I. SUMMARY

1. On October 17, 2003, Alicia Barbani Duarte and María del Huerto Breccia Farro (hereinafter, "the petitioners") lodged on their own behalf and on behalf of 686 other persons a petition with the Inter-American Commission on Human Rights (hereinafter, "the Commission") against the Republic of Uruguay (hereinafter, "the State") for alleged violation of the rights to life (Article 4), property (Article 21), and equal protection (Article 24), in conjunction with the violation of the obligations to ensure rights and adopt measures (Articles 1(1) and (2)) set forth in the American Convention on Human Rights (hereinafter, the "American Convention"). The State's responsibility for said violations is alleged to arise from the crime of fraud committed against a group of depositors with TCB-Banco de Montevideo in alleged collusion with the Uruguayan authorities due to their omission to monitor the activities of said banks and their proprietors.

2. As regards the admissibility of the complaint, the petitioners argue that the petition meets all of the requirements contained in Article 46 of the Convention and that they exhausted the domestic remedies created by the State when they filed their claims before the Special Commission created by Article 31 of Law 17.613. The State, for its part, argued that the petition was inadmissible on both formal grounds --non-exhaustion of judicial domestic remedies still in process-- and merits, inasmuch as none of the alleged violations of human rights has been demonstrated.

3. Having examined the positions of the parties, the Commission concluded that it was competent to decide the petition and that the case is admissible in accordance with Article 46 of the American Convention. Consequently, the Commission decided to inform the parties of its

decision, make the instant report on admissibility public, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. On October 17, 2003, the Commission received a petition lodged by Alicia Barbani Duarte and María del Huerto Breccia Farro, which it registered as number P-997/03. On April 6, 2004, the Commission requested the petitioners to submit additional information with respect to exhaustion of domestic remedies. In response to that request the petitioners reformulated their original petition, which they presented on December 15, 2004. The Commission transmitted the pertinent portions of the petition to the State on December 20, 2004, and granted it two months in which to reply. On February 9, 2005, the State requested an extension of the time in which to present its response. On February 15, the Commission granted it an extension of 28 days. On February 22, 2005, the State submitted its comments on the petition, which were forwarded to the petitioners on February 23, 2005. On March 21, 2005, the Commission received the observations of the petitioners on the response of the State and conveyed them to the latter on June 23 that same year without a request for comments. On October 17, 2005, at its 123rd regular session, the Commission held a hearing on the admissibility of the complaint, which was attended by the petitioners and representatives of the Uruguayan State. On February 16, 2006, as a result of that hearing, the Commission requested additional information as regards exhaustion of domestic remedies, in particular on the status of the petitions for nullification. The State and the petitioners replied on February 24 and March 5, 2006, respectively. The State presented additional information, prepared by the Central Bank of Uruguay, dated September 15, 2006. This information has been transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. The Petitioners

5. The petitioners alleged violation of the right to property of 686 Uruguayan depositors over their deposits, as a result of the "passive complicity" of the Uruguayan authorities in the "fraud" committed by the shareholders and the management of the Banco de Montevideo.[FN1] The petition states that on June 21, 2002, the Central Bank of Uruguay intervened in the administration of the Banco de Montevideo and the Banco La Caja Obrera, which both belonged to the Velox group. According to the petition, on June 24 that year, it came to the attention of around 1,200 Banco de Montevideo depositors that their savings had been transferred offshore without their consent and that they had been the victims of a "huge fraud" carried out by the Peirano family, the majority shareholder in the Velox Group, with the complicity and passiveness of the Central Bank of Uruguay and the Ministry of Economy and Finance.

[FN1] The fraud, according to the petitioners, involved approximately US$800 million of the depositors' money and US$97 million in TCB funds.

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6. The petitioners alleged that the fraud was perpetrated as follows. The company known as the Trade & Commerce Bank (TCB) had a representation office in Montevideo and its domicile was in the same office building as the Banco de Montevideo. TCB was authorized to offer technical assistance and advisory services in order to prepare, promote, or facilitate the business affairs of its clients. TCB was not allowed, either on its own behalf or that of its clients, to engage in financial intermediation activities, or credit and exchange operations, or to receive sums of money, securities, or precious metals from third parties in any capacity. However, acting without the approval or supervision of the Central Bank of Uruguay, TCB, through its intermediary, Banco de Montevideo, was receiving deposits from the public and falsifying the consent of depositors. The deposits were then transferred to the Cayman Islands, the domicile of the Velox Economic Group, which owned both the Banco de Montevideo and the TCB.

7. Thus, the petitioners allege, the customers were deceived into believing that their savings were deposited in the Banco de Montevideo when, in fact, they were transferred to accounts offshore. According to the petitioners, in order to induce the error of the depositors, the company organized a series of data and tools to falsify the consent of the victims such as using the same logo for the Banco de Montevideo S.A and the Trade & Commerce Bank. The petitioners say that when the Central Bank of Uruguay intervened in the administration of the Banco de Montevideo, the situation was revealed and approximately 1,200 people in Uruguay, Argentina, and Paraguay were affected.

