous findings that the residents of the District of Columbia do not have the right to vote of Members of Congress, and emphasized that the District was not a state and that Congressional representation was deeply tied to the structure of statehood. Further, the Court observed that "many courts have found a contradiction between the democratic ideals upon which this country was founded and the exclusion of District residents from Congressional representation. All, however, have concluded that it is the Constitution and judicial precedent that create the contradiction." By communication dated October 17, 2000, the Petitioners informed the Commission that on October 16, 2000, the U.S. Supreme Court affirmed the District Court's decision.

[FN16] Lois E. Adams v. Clinton, Clifford Alexander et al. v. Daley, Case Nos. 98-1665, 98-2187, (U.S. D.C. - D.C.).

[FN17] The Fifth Amendment to the US Constitutions provides “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

[FN18] Fourteenth Amendment to the US Constitution, supra.

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34. In addition to the above precedents, the Petitioners have cited cases in which the claimants have argued that the District of Columbia should be considered a part of the State of Maryland for the purpose of electing members of Congress. They refer, for example, to the case of Albaugh v. Tawes, [FN19] in which a resident of the District of Columbia filed a suit claiming that the District was still part of the state of Maryland for the purpose of electing U.S. Senators. The Court rejected this claim based upon the Congressional power over the District of Columbia under the Organic Act of 1801 and Article 1 of the U.S. Constitution. Similarly, the Petitioners cited the case of Frank E. Howard v. Maryland Administrative Board of Election Laws et al., [FN20] in which the Court found that the claimant had no right to participate in congressional elections in the State of Maryland.

[FN19] Albaugh v. Tawes, 233 F. Supp. 576 (D. Md.), aff'd 379 U.S. 27 (1964).

[FN20] Frank E. Howard v. Maryland Administrative Board of Election Laws et al., (D.C. of Maryland) (Case Nº 97-937), aff'd U.S.C.A. for the Fifth Circuit September 9, 1997, certiorari denied January 12, 1998 (U.S.S.C.).

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35. Based upon the above observations, the Petitioners contend that they have satisfied the requirement under Article 37 of the Commission's prior Regulations, now Article 31 of the Commission's current Rules of Procedure, that domestic remedies be exhausted. In particular, they argue that a challenge to the absence of effective legislative representation of residents of the District of Columbia would at base be futile, because it would require a court to find a provision of the U.S. Constitution to be "unconstitutional," which the Petitioners claim is not possible. Accordingly, the Petitioners argue that the domestic legislation of the United States does not afford due process of law for the violations alleged in this case and therefore that the requirement to exhaust domestic remedies does not apply. [FN21]

[FN21] Petitioners' Observations dated April 18, 1995, p. 7, citing, inter alia, Forest of Central Rhodope case (1933) (Greece v. Bulgaria), 3 U.N.R.I.A.A. at 105, for the proposition that where a national law justifying the violations of which the victims complain will have to be applied by the local organs or courts and thereby render recourse to them futile, local remedies need not be exhausted.

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36. In addition and in the alternative, the Petitioners claim that they have exhausted any effective remedies that may be considered to exist in the United States. In particular, they claim that the judicial decisions that they have described have confirmed the denial to District of Columbia residents of full Congressional representation and equal protection of the law and illustrate that no case challenging the status of District of Columbia citizens has been successful in achieving an adequate or effective remedy, or indeed any remedy at all. They also contend that these cases demonstrate that any future litigation in U.S. courts on the issues before the Commission would be futile. Accordingly, the Petitioners contend that domestic remedies have been exhausted in respect of the issues in their petition.

37. With respect to the timeliness requirements of Article 32 of the Commission's Rules of Procedure, the Petitioners claim that the violations alleged in their petition are continuing in nature, and therefore that the six-month rule is not applicable. [FN22]

[FN22] Petitioners' Observations, dated September 7, 1993, p. 6, citing De Becker v. Belgium, App. Nº 214/56, 1958 Yearbook of the Eur. Conv. H.R., Vol. II, at 236-38, for the proposition that the six-month rule cannot be considered to apply when the complaint concerns a legal provision which involves a permanent state of affairs for which there is no domestic remedy.

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38. In relation to the provisions on duplication of petitions under Article 39 of the Commission's prior Regulations, now Article 33 of the Commission's Rules of Procedure, the Petitioners have contended that no other petition or complaint raising the allegations in their petition is pending in any other forum, nor have the violations been previously considered by the Commission.

39. Finally, based upon their arguments on the merits of the case as summarized below, the Petitioners contend, contrary to the submissions of the State, that their petition is not manifestly groundless. Rather, they argue that the circumstances in their complaint disclose violations of Articles II and XX of the American Declaration attributable to the United States.

2. Merits of the Petitioners' Claims

40. In their petition and subsequent observations, the Petitioners contend that the State is responsible for violations of the right to equality under Article II of the American Declaration and the right to vote and to participate in government under Article XX of the American Declaration, in respect of the members of their organization and other residents of the District of Columbia.

41. More particularly, the Petitioners allege that as a consequence of Article 1, paragraph 8 of the U.S. Constitution [FN23] and the Act of Congress that created the District of Columbia in 1801, [FN24] the citizens of the District of Columbia are without effective representation in the U.S. federal legislature, having no representation in the U.S. Senate and no effective vote in the U.S. House of Representatives. As a consequence, they claim that, unlike citizens in all other states in the United States, the residents of the District of Columbia do not have the right to legislative, budgetary or full judicial autonomy. Rather, the U.S. Congress and the U.S. President can overturn and disregard the District's locally-approved legislation or appropriations, without regard to the will of the people of the District, contrary to Article II of the Declaration.

[FN23] Article 1, paragraph 8 of the U.S. Constitution provides in part that the Congress shall have Power "to exercise exclusive Legislation in all Cases whatsoever, over such District [over the District of Columbia]". This provision has been interpreted as providing Congress with governing authority over the District of Columbia. See Adams v. Clinton, supra, at 22 (indicating that "it is clear that the ultimate legislature the Constitution envisions for the District is not a city council, but rather Congress itself. The District Clause expressly grants Congress the power to 'exercise exclusive Legislation in all Cases whatsoever' over the district that would become the seat of government."). See also Binns v. U.S., 194 U.S. 486 (1904).
[FN24] Organic Act of 1801, 2 Stat. 103 (1801).

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42. Also in relation to Article II of the Declaration, the Petitioners cite statistics indicating that the population of the District of Columbia has evolved to encompass a majority of African-American citizens. [FN25] The Petitioners suggest that these statistics, when viewed in light of historical patterns of Congressional attitudinal behavior toward efforts to provide representation to the District of Columbia, indicate that the District’s status may be motivated by an animus against a particular racial group. The Petitioners further submit that, in any event, the appropriate test to determine the existence of discrimination under Article II of the Declaration is whether differential treatment is proved to be "reasonable" and that unreasonableness or injustice does not depend on the intent or motive of the party charged with discriminatory treatment. [FN26]

[FN25] Petitioners' observations dated July 18, 1994, p. 33 (indicating that by 1959, when Washington, D.C. became the first majority black city in North American, the African-American population was 55 percent, and that as of 1994 the African-American population had grown to 66 percent).
[FN26] Petitioner's Observations dated July 10, 1994, pp. 10-11, citing South West Africa Case (Second Phase), ICJ Reports (1966), dissenting judgment of Judge Tanaka.

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43. In the Petitioners' view, applying this test in the circumstances of the present case leads to the result that the United States Government imposes an unjustified and arbitrary distinction upon the people of the District of Columbia which lacks a legitimate aim and an objective justification, and that this differential treatment bears no relationship of proportionality between the means employed and the aim sought to be realized. [FN27]To the contrary, the Petitioners claim that the differential treatment is detrimental to the residents of the District of Columbia, and cannot be properly justified by reference to the arguments of the framers of the U.S. Constitution at the time of the forming of the Republic over 200 years ago relating to the physical security of the federal seat of government. [FN28]The Petitioners note in this regard that according to the Department of Defense, as of February 28, 1994 there were 1,607,844 men and women employed by the Armed Services of the United States of America. In light of the U.S. government's present-day military capabilities, the Petitioners maintain that it is impossible to imagine circumstances under which the men, women and children of the District of Columbia could conceivably pose a viable threat to the seat of government. [FN29]

[FN27] Id., paras. 12-13, citing Belgium Linguistics Case, Judgment, 23 July 1968, The Law, I.B, para. 10, Yearbook of the Eur. Conv. H.R. 1968 (II) at 662.
[FN28] Id., p. 14, citing, inter alia, Kenneth R. Bowling, Creating the Federal City 1774-1800: Potomac Fever (the American Institute of Architects Press, 1988), for the proposition that providing the U.S. Congress with control over the federal district was less a question of concern over State pressure and influence and more a question of physical security.
[FN29] Petitioners' observations dated July 18, 1994, pp. 17-19.

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44. Further, the Petitioners argue that the members of the Statehood Solidarity Committee and other citizens of the District of Columbia are denied representation in their country's government through freely-elected representatives contrary to Article XX of the Declaration, as they have no meaningful representation in the federal House of Representatives and no representation whatsoever in the Senate. As a result, the Petitioners claim that they are excluded from participating in national and international policy-making decisions and cannot vote through their representatives on issues of national and local concern, such as tax policies, economic plans and health care legislation. In the Petitioners' view, full Congressional representation is a prerequisite for participation in the national government of the United States, and this has been denied to the citizens of the District of Columbia contrary to Article XX of the American Declaration.

45. The Petitioners point out generally in this regard that no other constitution in the Americas that creates a federal district does so without representation in the national legislature, and cite as examples Buenos Aires, Argentina, Brasilia, Brazil, Mexico City, Mexico and Caracas, Venezuela. [FN30]According to the Petitioners, the constitutions of all of these federal republics provide for full voting representation of residents of these federal districts in the national legislative body. As a consequence, the Petitioners claim that the United States remains the only nation in the hemisphere to deny citizens in a federal capital equal political participation in their national legislatures as well as the right to autonomy at the local level.

[FN30] Petitioners' observations dated April 30, 1997, citing Charles Wesley Harris, Congress and the Governance of the Nation's Capital: The Conflict of Federal and Local Interests (1995).

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46. Similarly, the Petitioners contend that properly guaranteeing the rights protected under Article XX of the American Declaration requires the effective exercise of dynamic political power through representatives in a representative democracy. Accordingly, the Petitioners argue that the interpretation of "participation" provided by the State, which includes, for example, the presence of a shadow delegate for the District in the House of Representatives without full voting rights constitutes less than complete participation and should not be accepted as sufficient to guarantee the rights under Article XX of the Declaration.