8. The petitioners say that these events occurred in the context of the financial crisis that struck Uruguay as a result of the crisis in Argentina.[FN2] To deal with the crisis, on December 27, 2002, the Uruguayan Parliament passed Law 17.613 (Law on Restructuring the Financial System).[FN3] The petitioners argue that while the purpose of the aforesaid law was to mitigate the devastating effects of the crisis on users of the financial system, it was ineffective and failed to provide the depositors with adequate access to an effective remedy to recover their savings, in violation of their right to judicial protection provided in Article 25 of the American Convention. According to the petitioners, Article 31 of the aforementioned law empowered the Central Bank of Uruguay to grant the depositors of the Banco de Montevideo the same rights as all other depositors in those cases in which their deposits had been “transferred to other institutions without their consent.” To that end, the Law created a Special Commission to examine the claims of depositors and grant them the appropriate rights provided that they met all three requirements established by the Law: existence of a prior deposit, transfer to another institution, and lack of consent from the depositor.

[FN2] On December 1, 2001, Argentine Economy Minister Cavallo and President De la Rúa of Argentina signed the decree preventing the public from withdrawing more than US$150 a week of their bank deposits. The freeze (known as “el corralito”) prompted Argentines to withdraw their deposits from Uruguayan banks. There were US$16 billion in the Uruguayan banking system and more than 45% of foreign currency deposits (US $ 6.2 billion out of US $ 13.6 billion) belonged to non-residents, nearly all of them Argentines.

[FN3] Law 17.613 on “Strengthening the Banking System, Financial Intermediation, Protection of Bank Savings and Unemployment Allowance for Account Holders in the Caja de Jubilaciones y Pensiones Bancarias.”

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9. The petitioners argued that the Special Commission appointed by the Central Bank adopted an attitude that totally contradicted the clear and specific provisions of the Law, with the upshot that of more than 1,200 claims, only 22 were declared admissible. The petitioners alleged that the few claims that received approval did so in an irregular manner, based on favorable arguments of witnesses in a very few cases, while other claims that were in an identical situation were refused on the same arguments, in violation of the right to equal protection of the law. According to the petitioners, this Special Commission was composed of trusted appointees of the government and it approved a few claims but denied the majority based on ridiculous arguments. The petitioners say that among the 22 cases approved were those of three former officers and directors of the Banco de Montevideo, who were recognized as depositors and had exactly the same deposits as the petitioners and all the other depositors, with the aggravating circumstance that they were familiar with all of the internal operations and workings of said bank. According to the petitioners, this Special Commission has discriminated against them, which constitutes a violation of the right of equality before the law enshrined in Article 24 of the American Convention.

10. As a result of this refusal and the enormous blow dealt to most of the depositors by the loss of their entire life savings, five people committed suicide and, therefore, the violation of the right to property recognized in Article 21 denied them respect for human dignity and, consequently, in this case, violated their right to life, enshrined in Article 4 of the American Convention.

11. With respect to admissibility requirements, the petitioners said that they attempted all the appropriate administrative and judicial remedies in the prescribed time and manner. As regards criminal proceedings, the persons concerned filed criminal charges which were taken up by the Eighth Court of First Instance, which ordered the imprisonment pending trial of several former managers of the Banco de Montevideo, who have been charged as co-perpetrators of the crimes of fraud, simulation, and breach of bylaws, in accordance with Article 76 of Law 2.230.[FN4] Also on trial before the Eighth Court of First Instance are the brothers Juan, José, and Dante Peirano Basso, members of the managing board of the Velox Group.[FN5] During the processing of the petition, despite said proceedings, the petitioners say that, as yet, no one has been convicted in a final judgment of any of the alleged crimes.

[FN4] Several criminal actions were brought: on August 8, 2002, against Dante, José and Jorge Peirano Basso, members of the board of Banco de Montevideo and Banco La Caja Obrera; in November 2002 against Marcelo Guadalupe, former manager of Banco de Montevideo; Mario San Cristobal, former chairman of Banco de Montevideo; and Domingo Ratti; on April 20, 2003, Jorge Peirano Faccio died in prison. Juan Peirano Basso, the other member of the group, is at present a fugitive of justice with an international warrant out for his arrest. In August 2004 four more people were indicted in the same proceeding, all of them former managers of Banco de Montevideo and Banco La Caja Obrera: Carlos Alberto Codesal Longo, Christian Phillip Rippe Staff, Daniel Valgo, and José Iraola Anton. They have been imprisoned pending trial as co-