47. The Petitioners also suggest that recent Commission jurisprudence supports the merits of their claims. They argue, for example, that their claims are similar to those in the case Andres Aylwin Azocar et al. v. Chile, [FN31] in which the complainants argued that Chile was responsible for violations of the right to participate in government and to equal protection of the law under Articles 23(1)(c) and 24 of the American Convention based upon the senator-for-life provisions of the Chilean Constitution. The Commission ultimately found these complaints to be admissible and, in a majority decision, substantiated on the merits. Moreover, the Petitioners claim that the dissenting opinion in the Aylwin merits decision should not be considered to affect the admissibility of their claims, because, in the Petitioners' view, the claims in the present case satisfy even the more restrictive test articulated by the dissenting member regarding the circumstances under which the Commission may properly interfere in the institutional structures of a state, namely when those structures "impede the effective expression of the will of the citizens in a manifestly arbitrary manner."

[FN31] Andres Aylwin Azocar et al. v. Chile, Report Nº 95/98 (Admissibility), Annual Report of the IACHR 1998; Andres Aylwin Azocar et al. v. Chile, Report Nº 137/99 (Merits), Annual Report of the IACHR 1999.

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48. The Petitioners likewise refer to the Commission's admissibility decisions in the cases of Rios Montt v. Guatemala [FN32] and Susana Higuchi Miyagawa v. Peru [FN33] and the authorities relied upon by the Commission in those decisions, and suggest that the Commission's treatment of the issues in those cases support the admissibility and substance of the claims in

their petition. For example, the Petitioners contend that unlike the situation in the Montt Case, in which the Commission observed that the institutional structures at issue in that case were not uncommon and could be found elsewhere throughout the Americas, the District of Columbia is the only federal enclave in the Americas in which residents are denied effective representation in the national legislature. In respect of the Higuchi Case, in which the petitioner alleged the Peruvian government's responsibility for violations of Article 23 of the Convention for preventing her from standing for election as a candidate for the independent group "Armonía-Frempol" for the Democratic Constituent Congress of her country, the Petitioners emphasize the Commission's reliance in that case upon the principle that states may not invoke domestic law, constitutional or otherwise, to justify nonfulfillment of their international obligations. [FN34]

[FN32] Rios Montt v. Guatemala, Report Nº 30/93, Annual Report of the IACHR 1993.
[FN33] Susana Higuchi Miyagawa v. Peru, Report Nº 119/99, Annual Report of the IACHR 1999.
[FN34] Petitioners' Observations dated February 26, 2001, pp. 10-11.

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49. Based upon the foregoing submissions, the Petitioners argue that their claims are admissible and that they substantiate violations of their rights under Articles II and XX of the American Declaration for which the United States is responsible.

B. Position of the State

50. The State argues that the Petitioners' petition should be considered inadmissible based upon two grounds. The State first claims that the petition was brought to the Commission prior to the initiation of any equivalent action in the U.S. courts and therefore that the Petitioners have failed to exhaust domestic remedies. In this regard, in its first response to the Petitioners' petition, the State claimed that the Petitioners "have not cited a single case brought before domestic courts in which it was alleged (much less determined) that the rights of District residents to equal protection under the law or to due process were violated by virtue of lack of representation in the Congress of the United States." [FN35]In addition, the State specifically rejects the Petitioners' contention that Article I of the U.S. Constitution is somehow exempt from the other provisions of the Constitution. Rather, the State argues that United States court decisions make plain that all other constitutional commands apply as much to the District of Columbia as they do to other areas of the country, and that Congress has the discretion to create institutions of government for the District and to define their responsibilities only so long as it does not contravene any other provision of the Constitution. [FN36]

[FN35] State's observations dated April 25, 1994, p. 1.
[FN36] State's observations dated April 25, 1994, p. 1, citing Clarke v. U.S., 886 F 2d 404 (D.C. Cir. 1989), Palmore v. U.S., 411 U.S. 389 (1973).

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51. Accordingly, the State submits that a claim that the treatment of the residents of the District of Columbia has violated the Fifth and Fourteenth Amendments to the U.S. Constitution would present complex issues of constitutional interpretation and, far from being futile, could readily be litigated in domestic courts.

52. As its second ground for the inadmissibility of the Petitioners' petition, the State contends that the complaint fails to state a claim under the American Declaration. In this regard, the State argues that the decision of the drafters of the U.S. Constitution to make the District of Columbia a separate enclave rather than a state was not motivated by animus against a group of citizens, nor did it reflect an effort to disenfranchise its residents. Rather, the decision was a consequence of a federal structure of the United States, of the division of responsibilities between the states and the federal government, and, more specifically, of the desire to protect the center of federal authority from undue influence of the various states. [FN37]

[FN37] State's observations dated April 25, 1994, pp. 3-4.

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53. According to the State, the decision to provide Congress with control over the federal District was also motivated by concerns that residents of the District might enjoy disproportionate influence on government affairs by virtue of their contiguity to, and residence among, members of the national government.

54. In these respects, therefore, the State contends that the special status given to the District of Columbia was based on geography alone rather than any individual characteristics such as race, gender, creed and the like, and therefore does not constitute a human rights violation. Rather, in the State's view, the District status is a justifiable and important aspect of the federal system of government freely chosen by the citizens of the United States. [FN38]

[FN38] State's observations dated April 25, 1994, pp. 4-5, citing, inter alia, Eur. Court. H.R., Belgium Linguistics Case, Ser. A Vol. XIX (23 July 1968), for the "well-established principle" under international human rights law that "objective and reasonable" criteria can justify differential treatment.

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55. With regard to Article XX of the Declaration, the State contends that no where in this or any other Article of the Declaration is the modalities of participation in government specified. The Declaration does not, for example, indicate that participation should be effected through states or whether elections should be by legislative majority or proportionate rule, through a parliamentary system, federalism or the like. The State emphasizes in this regard that these are "complex issues over which unanimous agreement hardly can be reached within a single country, let alone in a multi-national setting. Instead, matters relating to the governmental structure ought to be determined by the citizens of each nation." [FN39]Considered in this light, the State submits that the decision in the United States that only states shall be directly represented in the

House of Representatives and Senate, and that the seat of the federal government shall not be a state, is a matter properly within the discretion of nations.

[FN39] State's observations dated April 25, 1994, pp. 5-6.

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56. Moreover, the State argues that the residents of the District of Columbia are not excluded from the political process in the United States. To the contrary, the State claims that District residents participate in the U.S. political processes through a variety of means, including voting in presidential elections, electing a mayor and city council, choosing a non-voting delegate in the House of Representatives who enjoys such benefits as floor privileges, office space, committee assignments and committee voting rights, and, since 1990, electing two non-voting senators and one non-voting representative whose roles are to advocate the cause of statehood. Moreover, the State emphasizes that District residents have freely and openly debated issues regarding the District's status in the government, through proposed constitutional amendments and other legislation. [FN40]

[FN40] State's observations dated April 25, 1994, pp. 5-6.

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57. Finally, the State claims that it recognizes that the inability of District of Columbia residents to select voting members of Congress is for many a significant political issue. The State considers, however, that the matter involves "delicate issues of constitutional law and federal structure that call into question the very organization of the United States" and therefore should be left in the realm of political debate and decision-making.

IV. ANALYSIS

A. Competence of the Commission

58. The State is a Member State of the Organization of American States that is not a party to the American Convention on Human Rights, as provided for in Article 20 of the Commission's Statute and Article 23 of the Commission's Rules of Procedure. The United States deposited its instrument of ratification of the OAS Charter on June 19, 1951. [FN41]

[FN41] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Articles 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Articles 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation

of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A Nº 10 (1989), paras. 35-45; I/A Comm. H.R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

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59. While the situation upon which the Petitioners' complaint is based in part upon legislation that was enacted prior to the State's ratification of the OAS Charter, namely the U.S. Constitution of 1789 and the Organic Act of 1801, the violations of the Declaration alleged have continued and remained current after the date of ratification of the OAS Charter by the United States. That alleged violations of this nature fall within the scope of the Commission's competence to apply the American Declaration is consistent with the Commission's practice and that of other international human rights tribunals of applying human rights instruments to alleged violations that arose prior to the ratification of those instruments but which are continuing in nature and whose effects persist after the instruments' entry into force. [FN42]

[FN42] See e.g. João Canuto de Oliveira v. Brazil, Report Nº 24/98, Annual Report of the IACHR 1997, paras. 13-18; I/A Court H.R., Blake Case, Preliminary Objections, Judgment of July 2, 1996, Ser. C Nº 27 (1996). See similarly Eur. Court H.R., Papamichalopoulos et al. v. Greece, Judgment of June 24, 1993, Series A Nº260-B, paras. 40-46.

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60. Finally, the Petitioners are natural persons and the violations are said to have occurred within the territory of the United States. The Commission therefore concludes that it is competent to examine this petition.

B. Admissibility of the Petition

61. The Commission has not previously determined the admissibility of the complaints in the Petitioners' petition. In light of the length of time for which the petition has been outstanding and the numerous opportunities available to the parties to provide observations on the admissibility and merits of the claims raised in the Petitioners' petition, the Commission has decided to consider the admissibility of the Petitioners' claims together with their merits.

1. Duplication of Procedures

62. The Petitioners have claimed that no other petition or complaint raising the allegations in their petition is pending in any other international forum, and that the violations alleged have not been previously considered by the Commission, in accordance with Article 33 of the Commission's Rules of Procedure. [FN43]The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under Article 33 of the Commission's Rules of Procedure.

[FN43] Article 33(1) of the Commission's Rules of Procedure provides: "The Commission shall not consider a petition if its subject matter: a) is pending settlement pursuant to another procedure before an international governmental organization of which the State concerned is a member; or 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."

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2. Exhaustion of Domestic Remedies

63. Article 31(1) of the Commission's Rules of Procedure specifies that, in order for a case to be admitted, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.

64. The record in the present case indicates that certain residents of the District of Columbia including members of the Statehood Solidarity Committee have pursued remedies in the domestic courts of the United States in respect of various aspects of the claims in the Petitioners' petition. In particular, the information provided by the Petitioners indicates that in the consolidated cases of Adams v. Clinton and Alexander et al. v. Daley, the claimants argued, similar to the matter presently before the Commission, that they as residents of the District of Columbia were entitled to enjoy equal Congressional representation and full self-governance under the provisions of the Fifth [FN44] and Fourteenth [FN45] Amendments to the U.S. Constitution protecting the rights to equal protection of the law and to a republican form of government. The record also indicates that in a 68-page majority decision dated March 20, 2000, the U.S. District Court rejected the claimants' claims and that the U.S. Supreme Court affirmed the U.S. District Court's decision in a judgment dated October 16, 2000.

[FN44] The Fifth Amendment to the U.S. Constitution, supra.
[FN45] The Fourteenth Amendment to the U.S. Constitution, supra.

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65. In its observations of April 25, 1994, the State made the general allegation that the Petitioners had failed to cite any cases brought before the domestic courts in which the violations alleged in the petition were raised before domestic courts, and suggested that it would be possible for the situation alleged in the Petitioners' petition to be challenged before domestic courts under the Fifth and Fourteenth Amendments to the U.S. Constitution. The State has subsequently made no observations on the issue of exhaustion of domestic remedies in this matter. Rather, the State indicated in its communications of October 17, 1996 and June 2, 2000 with the Commission that it had nothing further to submit in the case.

66. Based upon the information available, the Commission is satisfied that the Petitioners have exhausted domestic remedies. In particular, in the consolidated cases of Adams v. Clinton and Alexander et al. v. Daley, the absence of Congressional representation for residents of the District of Columbia has been unsuccessfully challenged before the U.S. District Court and the

U.S. Supreme Court under the civil rights provisions of the U.S. Constitution, including the right to equal protection of the law and to a republican form of government. The State has failed to establish that additional effective remedies remain for the Petitioners to exhaust. Consequently, the Petitioners' petition is not barred from consideration under Article 31 of the Commission's Rules of Procedure.

3. Timeliness of the Petition

67. In accordance with Article 32(1) of the Commission's Rules of Procedure, the Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted domestic remedies.

68. In the present case, the Petitioners' petition was not lodged beyond six months from the date on which the Petitioners were notified of the decision that exhausted domestic remedies, namely the October 16, 2000 decision of the U.S. Supreme Court dismissing the appeal in the consolidated cases of Adams v. Clinton and Alexander et al. v. Daley. The State has not contested the timeliness of the Petitioners' petition. Consequently, the Commission concludes that the Petitioners' petition is not barred from consideration under Article 31 of the Commission's Rules of Procedure.

4. Colorable Claim

69. Articles 34(a) and 34(b) of the Commission's Rules of Procedure require the Commission to declare inadmissible any petition when the complaint does not state facts that tend to establish a violation of the rights under the Convention or other applicable instruments, or where the statements of the petitioner or of the State indicate that the petition is manifestly groundless or out of order.

70. 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 to the extent that such responses have been provided. After carefully reviewing the allegations in light of the information provided by both parties, the Commission does not find the Petitioners' complaints to be manifestly groundless or inadmissible. In reaching this conclusion, the Commission has been particularly mindful of the fundamental role that representative democracy has played in the formation and development of the Organization of American States and in securing the protection of human rights in this hemisphere. [FN46] Accordingly, the Commission concludes that the Petitioners' petition is not inadmissible under Article 34 of the Commission's Rules of Procedure.

[FN46] See e.g. Charter of the Organization of American States, Preamble ("Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this content, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man…"); Article 2(b) (establishing as an essential purpose of the Organization to "promote and consolidate

representative democracy, with due respect for the principle of non-intervention"); OAS General Assembly Resolution 837 (XVI-O/86) (reaffirming the "inalienable right of all the peoples of the Americas freely to determine their political, economic and social system without outside interference, through a genuine democratic process and within a framework of social justice in which all sectors of the population will enjoy the guarantees necessary to participate freely and effectively through the exercise of universal suffrage."); I/A Court H.R., Advisory Opinion OC-6/86 (9 May 1986), "The Word "Laws" in Article 30 of the American Convention on Human Rights), para. 34 (declaring that "[r]epresentative democracy is the determining factor throughout the system of which the [American] Convention is a part.").

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5. Summary

71. In accordance with the foregoing analysis of the requirements of the applicable provisions of the Commission's Rules of Procedure, the Commission decides to declare as admissible the claims presented by the Petitioners with respect to Articles II and XX of the Declaration, and to proceed to examine the merits of the case.

C. Merits

1. The Petitioners and Representation in the U.S. Congress

72. Based upon the observations of the Petitioners and the State in this matter, it is evident that the determination of the Petitioners' complaint requires at the outset a summary of the structure of the U.S. federation and the status of the District of Columbia within that structure.

73. In this regard, the Commission notes that the United States is a federal republic, with governments at the federal and state level. Under the U.S. Constitution and judicial interpretations thereof, exclusive and concurrent jurisdiction over particular areas of governance has fallen to each of the federal and state jurisdictions. [FN47]The federal government, for example, has specifically enumerated powers under article I, section 8 of the Constitution. [FN48] These powers include the broad authority under the "necessary and proper" clause of the U.S. Constitution [FN49] to pass laws implementing its enumerated powers for the full effectuation of national goals, such that any state legislation that might interfere with the exercise of these federal powers is invalid. [FN50]State legislatures, on the other hand, have residual authority over powers that are not delegated to the United States by the Constitution nor prohibited by it to the States. [FN51]

[FN47] See U.S. Constitution, art. I, § 8, Amendment X. See generally John E. Nowak, Ronald D. Rotunda & J. Nelson Young, Constitutional Law 121-123 (2d ed., 1983) (noting that it was initially through the post-Declaration of Independence Articles of Confederation that a national government of very limited powers was established in the United States, and that through a convention beginning in May of 1787, these Articles were amended to enable the national government to deal with certain multi-state problems, which ultimately resulted in the U.S. Constitution and the new federal government).

[FN48] Article I, § 8 of the U.S. Constitution provides that "Congress shall have power
To lay an collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
To borrow money on the credit of the United States;
To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
To provide for the punishment of counterfeiting the securities and current coin of the United States;
To establish post offices and post roads;
To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries;
To constitute tribunals inferior to the supreme court;
To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
To provide and maintain a navy;
To make rules for the government and regulation of the land and naval forces;
To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten square miles) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; -and
To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."
[FN49] U.S. Const., Article I, § 8 ("Congress shall have the Power…To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.").
[FN50] See e.g. McCullough v. Maryland, 17 U.S. (4 Wheat) 316 (1819).

[FN51] U.S. Const., Amendment X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

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74. The U.S. federal government in turn is composed of an executive branch in the form of the President, [FN52] a legislative branch in the form of the U.S. Congress [FN53] and a judicial branch composed of one supreme court and such inferior courts as Congress has from time to time established. [FN54]The U.S. Congress is bicameral, being comprised of a House of Representatives and a Senate. The House of Representatives consists of members elected every second year by people of the States and apportioned on the basis of population. [FN55] The Senate is composed of two senators from each state elected for six year terms. [FN56]

[FN52] U.S. Const., Article II.
[FN53] U.S. Const., Article I.
[FN54] U.S. Const., Article III.
[FN55] U.S. Const., Article I, § 2.
[FN56] U.S. Const., Article I, § 3.

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75. At issue in the present case is the role of the residents of the District of Columbia in the legislative branch of the federal government. As illuminated by the observations of the parties and domestic judicial decisions relating to this issue, it appears undisputed that individuals who live in the District of Columbia and would otherwise be eligible to vote in U.S. federal elections may cast a vote for the U.S. President [FN57] but may not vote for or elect full members of the House of Representatives or the Senate. This circumstance stems from the terms of the U.S. Constitution as well as the federal legislation through which the District of Columbia was subsequently created.

[FN57] The right to vote in Presidential elections was provided to residents of the District of Columbia by way of the Twenty-Third Amendment to the U.S. Constitution, which provides as follows: Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct: A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment. Section 2. The Congress shall have power to enforce this article by appropriate legislation. See also H.R. Rep. Nº1698, 86th Cong., 2d Sess. 1, 2 (1960) (clarifying that the 23rd amendment "would change the Constitution only to the minimum extent necessary to give the District appropriate participation in national elections. It would not make the District of Columbia a State. It would not give the District of Columbia any other attributes of a State or

change the constitutional powers of the Congress to legislate with respect to the District of Columbia and to prescribe its form of government.").

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76. In particular, the preclusion of the right on the part of residents of the District of Columbia to elect members of the House of Representatives is derived from Article 1, section 2, clause 1 of the U.S. Constitution, which provides:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

77. Judicial authorities in the United States have interpreted this provision, in light of its text, history and judicial precedent, as only permitting states to elect members of the House of Representatives, and have held that the District of Columbia cannot be considered a "state" within the meaning of the provision. [FN58]

[FN58] Adams v. Clinton, supra, at 37.

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78. Similarly with respect to the U.S. Senate, as originally provided under Article I, section 3 of the U.S. Constitution the Senate was to be "composed of two Senators from each State," chosen not "by the People of the several States," as in the case of the House, but rather "by the Legislature thereof." [FN59] In 1913 the Seventeenth Amendment granted to the people of "each State," rather than their legislatures, the right to choose Senators [FN60] and after that change the provisions concerning qualifications and vacancies for the Senate have essentially paralleled those for the House. [FN61] As with the House of Representatives, the U.S. courts have concluded that the framers of the Constitution did not contemplate allocating two Senators to the District of Columbia, as the Senate was expressly viewed as representing the states themselves. Further, the guarantee of two senators for each State was an important element of the "Great Compromise" between the smaller and larger states that ensured ratification of the Constitution, such that the smaller states were guaranteed equal representation notwithstanding their smaller population. [FN62]

[FN59] U.S. Const. Article I, § 3, cl. 1.
[FN60] U.S. Const. Amend. XVII, cl. 1 (providing that "[t]he Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.").
[FN61] Adams v. Clinton, supra, at 26.
[FN62] Adams v. Clinton, supra, at 25-27, citing The Federalist Nos. 10, 39, 58, 62 (James Madison) (Jacob E. Cooke ed., 1961); Reynolds v. Simms, 377 U.S. 533 (1964).

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79. The findings of the U.S. judiciary as to the absence of Congressional voting rights for D.C. residents have also been based upon the terms of the so-called "District clause" in the Constitution, as well as by the Organic Act of 1801 by which the District of Columbia was created. According to Article I, section 8, clause 17 of the U.S. Constitution, Congress is expressly granted the power to "exercise exclusive Legislation in all Cases whatsoever" over the district that would become the seat of government. [FN63] When the District of Columbia was ultimately created from land ceded by Maryland and Virginia through the passage of the Organic Act of 1801, [FN64] it appears to have been generally accepted that once Congress assumed jurisdiction over the District, individuals residing in the District would lose their right to vote for Congress. [FN65] Likewise, since February 1801 District residents have been unable to vote in either Maryland or Virginia. [FN66]

[FN63] U.S. Const. Article I, § 8, cl. 17 (granting Congress power to exercise exclusive legislation in all cases whatsoever "over such District as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States.").
[FN64] Organic Act of 1801, 2 Stat. 103 (1801).
[FN65] Adams v. Clinton, supra, at 29-33, citing, inter alia, Enquiries into the Necessity or Expediency of Assuming Exclusive Legislation Over the District of Columbia 15 (1800) (complaining that once Congress assumed jurisdiction over the District, its residents would be "reduced to the mortifying situation, of being subject to laws made, or to be made, by we know not whom; by agents, not of our choice, in no degree responsible to us.").
[FN66] Id., at 43.