perpetrators of the offence recognized in Article 76 of Law 2.230 in the modalities of fraud, simulation, and breach of bylaws.
[FN5] The Judge of the Eighth Court of First Instance, which ordered the imprisonment pending trial of four former managers of Banco de Montevideo, said, "TCB never existed since it was a legal fiction and the instrument to propitiate the fraud. Its books were kept in a secret office in the Montevideo Free Trade Zone and it did not have a physical presence until September 2001."
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12. Furthermore, the petitioners said that they attempted the administrative and legislative remedies available to them in order to recoup their savings. The Executive Branch enacted Law 17.613 of December 27, 2002, to protect depositors who had deposited their savings in the former Banco de Montevideo. They say that they presented their claims to the Special Commission under the auspices of that Law, but that they were rejected without justification and in a discriminatory manner. Article 31 of Law 17.613 -which is a special law and, therefore, subject to strict interpretation- says that its provisions apply only to those persons who meet all of the following requirements: a) they are depositors in the Banco de Montevideo or the Banco La Caja Obrera; b) their deposits were transferred to other institutions; and, c) the foregoing was done without their consent. According to the petitioners, the group of depositors that they represent deposited their savings in the former Banco de Montevideo and the savings were transferred without their consent to another institution in the same business group (Peirano group) called TCB, which had its offices offshore and was not authorized to receive deposits from the public in Uruguay.

13. The petitioners say that the last domestic remedy available to them was to take their case to the legislative branch to seek recognition of their rights. Thus, the depositors pressed for the enactment of a bill that would grant them the rights conferred by the Central Bank of Uruguay in Article 31 of Law 17.613. The petitioners assert that despite the fact that the bill was approved at its first debate, it was ultimately thrown out by the Chamber of Deputies on May 4, 2004.

14. The petitioners say that the Central Bank of Uruguay, the Ministry of Economy and Finance and the Executive and Legislative Branches not only violated the depositors' right to property through direct acts, but also failed to ensure the full exercise of the right to property of the depositors by preventing them from receiving reparations for the violations committed by the Banco de Montevideo owned by the Peirano family business group, which perpetrated an identical type of fraud against Uruguayan depositors in 1972. According to the petitioners, the ineffectiveness and complicit passiveness of the authorities with respect to the Banco de Montevideo depositors, whose savings were transferred offshore without their consent, caused them multiple violations of human rights, in particular as regards the rights to property, equal protection, and life, to their detriment, injury, and impairment.

B. Position of the State

15. The State requested that the petition be declared inadmissible because "the remedies under domestic jurisdiction have not been exhausted, either in administrative or civil proceedings." The State also argued that it bore no responsibility whatever for the acts described and that its administrative, legislative, and judicial authorities adopted the appropriate legal

measures to resolve the situation and settle the petitions presented by the investors, for which reason the alleged violations did not occur.

16. The State pointed out that the following preliminary questions were worthy of consideration:

a) The signatories of the petition (...) are investors in certificates of deposit issued by a bank incorporated and headquartered in the Cayman Islands called the Trade & Commerce Bank, which is not under the supervision or control of the Central Bank of Uruguay.[FN6]
b) Said certificates of deposit were one of several types of investment offered by the Banco de Montevideo S.A.
c) Said investment was made at the client's responsibility and risk.
d) The issuer of the certificates of deposit, which was required to meet the obligations arising from such instruments, was an institution subject to the control of the appropriate authority in the Cayman Islands.
e) The Banco de Montevideo S.A. was a financial institution subject to the control and supervision of the Central Bank of Uruguay and, for several regulatory violations, was first intervened, on June 21, 2002, by the Central Bank, which replaced its statutory authorities and, on December 31, 2002, owing to the fact that its capital deficit had become untenable, ordered its liquidation, a process that is also under the supervision of the Central Bank of Uruguay as fiduciary administrator.
f) Some of the events that led the entity to be placed in administration in June 2002, inasmuch as they constituted criminal offences punishable by law, were immediately reported to the appropriate judicial authorities, which in August 2002 ordered the imprisonment pending trial of the directors of the Banco de Montevideo S.A., and ordered the same for one of its majority shareholders in December 2003 and, subsequently, for a number of managers and staff members of the bank in August 2004.
g) In order to protect the rights of the depositors of the Banco de Montevideo S.A. arising from their deposits placed in said institution and to protect the public’s savings, the Central Bank of Uruguay sought and obtained the attachment of more than 300 assets owned by individuals and corporations directly or indirectly linked to the aforesaid institution and also instituted a full trial for damages, with a view to securing a conviction and proceeding to the liquidation of the attached assets in order to repair the injury caused by the wrongdoings of the bank's directors.
h) In the framework of the liquidation process and through the vehicle created for that purpose, known as the Bank Capital Recovery Fund, the depositors of the Banco de Montevideo started, in September 2003, to recoup part of their savings.
i) The Banco de Montevideo S.A., together with Banco Velox in Argentina, Banco Alemán Paraguayo in Paraguay, the Trade & Commerce Bank, and other companies, comprise the so-called “Velox group”.
j) All of these companies went into liquidation, in accordance with the regulations in force in the respective countries of domicile. Said liquidation is being independently processed in form and substance in each State.
k) Under our law, the existence alone of companies belonging to the same group is not, per se, sufficient grounds to apply the disregard theory, which by law is subject to proof that the fraud caused injury to the creditors.

l) The fraudulent operations uncovered were not carried out for the benefit of the Banco de Montevideo S.A., which, all to the contrary, has been a victim of the Trade & Commerce Bank.