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80. As to the purpose underlying the treatment of the District of Columbia, it appears to be generally accepted that the historic rationale for the District Clause was to ensure that Congress would not have to depend upon another sovereign for its protection. [FN67] In particular, authorities claim that the District Clause was adopted in response to an incident in Philadelphia in 1783 in which a crowd of disbanded Revolutionary War soldiers, angry at not having been paid, gathered to protest in front of the building in which the Continental Congress was meeting under the Articles of Confederation. As described by the U.S. District Court:

[FN67] Kenneth R. Bowling, The Creation of Washington, D.C. 30-34 (1991); The Federalist Nº43, supra, at 289; Joseph Story, 3 Commentaries on the Constitution §§ 1213 (1833).

Despite requests from the Congress, the Pennsylvania state government declined to call out its militia to respond to the threat, and the Congress had to adjourn abruptly to New Jersey. The episode, viewed as an affront to the weak national government, led to the widespread belief that exclusive federal control over the national capital was necessary. "Without it," Madison wrote, "not only the public authority might be insulted and its proceedings be interrupted, with impunity; but a dependence of the members of the general Government, on the State comprehending the seat of the Government for protection in the exercise of their duty, might

bring on the national councils an imputation of awe or influence, equally dishonorable to the Government, and dissatisfactory to the other members of the confederacy." [FN68]

[FN68]Adams v. Clinton, supra, at 27-28, n. 25.

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81. The record before the Commission indicates that since the inception of the District, numerous initiatives have been attempted to provide residents of the District with representation at the local and federal levels. These have included: a constitutional amendment allowing for participation by residents of the District in Presidential elections in 1960; passage of the District of Columbia Delegate Act [FN69] in 1970 which provided the District with one non-voting delegate in the House of Representatives who enjoys floor privileges, office space, committee assignments and committee voting rights but was not empowered to vote on legislation brought before the House of Representatives; passage of the District of Columbia Self-Government and Governmental Reorganization Act, or Home Rule Act, [FN70] in 1973 which led to the election of a city council and mayor; the election by the District since 1990 of "shadow" representatives, namely two non-voting senators and one non-voting representative whose role is to advocate the cause of statehood; [FN71] and the granting in 1993 to the District delegate and all territorial non-voting delegates the right to vote in Congress' Committee of the Whole. [FN72] With respect to this latter development, it is the Commission's understanding based upon the parties' information that the vote of the District's delegate in the Committee of the Whole is subject to a "saving clause" that prevents the District and territorial delegates from casting a deciding vote on the passage of any Congressional legislation in the Committee of the Whole. [FN73]

[FN69] District of Columbia Delegate Act, Pub. L. Nº91-405, sec. 202, 84 Stat. 845, 848 (1970).
[FN70] District of Columbia Self-Government and Governmental Reorganization Act, Pub L. Nº93-198
Stat. 774 (1973).
[FN71] According to the Petitioners, these "shadow" representatives are "unpaid lobbyists who are not allowed onto the floor of either the House of Representatives or the Senate," and have no political power to affect any legislation. Petitioners' Observations dated July 18, 1994, pp. 46-47, n. 95.
[FN72] State's Observations dated April 25, 1994, pp. 5-6; Petitioners' Observations dated July 18, 1994, pp. 26-27.
[FN73] Petitioners' Observations dated July 18, 1994, p. 27; Petitioners' Observations dated August 28, 1993,
pp. 11-15, citing District of Columbia Self-Government and Governmental Reorganization Act, supra, House Rule XXIII(2)(d).

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82. Based upon the record before it, therefore, the Commission finds that the Petitioners, as residents of the District of Columbia, are not permitted to vote for or elect members of the U.S. Senate. While the Petitioners are permitted to elect a member of the House of Representatives, that member cannot cast a deciding vote in respect of any of the matters coming before the

House. This is in contrast to the residents of States in the United States, who have the right under the U.S. Constitution to elect members of both the Senate and the House of Representatives. The Commission also finds that the basis for this distinction lay with the desire of the original framers of the Constitution to protect the center of federal authority from undue influence of the various States, and at the same time avoid the possibility that the residents of the District might enjoy a disproportionate influence on governmental affairs by virtue of their contiguity to, and residence among, members of the federal government.

2. Articles II and XX of the American Declaration – Interpretation and Application of the Right to Equal and Effective Participation in Government

83. As particularized above, the Petitioners have alleged that the United States is responsible for violations of Articles II and XX of the American Declaration in respect of the members of the Statehood Solidarity Committee and other residents of the District of Columbia. This allegation is based on the contention that the Petitioners, unlike residents elsewhere in the United States, have no meaningful representation in the federal House of Representatives and no representation whatsoever in the Senate, and are therefore denied effective participation in the national legislature. They also contend that these limitations are manifestly arbitrary and that the State has failed to provide any adequate justification for them.

84. Articles II and XX of the American Declaration provide:

Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Article XX. Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

85. The Commission has long recognized the significance of representative democracy and associated political rights to the effective realization and protection of human rights more broadly in the hemisphere. According to the Commission

[t]he participation of citizens in government, which is protected by Article XX of the Declaration forms the basis and support of democracy, which cannot exist without it; for title to government rests with the people, the only body empowered to decide its own immediate and future destiny and to designate its legitimate representatives.

Neither form of political life, nor institutional change, nor development planning or the control of those who exercise public power can be made without representative government.

[…]

The right to political participation leaves room for a wide variety of forms of government; there are many constitutional alternatives as regards the degree of centralization of the powers of the state or the election and attributes of the organs responsible for the exercise of those

powers.However, a democratic framework is an essential element for establishment of a political society where human values can be fully realized. [FN74]

[FN74] IACHR, Doctrine of the Inter-American Commission of Human Rights (1971-1981), in Ten Years of Activities 1971-1981, Washington, D.C., 1982, p. 334.

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86. The central role of representative democracy in the inter-American system is evidenced in the provisions of the system's founding instruments, including Article 3(d) of the Charter of the OAS [FN75] which confirms that "solidarity of the American states and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy." Resolutions adopted by the Organization's political organs have likewise reflected the indispensability of democratic governance to the stability, peace and development of the region. In OAS General Assembly Resolution 837, for example, OAS member states reaffirmed the "inalienable right of all of the peoples of the Americas freely to determine their political, economic and social system without outside interference, through a genuine democratic process and within a framework of social justice in which all sectors of the population will enjoy the guarantees necessary to participate freely and effectively through the exercise of universal suffrage." [FN76] Citing these and other similar instruments, the Commission recently reaffirmed that "there is a conception in the inter-American system of the fundamental importance of representative democracy as a legitimate mechanism for achieving the realization of and respect for human rights; and as a human right itself, whose observance and defense was entrusted to the Commission." [FN77] According to the Commission, this conception implies protecting those civil and political rights in the framework of representative democracy, as well as the existence of institutional control over the acts of the branches of government, and the rule of law. [FN78]

[FN75] Charter of the Organization of American States, as amended by the Protocol of Cartagena of 1985, OAS, Treaty Series, Nos. 1-C and 61.
[FN76] OAS General Assembly Resolution 837 (XVI-O/86).
[FN77] Aylwin Azocar et al. v. Chile (Merits), Case 11.863, Report Nº137/99, Annual Report of the IACHR 1999,
at 536.
[FN78] Id., para. 56.

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87. The Commission is therefore of the view that those provisions of the system's human rights instruments that guarantee political rights, including Article XX of the American Declaration, must be interpreted and applied so as to give meaningful effect to exercise of representative democracy in this Hemisphere. The Commission also considers that insights regarding the specific content of Article XX of the Declaration can properly be drawn from Article 23 of the American Convention and the Commission's previous interpretation of that provision, [FN79] which parallels in several fundamental respects Article XX of the Declaration.Article 23 provides as follows:

[FN79] The Commission has previously held that in interpreting and applying the Declaration, it is necessary to consider its provisions in light of developments in the field of international human rights law since the Declaration was first composed. These developments may in turn be drawn from the provisions of other prevailing international and regional human rights instruments, including in particular the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration. See e.g. IACHR, Juan Raul Garza v. United States, Case 12.243, Annual Report of the IACHR 2000, paras. 88, 89; citing I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, Inter-Am. Ct. H. R. (Ser. A) Nº 10 (1989), para. 37. See also IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, doc. 40 rev. (February 28, 2000), para. 38 (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

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1. Every citizen shall enjoy the following rights and opportunities:

a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

88. In interpreting Article 23 of the American Convention, the Commission has recognized that a degree of autonomy must be afforded to states in organizing their political institutions so as to give effect to these rights, as the right to political participation leaves room for a wide variety of forms of government. [FN80]As the Commission has appreciated, its role or objective is not to create a uniform model of representative democracy for all states, but rather is to determine whether a state's laws infringe fundamental human rights. [FN81]The Commission has similarly recognized that not all differences in treatment are prohibited under international human rights law, and this applies equally to the right to participate in government. [FN82]

[FN80] Doctrine of the Inter-American Commission on Human Rights, supra, p. 334. See also Aylwin Case, supra,
para. 99.

[FN81] Aylwin Case, supra, para. 76.
[FN82] Id., para. 99.

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89. This does not mean, however, that the conduct of states in giving effect to the right to representative government, whether by way of their constitutions or otherwise, [FN83] is immune from review by the Commission. Rather, certain minimum standards or conditions exist respecting the manner in which this right is given effect which must be shown to have been satisfied. These standards or conditions relate primarily to the nature of permissible limitations that may be imposed on the exercise of such rights. The Commission has noted in this regard that Article 23(2) of the American Convention provides an exhaustive list of grounds upon which states may properly base limitations of the exercise of the rights and opportunities referred to in Article 23(1) of the Convention, namely on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. [FN84]

[FN83] It is well-established that all obligations imposed on a State by international law must be fulfilled in good faith and that domestic law may not be invoked to justify nonfulfillment, even in cases involving constitutional provisions. See I/A Court H/R., Advisory Opinion OC-14/94 of December 9, 1994, Ser. A Nº14 (1994), para. 35.
[FN84] Aylwin Case, supra, para. 101.