[FN6] The petitioners responded, "We are not investors, but depositors of Banco de Montevideo." Our savings were transferred without our consent and knowledge to TCB (which never existed and never had authority to receive deposits from the public in our country)." The Judge of the Eighth Court of First Instance, which ordered the imprisonment pending trial of four former managers of Banco de Montevideo, said, "TCB never existed since it was a legal fiction and the instrument to propitiate the fraud. Its books were kept in a secret office in the Montevideo Free Trade Zone and it did not have a physical presence until September 2001."

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17. The State said that the Central Bank instituted a full trial for damages with a view to securing a conviction and then proceeding to the liquidation of the attached assets in order to repair the injury caused by the wrongdoing of the bank's directors.

18. The State said that the petitioners had recourse to adequate and suitable remedies to seek judicial reparation for the material damages they alleged. Thus, pursuant to Article 31 of Law 17.613 of December 27, 2002, the Central Bank created a Special Commission composed of three members with recognized credentials, whose task was to examine claims to see if they met the three requirements established by the Law. Having analyzed said claims, the Commission formulated on a case-by-case basis a recommendation to the Board of Directors of the Central Bank to accept or reject the claim in question, a decision of the management that was "made public in a duly reasoned administrative decision." The Central Bank, in accordance with the laws in force, was required to act within a very narrow margin that prevented it from analyzing aspects that pertained exclusively to the jurisdiction of the judiciary and, therefore, it was only able to accept those claims that convincingly accredited that the deposit had been transferred without the permission of the account holder.

19. The State mentioned that under Uruguayan law, when faced with an administrative decision (such as a resolution of the Central Bank of Uruguay) the person concerned has three alternatives: i) he gives his express agreement; ii) he does not appeal within 10 days following its notification or publication in the Official Gazette, in which case his tacit consent is assumed; or, iii) he files a judicial appeal against the administrative act. Should the person concerned fail to appeal the decision within the prescribed time limit, that decision is not subsequently open to review in administrative proceedings inasmuch as his consent implies acceptance of the administration's decision. Having made that clarification, as a last resort, the petitioners, if such was their wish, should have brought an action for nullification before the Tribunal for Contentious-Administrative Disputes to overturn the resolutions of the Central Bank of Uruguay. The person concerned has 60 days to bring an action for nullification, counted from the date on which he is notified of the rejection of the official claim filed. Once that time has expired, the cause of action lapses.

20. In the instant case, the State said that all the petitions presented to the Special Commission were analyzed. In those cases where it was requested that evidence be produced the

opinion was sought of the Central Bank and the Superintendent of Financial Institutions, and, based on the evidence found a lawful decision was adopted in a timely manner. Of the petitions that were rejected by the Commission, "approximately two-thirds consented to the decision."[FN7] Those decisions are final and not open to review, while in the case of "others, the appropriate appeals were lodged." In connection with the latter, several petitioners have already brought an action for nullification before the Tribunal for Contentious-Administrative Disputes. Those cases are currently in process and no final decision has been issued to bring an end to the judicial proceedings. Therefore, the remedies available under domestic jurisdiction have not been exhausted. The State also argues that the petitioners cannot invoke any of the exceptions under Article 46(2) of the American Convention.

[FN7] In the State's reply dated September 15, 2006, in decision No. 599/05, issued November 18, 2005, by the Contentious-Administrative Tribunal, the Court states that 1,426 petitions had been filed, only 17 were filed in favor of the petitioners, 923 consented to the decision, 5 were revoked and those who were unhappy with the decisions were only 481. These numbers are contradicted by the petitioners who allege that 1,200 petitions were filed, 22 were decided in favor of the petitioners and that the class that they represent comprises 688 individuals who did not consent to the decision.

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21. Furthermore, the State mentioned that anyone who considers himself a victim of the investments made in the Trade & Commerce Bank in the Cayman Islands also has the option of instituting civil proceedings. Thus, several suits for damages arising from contractual and extra contractual liability, inadmissibility of legal personality, and disregard, have been brought and are at present in process. To date, no judgment, either favorable or unfavorable, has been issued and, therefore, the matter is still awaiting a judicial decision. According to the State, "Moreover, any person who considers himself a victim as a result of his investments in the bank in the Cayman Islands is still in time to bring a civil suit.

22. As regards criminal proceedings, the State argued that some of the acts that led to the bank being intervened in June 2002 constituted criminal wrongdoings punishable by law and were immediately reported to the appropriate judicial authorities, which, in August 2002, ordered the imprisonment, pending trial, of the Directors of the Banco de Montevideo S.A., and ordered the same for one of its majority shareholders in December 2003 and, subsequently, for a number of managers and staff members of the bank in August 2004.

23. Finally, the State argued with respect to the merits of the case, that the petition was inadmissible and unfounded. The State argued in its defense that its authorities acted in a timely and lawful manner to place the Banco de Montevideo in administration and to resolve the claims presented both by the depositors of the Banco de Montevideo and by the TCB investors. Thus, based on its analysis of the merits of the claims presented by the TCB investors, the Special Commission found that the various forms of expression of consent, the documents signed by the investors, the explanation of their investment, account statements, and the higher interest earned by a placement in an offshore bank, demonstrated awareness and willingness to transfer funds beyond the country's borders. Accordingly, the Special Commission did not act arbitrarily or in a

discriminatory manner. On the contrary, it acted in accordance with the law in order to avert possible injury to the legitimate Banco de Montevideo depositors.

24. The State concludes that the Central Bank of Uruguay, the Ministry of Economy and Finance, and the Executive Branch did not violate the right to property nor did they deprive the petitioners of that right. The State says it protected the real creditors of the Uruguayan financial institution that was now in liquidation and sought through legislative solutions and administrative and judicial actions to recover their savings, a course of action that is symptomatic of a state in which the rule of law prevails and that demonstrates recognition and defense of the right to property.

IV. ANALYSIS of admissibility

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

25. The petitioners are entitled under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims Alicia Barbani Duarte, María del Huerto Breccia Farro, and 686 other, individually identified persons, for whom Uruguay undertook to respect and ensure the rights enshrined in the American Convention. Insofar as the State is concerned, the Commission notes that Uruguay has been a State party to the American Convention since April 19, 1985, when it deposited the respective instrument of ratification. Therefore, the Commission has competence, ratione personae, to examine the petition.

26. The Commission has competence, ratione materiae, because the petitioners alleged violations of rights protected by the American Convention in Articles 1(1), 2, 4, 21, and 24 of said Convention.

27. The Commission has competence, ratione temporis, because the obligation to respect and ensure the rights protected in the American Convention was in force for the State at the time the events alleged in the petition are said to have occurred.

28. The Commission has competence, ratione loci, because the petition alleges violations of rights that occurred in the territory of a State Party to the American Convention.

B. Other admissibility requirements

Exhaustion of domestic remedies

a) A remedy is created to assist the victims of the bank collapse

29. The petitioners argued that despite their efforts to obtain a remedy at the domestic level, they were allegedly frustrated because the only domestic remedy available to them was decided by the administration in an arbitrary and discriminatory manner.[FN8] According to the petitioners, the State created a special remedy to help the depositors recuperate their savings.

This solution, designed by the State, was an administrative remedy that originated with the adoption of Law 17.613 of December 27, 2002 (Law on Restructuring the Financial System), which introduced norms for the liquidation of financial entities. On December 31, 2002, the Central Bank ordered the liquidation of the Banco de Montevideo and announced that it had created a Bank Capital Recovery Fund.

[FN8] On June 17, 2005, the petitioners informed the Commission that a government prosecutor, based on a criminal complaint brought by the group of depositors, sought the imprisonment pending trial of three lawyers who were part of an Advisory Committee to the Central Bank of Uruguay that refused to recognize the depositors' status as such. The prosecutor allegedly detected irregularities in the way this Advisory Committee operated.

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b) Petitioners maintain that they did not consent to offshore transfer of their savings to the Cayman Islands

30. The petitioners argued that consent is one of the core requirements for the validity of contracts. For consent to exist there must have been a proposal from the account executives and managers of the Banco de Montevideo saying, "Your funds are going to be transferred under such and such conditions to a bank separate from the Banco de Montevideo and you must accept...," and they say that no such thing occurred. Their deposits are held by the Banco de Montevideo, in an account in Uruguay, on stationery with the letterhead of the Banco de Montevideo and signed by officers of the Banco de Montevideo.

31. On September 3, 2003, the petitioners submitted a statement on the 2002 bank crisis made by Senator Julio Herrera, who was on the Uruguayan Senate Treasury Committee. The statement mentioned the difficulty of determining if the funds of the depositors were deposited in the Cayman Islands account with their consent:

We created a Commission to conduct a case-by-case study to determine in which situations the depositor had given consent and in which cases the depositor had not given consent to transfer their funds to the account in the Cayman Islands. The Commission was set up and composed of three really first-rate jurists and three persons with impeccable credentials. The months went by and they adopted what I would call a strict interpretation, but there was no other evidence to go on to enable them to adopt a different one, in accordance with Article 31. Then a generic deposit agreement appeared in which the bank was authorized to transfer the funds or to use the funds for different operations. By virtue of that generic agreement it would appear that there was knowledge; we came to realize that the key to the matter lay in what information the Banco de Montevideo gave to those depositors because if you make a knowing and intentional decision, then responsibility is yours. However, it is also necessary to determine if that knowing and intentional decision was based on reasonably accurate, reasonably transparent, and reasonably complete information. As we moved forward -I speak for myself and I know that the same was true of other legislators- we could see that the information provided by the Banco de Montevideo was certainly quite confusing. This is a business venture of the bank, it is the same as the bank, the account is the same, the account number remains the same, the stationery says Banco de

Montevideo; in other words there were more elements to confuse the depositor and induce error, than elements to allow us to say that there was a freely adopted knowing and intentional decision.

c) The State argues that they should have sought to have the Special Commission's decisions overturned by a Court

32. The State argued that Uruguayan law provides a special jurisdiction for members of the public to judicially contest acts of the administration that they consider unlawful. That jurisdiction is principally governed by the Organic Law of the Tribunal for Contentious-Administrative Disputes, which establishes official or administrative, as well as judicial, remedies. Thus, Uruguayan law provides a cause of action to nullify any administrative acts "ordered in misuse, abuse, or excess of power, or in violation of a legal rule."[FN9] The State argued that the petitioners had the possibility to remedy the allegedly infringed right through a variety of domestic judicial proceedings, among which there were still pending criminal actions, contentious-administrative proceedings, and civil remedies.