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90. More generally, the Commission has held that its role in evaluating the right to participate in government is to ensure that any differential treatment in providing for this right lacks any objective and reasonable justification. [FN85] In this connection, in securing the equal protection of human rights, states may draw distinctions among different situations and establish categories for certain groups of individuals, so long as it pursues a legitimate end, and so long as the classification is reasonably and fairly related to the end pursued by the legal order. [FN86]And as with other fundamental rights, restrictions or limitations upon the right to participate in government must be justified by the need of them in the framework of a democratic society, as demarcated by the means, their motives, reasonability and proportionality. [FN87]At the same time, in making these determinations, the Commission must take due account of the State's degree of autonomy in organizing its political institutions and should only interfere where the State has curtailed the very essence and effectiveness of a petitioner's right to participate in his or her government. [FN88]

[FN85] Id., para. 99, 101. See similarly UNHRC, General Comment 25(57), General Comments under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th mtg., U.N. Doc. CCPR/C/Rev.1/Add.7 (1996), para. 4.
[FN86] I/A Court H.R., Advisory Opinion OC-4/84 of January 19, 1984, para. 57.
[FN87] Aylwin Case, supra, para. 102.
[FN88] Id., para. 103, citing Eur. Court H.R., Case of Mathieu-Mohin and Clerfayt, Nº9/1985/95/143 (28 January 1987).

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91. This approach to the interpretation and application of the right under Article 23 of the American Convention and Article XX of the American Declaration to participate in government is consistent with jurisprudence from other international human rights systems concerning similar treaty protections. The European Court of Human Rights, for example, had occasion to interpreting Article 3 of Protocol I to the European Convention [FN89] in the context of a complaint challenging Belgian legislation that transitionally demarcated the territory of Dutch-speaking and French-speaking regions of Belgium and placed linguistic restrictions upon representation and membership for minority language groups in the Community and Regional Councils and Executives of those regions. [FN90] In disposing of the complaint, the European Court indicated that the rights encompassed in Article 3 of Protocol I are not absolute, but rather that there is room for "implied limitations." [FN91] Moreover, the Court proclaimed that states have a "wide margin of appreciation" in implementing the rights under Article 3 of Protocol I, but that

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[FN89] European Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol 1, Article 3 (providing: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.").
[FN90] Case of Mathieu-Mohin and Clerfayt, supra.
[FN91] Id., para. 52, citing Eur. Court H.R., Golder Judgment, Series A Nº18 (21 February 1975), pp. 18-19, § 38.

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[i]t is for the Court to determine in the last resort whether the requirements of Protocol Nº 1 (P1) have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate. In particular, such conditions must not thwart 'the free expression of the opinion of the people in the choice of the legislature.'" [FN92]

[FN92] Id.

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92. According to the European Court, any electoral system must also be assessed in the light of the political evolution of the country concerned, for, in its view, "features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people on the choice of the legislature." [FN93]In ultimately dismissing the applicants' complaint, the Court emphasized that

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[FN93] Id., para. 54.

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[i]n any consideration of the electoral system in issue, its general context must not be forgotten. The system does not appear unreasonable if regard is had to the intentions it reflects and to the respondent State's margin of appreciation within the Belgian parliamentary system – a margin that is all the greater as the system is incomplete and provisional. [FN94]

[FN94] Id.

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93. Similar principles governing the right to political participation have been elucidated in the UN human rights system. Article 25(b) of the International Covenant on Civil and Political Rights provides that "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: […] (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." Like the European Court and this Commission, the UN Human Rights Committee has recognized that the rights protected under Article 25 of the ICCPR are not absolute, but that any conditions that apply to the right to political participation protected by Article 25 should be based on "objective and reasonable criteria." [FN95] The Committee has also found that in light of the fundamental principle of proportionality, greater restrictions on political rights require a specific justification. [FN96]

[FN95] UNHRC, General Comment 25(57), General Comments under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th mtg., U.N. Doc. CCPR/C/Rev.1/Add.7 (1996), para. 4. According to the travaux préparatoires to the ICCPR, permissible restrictions under Article 25 would include, for example, prescription of a minimum age for voting. Marc J. Bossuyt, Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights 473 (1987), citing Third Committee, 16th Session (1961), A/5000, § 93, referring to A/C.3/SR/1096, §36 (GH), §37 (CL), §46 (GH); A/C.3/SR.1097, §5 (IQ), §9 (TR), §21 (U).

[FN96] See The Pietraroia Case, Communication Nº44/1979, para. 16. See similarly Manfred Nowak, U.N. Covenant on Civil and Political Rights – CCPR Commentary 444-5 (1993). Nowak notes that universal suffrage in various countries is not an absolute precept but rather only a relative principle molded by the respective understanding of democratic participation. At the same time, he emphasizes that the principle of universal suffrage obligates States Parties not only to extend the circle of persons eligible to vote and to be elected to as many citizens as possible, but also to take positive steps to ensure that these persons are truly able to exercise their right to vote.

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94. The Commission also observes that in affording individuals the rights prescribed under Article XX of the Declaration, they must do so on the basis of equality and without discrimination as mandated by Article II of the Declaration. As with permissible restrictions

under Article XX itself, Article II of the Declaration allows for differential treatment but only when that treatment is based upon factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review, due account being taken of the State's prerogative in choosing its political institutions. [FN97]

[FN97] See e.g. Ferrer-Mazorra et al. v. United States, Case 9903, Annual Report of the IACHR 2000, para. 238; I/A Court H.R., Advisory Opinion OC-4/84 of January 19, 1984, paras. 56, 57.

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95. In evaluating the circumstances of the present case in light of the above principles, the Commission must first address whether the rights of the Petitioners under Article XX of the American Declaration to participate in their government have, on the evidence, been limited or restricted by the State. In this respect, the State does not contest that the U.S. Constitution, by its terms and as interpreted by the courts in the United States, does not permit the Petitioners and other residents of the District of Columbia to elect representatives to their national legislature.

96. Nevertheless, the United States appears to suggest that District residents are afforded an adequate right to participate in the government of the United States and to take part in popular elections in compliance with Article XX of the Declaration, by reason of other political activities that are open to them. According to the State, these include their ability to vote in Presidential elections, to elect a mayor and city council, and the presence of one non-voting delegate in the House of Representatives and three "shadow" representatives in Congress. The State also points to the fact that the District's status is freely and openly debated in the government through, for example the presentation of statehood bills in Congress. The State therefore contends that by any measure, District residents have been able to take part in "healthy and robust debate" concerning all issues of national concern, including the status of the District itself.

97. Upon consideration of the parties' observations on the record of the case, the Commission must conclude that the Petitioners' rights to participate in the federal legislature of the United States have been limited or restricted both in law and in fact. As noted, it is agreed that as a matter of domestic constitutional law the Petitioners are not afforded the right to elect members of either chamber of Congress. While the State has contended that the District of Columbia elects a delegate to the House of Representatives who has the right to vote upon legislation in the Committee of the Whole, [FN98] the record indicates that the delegate is prohibited from casting a deciding vote in respect of any legislation that comes before Congress. On this basis, the State's own courts have proclaimed that the vote extended to the District of Columbia delegate in the Committee of the Whole has no chance of affecting the ultimate result of matters coming before the Committee and is therefore "meaningless." [FN99]Accordingly, the Commission cannot accept this arrangement as providing the Petitioners with effective participation in their legislature. For similar reasons, the ability of the Petitioners to elect representatives to other levels and branches of government and to participate in public debates on the status of the District of Columbia cannot be considered equivalent to the nature of participation contemplated by Article XX of the Declaration, which, in the Commission's view, entitles the Petitioners to a meaningful opportunity, directly or through freely elected

representatives, to influence the decisions of government that affect them, including those of the federal legislature.

[FN98] The U.S. District Court for the District of Columbia has described the Committee of the Whole as follows:

The Committee of the Whole is comprised of all the Members of the House of Representatives and convenes on the floor of the House with Members serving as the Chair on a rotating basis. It is in this procedural forum that the House considers, debates and votes on amendments to most of the legislation reported out of the standing or select committees. Only after consideration of amendments in the Committee of the Whole is legislation reported to the floor of the House for final, usually perfunctory, consideration.

Robert H. Michel et al. v. Donald K. Anderson et al., U.S. District Court for the District of Columbia, Civil Action Nº 93-0039, March 8, 1993 (Greene J.), at 5; aff'd U.S. Court of Appeals for the District of Columbia, Case Nº 93-5109 (January 25, 1994)

[FN99] Id. (concluding that "[i]n a democratic system, the right to vote is genuine and effective only when, under the governing rules, there is a chance, large or small, that, sooner or later, the vote will affect the ultimate result. The votes of the Delegates in the Committee of the Whole cannot achieve that; by virtue of Rule XXIII they are meaningless. It follows that the House action had no effect on legislative power and that it did not violate Article I or any other provision of the Constitution.").----------

98. Therefore, to the extent that each of the Petitioners, unlike similarly-situation citizens elsewhere in the United States, does not have the right to vote for a representative in their national legislature who has an effective opportunity to influence legislation considered by Congress, the Commission considers that they have been denied an equal right under law in accordance with Article II of the Declaration to participate in the government of their country by reason of their place of residence, and accordingly that their right under Articles XX of the Declaration to participate in their federal government has been limited or restricted. In this respect, the Commission has noted the Petitioners' allegations regarding the existence of a Congressional intent to discriminate against a particular racial group in light of the considerable African-American majority that has evolved in the District's population over the past 40 years. The Commission is concerned that these circumstances raise the possibility that the absence of Congressional representation for the District of Columbia has had a disproportionately prejudicial impact upon a particular racial group, namely the African-American community residing in the District. After careful consideration of the record before it, however, the Commission does not find the allegations regarding the existence of a racially discriminatory intent on the part of Congress to have been adequately briefed so as to enable it to make a specific determination on this issue.

99. The Commission must next consider whether this restriction or limitation on the rights under Article XX and II of the Declaration to vote and to participate in government with equality under law is nevertheless justified when analyzed in the general political context of the State concerned and thereby permissible under these articles of the Declaration. As noted above, this entails evaluating whether the restrictions imposed by the State may be considered to curtail the

very essence and effectiveness of the Petitioners' right to participate in their government and whether the State has offered a reasonable, objective and proportionate justification for the restrictions.