[FN9] Organic Law of the Tribunal for Contentious-Administrative Disputes, Article 23 (a).

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d) The applicable law

33. Law 17.613 on the Restructuring of the Financial System was adopted on December 27, 2002. Inter alia, that law introduced provisions for the liquidation of financial entities (in particular for suspended banks) and it created the Bank Deposit Guarantee Fund for the restructuring of the financial system. In this context, a special administrative remedy was adopted to assist the victims of the bank crisis. Article 31 of this Law created a Special Commission with the mandate to examine the claims of the depositors and find a solution in that respect, provided it could be demonstrated that the claims met all three requirements provided by the law: existence of a prior deposit, transfer to another institution, and lack of consent from the depositor to carry out the transfer. Article 31 of said law states:

Let the Central Bank of Uruguay be empowered to grant those depositors of Banco de Montevideo and La Caja Obrera, whose deposits were transferred to other institutions without their consent the same rights as the other depositors of said banks. To that end and by a justified act, the Central Bank of Uruguay shall create a Commission,, which shall issue its opinion within an extendable time limit of 60 days.

34. On December 31, 2002, the Central Bank ordered the dissolution and liquidation of the Banco de Montevideo, the Banco Comercial, and La Caja Obrera, and created a Bank Capital Recovery Fund for each of the aforesaid banks.

35. This Article 31 Commission went into operation on February 1, 2003. The Committee had an extendable time limit of 60 days to issue its opinion on the situation of the accounts of each of the depositors who were allegedly defrauded by the Banco de Montevideo. Despite the

apparent deadline, the Commission continued operating until the end of 2004. Whenever the Special Commission denied a claim, the Board of Directors of the Central Bank had to confirm the rejection. The Board of Directors of the Central Bank concluded the process which lasted from December 30, 2003 to December 28, 2005.[FN10] the first resolution was adopted on December 30, 2003 and the last one was adopted on December 28, 2005. This remedy functioned as follows:

- The depositors submit their claims together with the documents that accredit their status;
- The Committee evaluates each case and presents its opinion to the Central Bank;
- The Board of Directors of the Central Bank (headquarters) approves the report and returns it to the Commission;

At that stage a list is made public of those who will recoup their funds and those who will not;

- The depositors have 15 days to appeal. They may submit the appeal themselves or through an attorney. The Commission reviews the cases appealed and amends or ratifies the earlier decision in a report submitted to the Central Bank.
- The Board of Directors of the Central Bank (headquarters) issues a final ruling within 30 days.

[FN10] Information provided by the State in its response dated September 15, 2006 in an annexed report from the Central Bank of Uruguay.

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36. The Banco de Montevideo depositors who did not agree to transfer their funds offshore had to prove their refusal in order to recover their money. The petitioners said that the consent of the Banco de Montevideo depositors, whose savings ended up on Grand Cayman, did not exist because it was vitiated by the fraudulent actions of the employees and officers of the Banco de Montevideo.

37. The petitioners argue that they were able to demonstrate their compliance with the three requirements established by the law, but that their claims were denied due to the discriminatory attitude of the members of the Special Commission. The petitioners argue that the procedures used by the Special Commission were completely irregular and constitute a violation of their human rights. They argue that the Special Commission was comprised of individuals in positions of confidence in the government and they mention, by way of example, that among the 22 cases approved were those of three persons who were recognized as depositors and were former officers and directors of the Banco de Montevideo, who had exactly the same deposits as the petitioners and all the other depositors, with the aggravating circumstance that they were familiar with all of the internal operations and workings of said bank. According to the petitioners, this Commission discriminated against them, which constitutes a violation of the right of equality before the law enshrined in Article 24 of the American Convention.

38. The principal argument of the State with respect to admissibility is that the petitioners should have sought to have the Commission’s decisions nullified, and it argued that other

individuals, in a similar situation to theirs, did, in fact, file actions for the nullification of the decisions of the Special Commission denying their claims. On February 16, 2006, the Inter-American Commission specifically requested information from the State on the nullification actions presented in these cases. The pertinent portion of the State's response of February 24, 2006, reads as follows:

As with any administrative act, if the interested party does not agree with it, he may attempt an administrative remedy against it (via an action for revocation as provided in Article 317 of the Constitution) and – if his challenge is expressly denied or in the event of implied denial because the time for the action has lapsed – he may take his case to the Tribunal for Contentious-Administrative Disputes to bring an action for nullification of the administrative act that causes him injury, in accordance with Article 309 of the Constitution. On the basis of the foregoing, there are currently a large number of actions for nullification (approximately 80) in which the interested party or parties seek annulment of the administrative act of the Central Bank of Uruguay that refused their request for protection under the auspices of the provisions contained in the aforesaid Article 31 of Law 17.613, of December 27, 2002. Any person who failed to seek an administrative remedy or allowed the 60-day time limit for an action for nullification to expire have clearly not exhausted the remedies provided under domestic law to protect their respective legal rights.