100. In this respect, the State has provided a number of explanations or justifications for the Petitioners' treatment which, in its view, should preclude the Commission from finding any violations of Articles II and XX of the American Declaration. In particular, as noted above, the State argues that the issue raised by the Petitioners relates at base to the federal structure of the United States and the decision by its founders to constitute a union of relatively autonomous states. According to the State, it is the absence of the District's status as a state, and not any conscious decision by the U.S. government, discriminatory or otherwise, to disenfranchise the Petitioners or other residents of the District of Columbia, that has resulted in their status vis a vis the U.S. Congress. The decision of the framers of the U.S. Constitution in turn was, according to the State and the Petitioners alike, based upon the desire to protect the center of federal authority from undue influence of the various States, and at the same time avoid the possibility that the residents of the District might enjoy a disproportionate influence on governmental affairs by virtue of their "contiguity to, and residence among, members of the General government." [FN100] As such, the State suggests that these decisions not only justify the limitation on the Petitioners' right to elect members of Congress, but concern the very organization of the United States and therefore should be left to the realm of political debate and decision-making.

[FN100] State's observations dated April 25, 1994, p. 4, citing 10 Annuals of Congress 991, 998-999 (1801) (Remarks of Rep. Dennis).

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101. In entering into this stage of its analysis, the Commission acknowledges the degree of deference that must properly be afforded to states in organizing their political institutions so as to give effect to the right to vote and to participate in government. The Commission should only interfere in cases where the State has curtailed the very essence and effectiveness of an individual's right to participate in his or her government. After considering the information on the record, however, the Commission finds that the restrictions on the Petitioners' rights under Article XX to participate in their national legislature have been curtailed in such a manner as to deprive the Petitioners of the very essence and effectiveness of that right, without adequate justification being shown by the State for this curtailment.

102. The Commission notes in this regard that the political structure of the United States has been developed so as to provide for both state and federal levels of government, each with exclusive areas of jurisdiction under the Constitution. Consistent with this, the U.S. Congress, as the legislative branch of the federal government, has been afforded extensive powers to consider and enact legislation in areas such as taxation, national defense, foreign affairs, immigration and criminal law. It is also clear that these powers and legislative measures are binding upon or otherwise affect residents of the District of Columbia as they do other citizens of the United States. Indeed, as a consequence of Article I, section 8 of the U.S. Constitution and the Organic Act of 1801, Congress has the exceptional authority to exercise all aspects of legislative control

over the District, subject to what aspects of that authority Congress may delegate to District authorities through appropriate federal legislation.

103. Despite the existence of this significant and direct legislative authority that Congress exercises over the Petitioners and other residents of the District of Columbia, however, the Petitioners have no effective right to vote upon those legislative measures, directly or through freely chosen representatives, and it is not apparent from the record that Congress is responsible to the Petitioners for those measures by some other means. In this manner, Congress exercises expansive authority over the Petitioners, and yet it is in no way effectively accountable to the Petitioners or other citizens residing in the District of Columbia. This, in the Commission's view, has deprived the Petitioners of the very essence of representative government, namely that title to government rests with the people governed.

104. Both the Petitioners and the State have suggested that the foundation of the denial to the Petitioners of the right to vote for and elect members of Congress lay upon concerns existing at the time the U.S. Constitution was negotiated over 200 years ago that the seat of the federal government may be disproportionately threatened, or the position of a state correspondingly enriched, by placing Congress within a State.

105. The Commission has recognized and given due consideration to the fact that these concerns may have justified depriving residents of the District of elected representation in Congress at the time that the U.S. Constitution was enacted and indeed may have been indispensable to the Constitution's negotiation. However, as with all protections under the American Declaration, the Commission must interpret and apply Articles II and XX in the context of current circumstances and standards. [FN101] Not only has the State failed to offer any present-day justification for the Petitioners' denial of effective representation in Congress, but modern developments within the United States and the Western Hemisphere more broadly indicate that the restrictions imposed by the State on the Petitioners' right to participate in government are no longer reasonably justified.

[FN101] See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16 (stating that an "international instrument must be interpreted and applied within the overall framework of the juridical system in force at the time of the interpretation."). See also I/A Court H.R., Advisory Opinion OC-10/89, supra, para. 37

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106. Significantly, the State's judicial branch has specifically concluded that the historical rationale for the District Clause in the U.S. Constitution would not today require the exclusion of District residents from the Congressional franchise and has accepted that denial of the franchise is not necessary for the effective functioning of the seat of government. [FN102]It is also notable in this regard that domestic courts in the United States have found that the exclusion of District residents from the Congressional franchise does not violate the right to equal protection under the U.S. Constitution, not because the restriction on their right to elect Congressional representatives have been found to be justified, but because the limitation is one drawn by the

Constitution itself and accordingly cannot be overcome by the one person, one vote principle. [FN103]The American Declaration prescribes no similar limits or qualifications upon the guarantee of the rights under Articles II and XX and, as indicated above, establishes standards that apply to all legislative or other enactment by a state, including its constitutional provisions.

[FN102] Adams v. Clinton, supra, at 27, 56 (stating that "[i]t is also true, as our dissenting colleague argues, that the historical rationale for the District Clause – ensuring that Congress would not have to depend upon another sovereign for its protection – would not by itself require the exclusion of District residents from the congressional franchise", and indicating that the majority of the Court "do not disagree that defendants have failed to offer a compelling justification for denying District residents the right to vote in Congress. As the dissent argues, denial of the franchise is not necessary for the effective functioning of the seat of government.").
[FN103] Id., pp. 56-59 (noting that the Equal Protection Clause (Article 1, § 2) of the U.S. Constitution does not protect the right of all citizens to vote but only the right of all "qualified" citizens to vote and that the right to equal protection cannot overcome the line explicitly drawn by that article. Accordingly, the Court concluded that the doctrine of one person, one vote under U.S. constitutional jurisprudence could not serve as a vehicle for challenging the structure the Constitution itself imposes upon the Congress.).

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107. Numerous political initiatives have been undertaken in the United States in recent years to extend some measure of national representation for D.C. residents, which similarly recognize the present-day inadequacy of the Petitioners' status in the federal system of government. These have included, for example, granting District residents in 1960 the right to vote in Presidential elections through the 23rd amendment to the U.S. Constitution, the passage of the District of Columbia Delegate Act in 1970 which provided the District of Columbia with a non-voting delegate in the House of Representatives, and the extension to the D.C. delegate in 1993 of a limited right to vote in Congress' Committee of the Whole.

108. The Commission also considers it significant that according to the information available, no other federal state in the Western Hemisphere denies the residents of its federal capital the right to vote for representatives in their national legislature. In Canada, for example, the City of Ottawa constitutes a part of the Province of Ontario and accordingly its residents are entitled to elect Members of Parliament in the federal House of Commons on the same basis as residents in other provincial electoral divisions. [FN104]The City of Buenos Aires, while constituting a separate enclave similar to the District of Columbia, is entitled to elect deputies and senators to Argentina's national legislature. [FN105] Similarly, the residents of Brasilia, Brazil, [FN106] Caracas, Venezuela [FN107] and Mexico City, Mexico, [FN108] all of which constitute federal enclaves or districts, have voting representation in their national legislatures.

[FN104] Constitution Act, 1867 (Canada), Sections 32, 37, 40, First Schedule, Item 38.
[FN105] Charles Wesley Harris, Congress and the Governance of the Nation's Capital: The Conflict of Federal and Local Interests (1995), at 255. See also Constitution of the Nation of Argentina (1994), Title II, Sections 125 - 129, Georgetown University, Political Database of the

Americas (last modified June 6, 2001) <http: // www. georgetown.edu/LatAmerPolitical/Constitutions/Argentina/argen94.html>.
[FN106] Harris, supra, pp. 255. See also Constitution of the Federative Republic of Brazil (1999 as am.), Ch. V, Section I, Article 32 (The Federal District Government), Georgetown University, Political Database of the Americas (last modified June 6, 2001), <http: // www . georgetown.edu/LatAmerPolitical/Constitutions/Brazil/brazil99.html>.
[FN107] Harris, supra, pp. 245. See also Constitution of the Republic of Venezuela (1999), Title II, Arts. 16-18, Title IV, Article 186, Georgetown University, Political Database of the Americas (last modified June 6, 2001), <http: // www . georgetown.edu/LatAmerPolitical/Constitutions/Venezuela/venezuela.htm>; Manuel Alcántara, Sistemas políticos de Ameríca Latina (1999), at 505.
[FN108] Harris, supra, pp. 245. See also Political Constitution of the United Mexican States (1917 with reforms to 1998), Title II (Legislative Branch), Articles 53, 54, 56, Title V (States of the Federation and the Federal District), Articles 122-129 (last modified June 6, 2001) <http: // www.georgetown.edu/LatAmerPolitical/Constitutions/Mexico/mexico 1998.html.
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109. Based upon the foregoing analysis, the Commission concludes that the State has failed to justify the denial to the Petitioners of effective representation in their federal government, and consequently that the Petitioners have been denied an effective right to participate in their government, directly or through freely chosen representatives and in general conditions of equality, contrary to Articles XX and II of the American Declaration.

110. It also follows from the Commission's analysis that securing the Petitioners' rights under Articles II and XX of the Declaration does not necessarily require that they be afforded the same means or degree of participation as residents of states in the United States. What the Declaration and its underlying principles mandate is that the State extend to the Petitioners the opportunity to exercise a meaningful influence on those matters considered by their governing legislature, and that any limitations and restrictions on those rights are justified by the State as reasonable, objective and proportionate, taking due account of the context of its political system. As Article XX of the Declaration suggests, this is generally achieved through the election of representatives to the legislature who may cast a vote on matters before the legislature that has a meaningful possibility of affecting the outcome of those deliberations. Nevertheless, the mechanisms through which the State may afford these opportunities are clearly a matter for the discretion of the State concerned.

V. PROCEEDINGS SUBSEQUENT TO REPORT 115/01

111. On October 15, 2001, the Commission adopted Report 115/01 pursuant to Article 43 of its Rules of Procedure, setting forth its analysis of the record, findings and recommendations in this matter.

112. Report 115/01 was transmitted to the State by note dated October 19, 2001, with a request that the State provide information as to the measures it had taken to comply with the recommendations set forth in the report within a period of two months, in accordance with Article 43(2) of the Commission's Rules.

113. By communication dated December 18, 2001 and received by the Commission on December 19, 2001, the State delivered a response to the Commission's request for information, in which it indicated as follows:

As the United States has previously indicated, the petition submitted in Case No. 11.204 is inadmissible for the reasons detailed in the numerous submissions to the Commission. The petition in this matter fails to state a claim under the American Declaration on the Rights and Duties of Man ("Declaration"), and on this basis, the United States respectfully requests that the Commission withdraw Report No. 115/01 and order the petition dismissed.

First, petitioners have failed to allege facts that establish a violation of the right to vote as set forth in Article I of the Declaration. The decision to establish the District of Columbia as a federal enclave in which the residents have voting rights that differ from residents of other areas of the United States was not based on any improper grounds as set forth in Article II. Instead, the decision was based on matters of federalism, unrelated to "race, sex, language, creed or any other factor."