Without prejudice to the foregoing, and while not precisely related to a decision adopted under Article 31 of the aforesaid Law, given its connection with the issue, it is worth drawing attention to a recent judgment of the above-mentioned jurisdictional organ (Tribunal for Contentious-Administrative Disputes).

Said judgment relates to a nullification action brought against the decision of the Central Bank of Uruguay of December 31, 2002, which ordered the dissolution and liquidation of the Banco de Montevideo S.A. and created the Bank Capital Recovery Fund, having deemed verified the credits accounted by said Bank.

The injury consisted in the failure to recognize the plaintiff's deposit in the Banco de Montevideo and the fact that the latter, without the plaintiff's consent, had transferred said deposit to the TCB in the Cayman Islands.

The Tribunal for Contentious-Administrative Disputes held that the impugned act was not injurious because the plaintiff made use of the protection conferred upon him by Article 31 of Law 17.613, requesting his inclusion, which petition is still in process.

39. In other words, the Tribunal for Contentious-Administrative Disputes held that the cause of action would not succeed because there is a proceeding in process before the administrative justice system which expressly provides "the possibility that the petitioner's claim will be vindicated…" adding that the admission of the claim under Article 31 of Law 17.613 dispels any notion of finality in the decision of the Central Bank of Uruguay.

40. With respect to other judicial actions, apart from the actions for nullification, the State informed the Commission that:

In some cases (still a few) there has been a judgment at first instance recognizing a valid claim for damages from the Banco de Montevideo S.A., based on its contractual liability as broker or intermediary in the operation. Those judgments have been appealed. In other cases the judgment rejected the complaint.

A number of investors have brought actions against the Central Bank of Uruguay based on its alleged failure to exercise its control activities. Thus far, a favorable judgment has been returned in only one case, and it is under appeal before the relevant appellate court. Thus far, all the other decisions issued at first instance have rejected the claim of alleged liability on the part of the Central Bank of Uruguay.

41. In their March 5, 2006 communication to the Commission, the petitioners submitted the following information in response to the Commission's request for information on the presentation of actions for nullification. In the pertinent parts of their response, the petitioners said,

A. Not many depositors took their cases to the Tribunal for Contentious-Administrative Disputes. The few that did so have not yet received a final judgment and, despite the fact those four years will have elapsed on June 24, 2006, there is no indication as to when a final judgment will be issued.

B. The delay, without any prospect of an immediate solution, is the strongest demonstration that domestic remedies have been exhausted due to the unreasonable delay in the issuance of a decision from all of the jurisdictional organs, whether it be the Tribunal for Contentious-Administrative Disputes or any of the other courts, since there has been no final and definitive judgment in any case.. The delay in the judicial decisions is enormous and the end to those proceedings appears to be an infinite distance away. It would be unreasonable to believe that legal solutions will be reached within six or seven years and to wait that long under such conditions would effectively constitute a denial or disavowal of the right or rights violated.

In addition to all of this, the Commission that was created under Article 31 of Law 17.613 to study the 1,200 cases is currently under judicial investigation (the prosecutor sought an indictment) and this matter is currently before the courts for resolution, which could take another year. (Enclosed for the IACHR file was a news article in which the prosecutor, Mr. Fernández Dovat, sought the imprisonment, pending trial, of the three lawyers who comprised the Commission and the former Board of Directors of the Central Bank).

C. According to a report of January 28, 2003, signed by the accountant Rosalina Trucillo, Unit Head of the Central Bank of Uruguay, which concerned the Banco de Montevideo- Banco La Caja Obrera and, in particular, liability for the actions of its management, according to information gathered in July 2002 following the intervention, of a total of US $127,813,357 in client operations, there were US $53,426,535 for which they were no agreements or specific instructions signed by the client. This omission leaves the Banco de Montevideo in a very vulnerable position at a time when it has to demonstrate that the operations were carried out according to client instructions. The investigation shows that the internal audit of April 2001

noted cases in which private banking operations were documented without the signature of clients and without signed standing orders in the clients' files.

42. The State has not presented any information to show that the actions for nullification were dealt with and that the situation alleged by the petitioners was remedied. In this context, according to the State, the only case decided by the Courts, in four years, concerned an action for nullification that was refused because the Court found that the appropriate remedy was for the petitioner to invoke Article 31 of Law 17.613. Therefore, the Commission finds that the action for nullification is neither an adequate nor an effective remedy for resolving the petitioners' claims.

43. The Commission considers that the petitioners exhausted the domestic remedies established by the State when they filed their claims before the Special Commission created by Article 31 of Law 17.613.

44. The jurisprudence of the Inter-American Court has established that:, "A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance."[FN11] The Commission is of the opinion that the petitioners are not obliged to seek judicial nullification of the decisions that rejected their claims that were issued by the Special Commission with the approval of the Central Bank, nor to institute criminal proceedings against the members of the Special Commission, nor to go back to Congress to seek new legislation to resolve their difficult situation. On the facts in the instant case, the petitioners are only required to present prima facie evidence that demonstrates that the Special Commission acted arbitrarily and that, as a consequence, it discriminated against them and denied them equal protection before the law. If the Special Commission indeed did act in an irregular manner, then that is a matter to be decided at the merits stage of the proceedings.

[FN11] I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 64.

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45. The Commission recalls that the Inter-American Court has held that the mere existence of domestic remedies does not entail an obligation to exhaust them because they must be adequate and effective. Adequate domestic remedies are those which are suitable to protect the infringement of a legal right. The Uruguayan parliament attempted to contain the financial crisis by the enactment of Law 17.630 (Law on Restructuring the Financial System). For that purpose, the Law created a Special Commission to review the 1,200 claims, which seemed to be a suitable mechanism. However, according to the petitioners, this Special Commission was made of persons in positions of confidence in the government and it adopted an attitude that totally contravened the provisions of the law and acted in an irregular manner by accepting favorable arguments of witnesses in a few cases, while refusing, based on the same arguments, other claims that were in an identical situation, in violation of the right to equal protection before the law. Consequently, of the more than 1,200 petitions, only 22 were approved. The petitioners not only exhausted this remedy, which was created especially for them, but, when it proved ineffective in all but 22 isolated cases, they sought a political solution from Congress.

46. The petitioners have substantiated their allegation that the Special Commission functioned in an irregular manner by pointing out that on October 13, 2005, the prosecutor Eduardo Fernández Dovat requested Judge Luis Charles to indict the former Board of Directors of the Central Bank of Uruguay for the irregular way in which they proceeded with respect to the depositors of the Trade and Commerce Bank (TCB), alleging that they did not adopt uniform guidelines for accepting the petitions of the TCB depositors. The Prosecutor's Office sought the indictment of former Central Bank directors, Julio de Brun, Miguel Vieytes, and Andrés Pieroni. The trial is still pending.

47. The State must not only indicate which domestic remedies remain available to the petitioners but must also demonstrate their efficacy. It is not necessary to exhaust all existing domestic remedies, merely those that are adequate to address the situation concerned.[FN12] The Commission concludes that the instant petition is admissible and that the petitioners exhausted the available domestic remedies. Consequently, the requirement contained in Article 46(1)(a) of the American Convention has been met.

[FN12] Cf. Héctor Faúndez Ledesma, EL SISTEMA INTERAMERICANO DE PROTECCION DE LOS DERECHOS HUMANOS, 3era edición, p. 305.

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2. Time limit for the presentation of the petition

48. Article 46(1)(b) of the American Convention provides that the petition must be lodged within a period of six months from the date on which the petitioners were notified of the final judgment that exhausted domestic remedies. In the instant petition, the Commission has determined that the petitioners exhausted domestic remedies.

49. The petitioners argued that the denial of justice was consummated with the decisions of the Board of Directors of the Central Bank, which confirmed the decisions of the Special Commission to reject the vast majority of the petitions (supra para. 37). According to information provided by the State in its Note Nº 141/06 of September 15, 2006, the Board of Directors functioned from December 30, 2003 to December 28, 2005, and the petitioners lodged their complaint with the Commission on October 17, 2003. The Commission concludes that the petition was presented within the time limit set in Article 46(1) (b) of the Convention.

3. Duplication of proceedings and res judicata at the international level

50. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement, or is substantially the same as one previously studied by the Commission or by another international body. The Commission, therefore, concludes that the requirements established in Article 46(1) (c) are met.

4. Characterization of the alleged facts

51. The Commission finds that the petition describes acts, which, if proven, could constitute violations of the rights protected by Articles 8, 21, 24 and 25 of the American Convention in connection with the obligations contained in Articles 1(1) and 2, for which reason the requirements of Article 47(b) have been met. The alleged violations would give rise to the responsibility of the State owing to its failure to provide the guarantee of equality before the law in the procedure employed in the State's remedy specifically designed to deal with the petitioners' complaints. With respect to Article 4, the Commission considers that the petitioners did not demonstrate prima facie a possible violation of that right. It has not been sufficiently proven that the deaths of the persons in the group of petitioners were directly caused by the loss of their savings. For the purposes of admissibility, the Commission concludes that there is sufficient evidence that the allegations tend to establish violations of human rights and that the petition is not manifestly groundless or obviously out of order.

V. CONCLUSION

52. The Commission has determined in the instant report that it is competent to take up the complaint lodged by the petitioners alleging violation of the rights to property and equality before the law (Articles 21 and 24) and the rights to a fair trial and judicial protection (Articles 8 and 25), in conjunction with Articles 1(1) and 2 of the American Convention, in accordance with the requirements set forth in Article 46 of that treaty.

53. Based on the factual and legal arguments given above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 1(1), 2, 8, 21, 24 and 25 of the American Convention.
2. To notify the parties of this decision.
3. To proceed with its analysis on merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Members of the Commission.