Likewise, the petition fails to establish a violation of Article XX of the Declaration. Neither the petition, nor the Commission's Report identifies any standard – either in the Declaration or in international law – that would require participation in government in any particular manner. The framers of the U.S. Constitution, as well as its past and present citizenry, have devised a system of government that affords citizens of the District of Columbia certain rights with regard to participation in governance, both at the district and federal level. This is a matter properly within the discretion of the people of the United States.

Finally, the political system challenged by the petition is simply not appropriate for review, and even less for rejection, by the Commission. These are sensitive issues better left to domestic political processes. There is simply no basis for the Commission to substitute its judgment for the political debate and decision-making of the federal branches of the government of the United States.

114. With respect to the first two observations raised by the State, the Commission considers that these arguments have already been raised before and examined by the Commission during the admissibility and merits phases of the process and the Commission sees no reason to alter its findings in this connection. With respect to the State's third observation, although the Commission agrees that the issues raised by the Petitioners may constitute sensitive matters ordinarily addressed by domestic processes, it is in large part because the domestic political and legal procedures have failed to resolve the complaints raised by the Petitioners that the Commission has exercised its reinforcing and complementary jurisdiction to evaluate their complaints in light of the United States' international human rights obligations.

115. Based upon the response of the United States, the Commission finds that the State has failed to take measures to comply fully with the Commission's recommendations. On this basis, and having considered the State's observations, the Commission has decided to ratify its conclusions and reiterate its recommendations, as set forth below.

VI. CONCLUSIONS

116. The Commission, based upon the foregoing considerations of fact and law, and in light of the response of the State to Report 115/01, hereby ratifies the following conclusions.

117. The Commission hereby concludes that the State is responsible for violations of the Petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

VII. RECOMMENDATIONS

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THE FOLLOWING RECOMMENDATIONS TO THE UNITED STATES:

119. Provide the Petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the Petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.

VIII. PUBLICATION

120. By communication dated October 29, 2003, the Commission transmitted this report, adopted as Report Nº 54/02 pursuant to Article 45(1) of the Commission's Rules of Procedure, to the State and to the Petitioners in accordance with Rule 45(2) of the Commission's Rules and requested information within 30 days as to measures adopted by the State to implement the Commission's recommendations.

121. By communication dated November 29, 2003 and received by the Commission on December 1, 2003, the Petitioners provided a response to the Commission's October 29, 2003 request for information, in which they indicated that the Government of the United States had failed to comply with the Commission's recommendations.

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

123. In light of the information received from the Petitioners, the Commission in conformity with Article 45(3) of its Rules of Procedure decides to ratify the conclusions and reiterate the recommendations in this Report, 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.

Approved on the 29th day of the month of December, 2003. Clare K. Roberts, First Vice-President; Susan Villarán, Second Vice-President; and Julio Prado Vallejo, Commissioner. President José Zalaquett adopted a dissenting opinion, which was presented on October 24, 2003 and is included immediately after this report.

DISSENTING OPINION OF COMMISSIONER JOSE ZALAQUETT

1. My dissent is based on differences with the explicit position of the majority –or with the conclusions that derive logically from that position – in respect of three types of issues: (i) the assessment of the relevant and substantial facts pertaining to this case, as well as other background materials, of public or general knowledge, which are important to take into account when reasoning by comparison or analogy; (ii) applicable law, in particular Articles II and XX of the American Declaration of the Rights and Duties of Man; (iii) what is this Commission's role in protecting and promoting human rights in the Hemisphere, and in particular the relationship of its role in the examination of communications or complaints that it receives versus its role in promoting human rights; and how it should apply the principle of progressivity in the protection and promotion of human rights.

2. Before expressing my opinion on these three types of issues, I should begin by stating that I fully share the opinion of the majority in this case, as well as that expressed by the Commission in its report on the Aylwin Azócar et al. case, [FN109] both by the majority and by Commissioner Robert Goldman, who wrote a dissenting opinion, in that representative democracy is the essential framework for the protection and promotion of human rights in the inter-American system.

[FN109] Report No. 137/99, case 11.863. Andrés Aylwin Azócar et al., Chile, December 27, 1999.

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3. It also seems appropriate for me to make clear from the outset that, although I shall cite the dissenting opinion of Commissioner Goldman in Andrés Aylwin Azócar et al., my comments should not be construed as a commentary, either positive or negative, on the decision in that case, which involved a petition against my country of nationality, the Republic of Chile. To be sure, I have well-formed opinions on substantial questions relating to the structure of my country's political system — questions like those that were at issue in the Andrés Aylwin Azócar et al. case. However, I believe that my views in this regard are better expressed in other venues and forums, as I have done on a number of occasions in the past. By stating this, I do not mean to suggest that the rules prohibiting commissioners from taking part in discussions, deliberations, or decisions regarding matters submitted to the Commission in relation to the State of which they are nationals [FN110] should be interpreted so broadly as to prohibit a commissioner from commenting on decisions involving his country that appear in past Commission reports (decisions in which he has not participated) when ruling on communications or petitions relating to other States. Rather, I think, on the one hand, that the facts in the Andrés Aylwin Azócar et al. case are very different from the facts in the present case, and, on the other, that it is important to prevent, insofar as possible, speculative interpretations, in one direction or another, of the

present dissenting opinion, whether such speculation is based on the above-mentioned case, on my status as a Chilean, or on the activities that I have carried out in my country in the field of human rights. I cannot, however, fail to make reference to generally applicable principles and standards mentioned by Commissioner Goldman in his dissenting opinion in Andrés Aylwin Azócar et al., since I consider them pertinent in establishing the basis for my position in the present case.

[FN110] Rules of Procedure of the Inter-American Commission on Human Rights, Article 17.2.

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4. Turning to the facts established in the record of the present case, it seems to be generally accepted that the status of the District of Columbia as the seat of government under the jurisdiction of Congress, without being a state of the Union, was originally a product of reasonable–and, in any case, sovereign–political accords, as well as of motivations and considerations based on historical circumstances going back to the founding of the United States of America. It is also clear that, since the establishment of the District of Columbia, constitutional amendments and legislation have allowed its residents to participate in presidential and local elections, as well as to elect two senators and a representative, who are not, however, allowed to vote in committee or in plenary if their vote might be decisive.

5. Despite the changes introduced in the legal status of the District and the political rights of its residents over time, it may be said that in light of the evolution undergone by the United States and its federal government in the course of the country's history, as well as in light of the connotations which at present are attached to the concept of democratic representation, the reasons that, at the time, could have explained the constraints placed on the District of Columbia within the constitutional and legal structure of the United States have now lost validity. Hence, it may be affirmed from the point of view of political theory or political ethics that the corrective measures that have been introduced, gradually and very slowly, remain insufficient in that the residents of the District continue to be deprived of the right to vote for members of Congress who are members of that body in the full sense. This inequity has been recognized by the Federal Court of the District of Columbia, although it concluded that it lacked the authority to provide a legal remedy. [FN111]

[FN111] See above, paragraph 33.

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6. In other words, if the District of Columbia were founded today, it would not appear reasonable or equitable for the rights of its residents to be subject to the political restrictions that currently affect them. Since the District, as is well known, has a history going back more than 200 years, the reproach that could be addressed to the United States from the point of view of democratic theory or ethics would be that it has not adapted its political system to present-day exigencies as regards the rights of the District's residents. What this Commission must decide is whether, in this case, that theoretical or moral reproach can also be formulated as a legal

reproach, based on the rules of international law invoked by the petitioner, i.e., Articles II and XX of the American Declaration of the Rights and Duties of Man.

7. Before analyzing the point just mentioned in the preceding paragraph, an examination of further matters of fact is in order. As established in this report, [FN112] a proposed 1978 amendment to the Constitution of the United States, seeking to broaden the political rights of the residents of the District in the direction called for by the petitioners in this case, failed to obtain the required ratification of three quarters of the state legislatures. The petitioners cite statistics indicating that the population of the District of Columbia has changed over time, coming to comprise a majority of African-Americans. They suggest that the lack of change in the District's status could be motivated by racial prejudice. The majority vote, although it expresses concern about the possibility that the District's situation may have had a harmful impact that affected the resident African-American community disproportionately, judged that the record did not contain sufficient evidence to justify a finding on the question of racial prejudice. [FN113]Indeed – one may add - the lack of sufficient ratifications by state legislatures could be attributed to other factors in addition to, or in place of, that mentioned by the petitioners, although that too would entail speculating on the motivations of the voters who rejected the constitutional amendment. One possible motivation could be reluctance to grant the right to elect senators and representatives to a community of residents, the majority of which is known or assumed to favor a particular political party. Another is the reluctance of many voters to grant greater political rights to the residents of the territory that is the seat of the branches of the federal government, or to change the foundations of a federal structure that dates back to the nation's origins.

[FN112] See above, paragraph 28.
[FN113] See above, paragraph 98 of this report.

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8. These considerations, though speculative, are reminders of the well-known fact that the majority, if not all, democratic political systems, reveal asymmetries as a result of complex historical developments in which a range of factors play a role. Added to this is the inclination of the majority of citizens in many countries to preserve their basic institutions, especially longstanding ones, frequently out of fear that some changes, though desirable, may alter certain balances and provoke other, less desirable, changes. We may consider these facts good or bad, but in my judgment they constitute one of the ultimate reasons why States, when assuming international obligations, take care to reserve, for their own sovereign decision-making, fundamental aspects of their internal political structure, notwithstanding the political rights they establish or the obligations they undertake.

9. The majority opinion has cited the example of other federal States in the Americas, in all of which the residents of federal districts or enclaves have the right to vote for representatives in the national legislature. [FN114]I consider that this reference, which appears to advance these States as models in contrast to the situation in the United States, is unfortunate, since it singles out an isolated element of such States' political systems without considering their political structure as a whole or the manner in which they have guaranteed or guarantee the political rights of their citizens. In analyzing this case, it seems to me that it is more relevant to note the variety

and complexity of the asymmetries and peculiarities revealed by an examination of the most diverse democratic regimes of our region and other parts of the globe. These asymmetries and peculiarities include forms of association among States that contain special agreements on the political rights of their respective residents; special status applying to certain provinces, regions, or territories within a State, including particulars on the political or other rights of the residents, nationals, or members of one or another geographical area or community; recognition, within a State, of particular peoples or groups, who are subject to a specific status, legislation or jurisdictions or enjoy specific rights; organs of the State that carry out legislative or quasi-legislative functions although they are not elected by the people, or although some of their members are not; vast differences in the representation of states in the federal legislature, given their respective populations (for example, the state of California, the most populous in the United States, has approximately 65 times the population of Wyoming, the least populous state, but both, like the rest of the states, elect two senators each); requirements of political party affiliation as a condition for a given type of participation in elections, or requirements for a minimum percentage of votes for a political party to exist as such or to have parliamentary or municipal representation; a variety of electoral systems and diverse configurations of electoral districts or constituencies that, objectively, can favor certain candidates, movements or parties very significantly.

[FN114] See above, paragraph 108 of this report.

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10. Though it seems just and equitable, at least theoretically or morally, for the residents of the District of Columbia to have the right to elect full representatives to the federal legislature, the above factors indicate that any institutional or legal modality that may be used to achieve this objective, insofar as it would involve reform to a particular aspect of a complex institutional arrangement, may entail many other repercussions within the political system of the United States. This supports the conviction (the legal foundation of which is set forth below as a part of this dissent) that the matter before us should remain subject to the internal political process of the United States. This does not mean that there are no questions of political rights that may be the subject of scrutiny by international human rights bodies, but, as I shall argue in the paragraphs below, the issue at stake in this case is not one of them.

11. The standards of international law that, in principle, are applicable to this case are Articles II and XX of the Inter-American Declaration of the Rights and Duties of Man. The majority of the Commission has ruled that the rights of the petitioners established in these articles have been violated by the United States, which has denied them an effective opportunity to play a role in its federal legislature. Other relevant norms of international law that may throw light on the interpretation of the above-mentioned precepts are those embodied in Articles 23 and 24 of the American Convention on Human Rights, those in Articles 2.1 and 25 of the International Covenant on Civil and Political Rights, and those in Article 3 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Also of interest is the jurisprudence of the European Court of Human Rights [FN115] and the decisions and general observations of the Human Rights Committee established by the International Covenant on Civil and Political Rights . [FN116]

[FN115] The following cases in particular and the sections mentioned in each of them: Mathieu-Mohin and Clerfayt v. Belgium, No. 9267/81. Judgment (merits) 3/2/1987, paragraphs 52 and 54; Matthews v. The United Kingdom, No. 24833/94. Judgment (merits) 2/18/99, paragraphs 63, 64, and 65; Podkolzina v. Lettonie, No. 46726/99. Judgment (merits) 4/9/2002, paragraph 33; Gitonas and others v. Greece, No. 18747/91. Judgment (merits) 7/1/1997, paragraph 33; Ahmed and others v. The United Kingdom, No. 22954/93. Judgment (merits) 9/2/1998, paragraph 75; Refah Partisi (Welfare Party) and others v. Turkey, No. 41340/98, 41342/98, 41344/98. Judgment (merits), paragraph 43; Selim Sadak and others v. Turkey, No. 25144/95 to 26154/95, 27100/95, 27101/95. Judgment (merits and just satisfaction), paragraph 31.

[FN116] In particular, General Observation No. 25, adopted at the 57th session (1996) and the following communications: Grand Chief Donald Marshall et al. v. Canada. Communication No. 205/1986. Views of 4thNovember 1991, paragraphs 5.4 and 5.5; Josef Debrezvy v. The Netherlands. Communication No. 500/1992. Views of 3rd April 1995, paragraph 9.2.; Gillot et al. v. France. Communication No. 932/2000. Views of 15th July 2002, paragraphs 12.2 and 13. 2.

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12. In his dissenting opinion in Andrés Aylwin Azócar et al., Commissioner Goldman has examined a number of the standards and decisions mentioned in the paragraph above, in connection with his analysis of Article 23 of the American Convention on Human Rights, which is applicable to that case because Chile, unlike the United States, has ratified the Convention. His analysis, which I fundamentally agree with, is similarly applicable to Article XX of the American Declaration of the Rights and Duties of Man, which is binding on the United States. A number of ideas from Commissioner Goldman's dissenting opinion are especially relevant here: (i) that the protection of the inter-American system has been conceived as a subsidiary mechanism, while primary responsibility for protecting human rights falls on the States (paragraph 2); (ii) that Article 23 of the American Convention (additional comment: this is also applicable to Article XX of the American Declaration) does not establish a model or specific modality for electing the members of the legislature (paragraph 3); (iii) nor does it define a definite model according to which each State should be organized in order to institutionalize representative democracy in an ideal fashion, so that the standard in question and its underlying principles must be analyzed with special deference to the member states (paragraph 4); (iv) that to judge the need, advisability, and purpose of these arrangements is beyond the purview of an international supervisory body, since it involves eminently political considerations (paragraph 8); (v) that the Commission must, to the extent possible, avoid assuming the role of a supra-constituent body of the States with a view to "perfecting" their political structures (paragraph 9); (vi) and that, nevertheless, deference to the States must not acquire an absolute character, and the Commission is authorized to determine whether the mechanism for political representation adopted by a member state is manifestly arbitrary (paragraph 10, emphasis added).

13. Iinterpret applicable international law in a fashion very similar to that of Commissioner Goldman. The standards cited above, in paragraph 11 of the present dissenting opinion, protect the right of all persons to participate in the government of their country, directly or through their

representatives, and to take part in popular elections, which must be periodic, held at reasonable intervals, genuine, free, and based on secret ballot. None of them – and certainly not Article XX of the American Declaration – establishes a model of how a State is to organize itself internally to embody representative democracy in its institutions, nor how political representation is to be assigned among the country's different states, provinces, electoral districts, constituencies, or territories. To be sure, Article 3 of Protocol 1 (cited above) provides that elections must be held under conditions that ensure the free expression of the opinion of the people in the choice of the legislature (emphasis added). Nevertheless, as the European Court of Human Rights has established, citing the travaux préparatoires of Protocol 1, the article in question applies only to the election of the "legislature" or, at least, to one of its chambers, if there are two are more, but the word "legislature" does not necessarily refer only to the national parliament. Rather, it must be interpreted in the light of the constitutional structure of the State in question. [FN117] It must also be recalled that the parliamentary system is prevalent among the European countries that signed Protocol 1, so that national elections are, in fact, as a rule, elections of the legislature. The respective standards of the inter-American system, on the other hand, do not make reference to legislatures. Lastly, the reference to the legislature contained in Article 3 bears on the conditions necessary to ensure that the expression of the people's will be free. No predetermined political-electoral system or model is specified, and the ruling cited reinforces this by accepting that said Article would not be incompatible with a situation in which not all legislative chambers (if there are more than one) are elected by the people.

[FN117] Mathieu-Mohin and Clarfayt v. Belgium, loc. cit., paragraph 53.

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14. Having clarified the issue of the scope of Article 3 to Protocol 1, we may return to the above affirmation, in paragraph 12, that the deference which international human rights bodies owe the States in this respect is not absolute. Commissioner Goldman believes that the Commission has the authority to determine whether the mechanism for political representation adopted by a State is manifestly arbitrary (his own emphasis). The jurisprudence of the European Court of Human Rights has established that the conditions imposed by the State must not be such as to affect the very essence of the right and deprive it of its effectiveness, that they must be imposed in pursuit of a legitimate end, and that the means employed must not be disproportionate. [FN118]For its part, the Human Rights Committee has established that although the International Covenant does not impose any particular electoral system, these systems should not "discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely." [FN119]

[FN118] Idem, paragraph 52.
[FN119] General Observation no. 25, loc. cit., paragraph 21.

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15. I see no reason not to adopt Commissioner Goldman's formulation, if what it means by "manifestly arbitrary" is a mechanism for political representation that involves arbitrary discrimination in terms of Article II of the American Declaration of the Rights and Duties of

Man, interpreted in the light of Articles 1.1 and 23.2 of the American Convention on Human Rights, or a mechanism for political representation that deprives persons or groups of the very essence of political rights or places restrictions on them without a legitimate purpose and in a manner that exceeds all reasonable bounds. It should be pointed out here that Article 21.2 of the American Convention provides that the law may regulate the exercise of the rights and opportunities referred to in its preceding paragraph by reason of residence, among other factors. In other words, a distinction made for reasons of residence is not arbitrary in itself.

16. The majority opinion, in analyzing the competence of the Commission in this case, cites the practice of this body and other human rights tribunals of applying human rights instruments to alleged human rights violations that may have occurred prior to the ratification of the instruments, but that are of a continuing nature so that their effects persist after the instruments enter into force. [FN120]One may also recall the principle according to which the States may not invoke rules of domestic law to justify the failure to meet their international obligations. Nevertheless, the crucial point does not lie here but rather in determining whether the signatory States of the American Declaration of the Rights and Duties of Man – and in this case, the United States – effectively assumed an obligation that may serve as a basis for establishing a violation in the present case. On this issue, I am of the view that the principle should prevail that States only acquire obligations under international law by their consent (except for norms of customary law). It seems to me that it cannot be concluded, in light of international norms and practices, that the signatory States to the American Declaration consented to obligate themselves in respect of political rights in such a way that it could be determined that they have violated those obligations by failing to reform their political systems, unless that failure to reform was in manifest contradiction with other obligations that they have assumed in connection with political rights.

[FN120] See above, paragraph 59 of this report.

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17. Having asserted the above, I believe it is also pertinent to express my position on the scope of the principle of progressivity, or pro-rights principle, often invoked as a criterion for guiding international rights bodies in their interpretation of human rights standards. In my view, such standards should be interpreted so as to best protect the rights which they enshrine. In cases of doubt or ambiguity, the interpretation should favor the right rather than the restrictions. Finally, it should take into account changes of all types brought about by historical evolution, seeking to understand the content and scope of rights in a living and dynamic way, a way that preserves their essence and even strengthens them. I am not unaware that the interpreter may go so far in this direction as to usurp the role of the legislator, but this is not the place to rehearse an ancient and hard-fought debate of legal theory. Suffice it to say that in my opinion, this interpretive role is a necessary and even inevitable one, but that, in carrying out an interpretation that updates the law or addresses it from a progressive stance, special care must be taken to proceed on a firm basis, advancing only to the very next logical step.

18. It does not seem to me that a violation of the rights of the petitioners can be established today, either under Article II or Article XX of the American Declaration of the Rights and Duties

of Man on the basis of an interpretation like the one indicated in the last lines of the paragraph above. Nevertheless, I do not dismiss the possibility that the evolution of international law and political practice in the Hemisphere may advance to a point where, had it had been reached today, it would have permitted us to come to a different conclusion. Thus, I am of the view that the type of issues dealt with in the present case can and should be dealt with by the Commission and other organs of the Organization of American States through their promotional functions rather than by deciding on a claim or communication. I believe such an approach to be more promising and constructive.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 24th day of the month of October, 2003. (Signed): José Zalaquett.