Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Constitutional Court v. Peru
Doc. Type:	Judgment (Competence)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Maximo Pacheco-Gomez; Judges: Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo Judge Hernan Salgado-Pesantes, who had presided over the Court's proceedings until September 16, 1999, disqualified himself effective that date from the drafting and adoption of this Judgment.
Dated:	24 September 1999
Citation:	Constitutional Court v. Peru, Judgment (IACtHR, 24 Sep. 1999)

In the Constitutional Court case,

the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), pursuant to Article 29 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), enters the following judgment on competence in relation to the supposed withdrawal on the part of the Republic of Peru (hereinafter "the State" or "Peru") of its recognition of the Court's binding jurisdiction.

I. INTRODUCTION OF THE CASE

1. On July 2, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application with the Court involving a case that had originated in a petition (number 11,760) received at the Commission's Secretariat on June 2, 1997.

II. FACTS SET FORTH IN THE APPLICATION

2. In the following paragraphs, the Court summarizes the relevant facts in the case, as alleged by the Commission in the application:

a) On April 5, 1992, the President of Peru, Mr. Alberto Fujimori, dissolved Congress and the Court of Constitutional Guarantees, and removed a number of justices from the bench of the Supreme Court;
b) On October 31, 1993, Peru's new Constitution was approved via a referendum. Article 112 provides that "[t]he president shall serve a five-year term of office and is eligible for re-

election to the immediately subsequent term. Thereafter, at least one constitutional term of office must pass before the former president may run for office again, and then subject to the same conditions;

c) In June 1996, the new Constitutional Court was seated with the following seven members: Ricardo Nugent (President), Guillermo Rey Terry, Manuel Aguirre Roca, Luis Guillermo Díaz Valverde, Delia Revoredo Marsano de Mur, Francisco Javier Acosta Sánchez and José García Marcelo;

d) On August 23, 1996, Law No. 26,657 was enacted, which is the Act Stipulating the Authentic Interpretation of Article 112 of the Constitution. That law interprets Article 112 as follows: "The [presidential] re-election refers and applies to the presidential terms of office that begin subsequent to the date on which the Constitution was enacted into law." The Authentic Interpretation Act concludes, therefore, that "presidential terms of office that began prior to the date on which the new Constitution took effect are not to be taken into account retroactively";

e) On August 29, 1996, the Lima Bar Association filed suit with the Constitutional Court challenging the constitutionality of Law No. 26,657, arguing that it was a violation of Article 112 of the Peruvian Constitution;

f) A public hearing on the case was held on November 20, 1996, with all seven members of the Constitutional Court present. On December 27 of that year, the working paper was discussed and a vote taken on it, with five votes in favor and two opposed. The judgment adopted stated that the law in question was non-applicable but did not declare it unconstitutional. Under Article 4 of the Statute of the Constitutional Court, six votes are needed to settle constitutionality cases, whereas only a simple majority is required to declare a law inapplicable;

g) A working paper prepared by Justice Rey Terry, which became a judgment on December 27, 1996, was removed by Justice García Marcelo and handed over to the Police. Justice García Marcelo claimed to have found the draft on the meeting table, in Justice Rey Terry's folder. He said that "the document was proof of a scheme designed to thwart the President's re-election";

h) What followed was a campaign to pressure the five justices who had signed the judgment in question. These five justices said that "they were intimidated and received threats, blackmail and bribes of all types." There were even accusations that Mrs. Delia Revoredo Marsano de Mur and her husband Mr. Jaime Mur Campoverde, were engaged in contraband;

i) On January 2, 1997, Justices Nugent and Díaz Valverde "requested another vote." On January 3 of that year, the two justices who had requested the second vote abstained because they had expressed their views, and withdrew their signatures. Two other justices, Mr. Actosta Sánchez and Mr. García Marcelo, chose not to express an opinion.Mr. Aguirre Roca, Mr. Rey Terry and Mrs. Revoredo Marsano de Mur voted as they had before, that Law No. 26,657 was non-applicable;

j) By note of January 14, 1997, 40 congressmen from the majority party in Congress sent a letter to the Constitutional Court seeking to ban publication of "a decision that would declare Law 26657 to be 'non-applicable'." Citing Article 34 of Law No. 26,435, the congressmen added that the deadline for publication had expired on January 10, 1997. They also cited Law No. 36,301, governing an action seeking compliance [Acción de Cumplimiento], and requested that the Constitutional Court expressly rule on the constitutionality of Law 26,657 within a period of thirty working days;

k) In their note, the 40 congressmen in question requested the following:

That the Constitutional Court declare the action brought by the Lima Bar Association challenging the constitutionality of Law 26,657 to be either founded or unfounded and that the

judgment not contain any "declaration" of non-applicability, as that would seriously imperil fundamental and political rights recognized in the Constitution. It would also constitute an abuse of power, since the Constitutional Court would be taking upon itself an authority that its own Statute does not confer upon it;

l) On January 16, 1997, justices Acosta Sánchez and García Marcelo decided to "abstain from voting." However, they did not withdraw from the proceedings in order that a judgment might be entered. The working paper that was under consideration was discussed again and put to a vote that same day. It became the definitive judgment when it was approved by a vote of three in favor and four abstentions. With the abstentions mentioned earlier and in exercise of the Court's oversight authority, the decision unanimously declared that Law No. 26,657 –the Authentic Interpretation Act- was "NON-APPLICABLE in the specific case of the incumbent President's candidacy for the office of President in the year 2000." On January 17, 1997, the judgment was published in the El Peruano official gazette.Due to typographical errors, it was published again the following day. The date that appears on the judgment, however, is January 3, 1997;

m) On January 20, 1997, the Lima Bar Association requested clarification of the January 3, 1997 judgment. On instructions from the President of the Constitutional Court and by agreement with the full Bench, the draft decision issued on the request for clarification, and which is part of the judgment, was written by the justice designated to do so, who was Justice Rey Terry. "As agreed, that working paper was discussed, voted on and signed by the justices that had voted for the judgment whose clarification was requested. That document (the working paper or draft decision) was sent, via the regular channels, to the Office of the President, for the appropriate purposes. The Office of the President ordered its publication, since in its view the document did not have to be brought to the attention of the full bench," given the bench's previous agreement. The procedure followed for the clarification had been ratified by the full Administrative-Law bench, as the document dated March 14, 1997 attests. That document is a record of the fact that the procedure described therein had been authorized before the decision was written;

n) On February 28, 1997, the Congress of Peru approved the creation of a committee to investigate the incidents of harassment and pressure to which the Constitutional Court was allegedly subjected, based on complaints brought by Justice Revoredo Marsano de Mur. Committee members were prohibited from making any pronouncements concerning matters within the Constitutional Court's jurisdiction;

o) On May 5, 1997, the Congressional Indictment Subcommittee presented its Permanent Commission with articles of impeachment against justices Aguirre Roca, Rey Terry and Revoredo Marsano de Mur. They were charged with breach of the Constitution, based on the following arguments:

a. Presenting a mere working paper as a judgment already discussed and approved by the Constitutional Court en banc. Justice Guillermo Rey Terry is particularly at fault, as he had prepared the Memorandum of Transmittal wherein he portrayed what was merely a position paper as being a 'judgment'.

b. On January 21, 1997, Justices Aguirre Roca, Rey Terry and Revoredo Marsano on their own entered a ruling of the Constitutional Court on the petition that the Lima Bar Association filed seeking a clarification; the Court was never convened to deliberate en banc, with the result that the decision was not taken with the quorum required by law and did not carry the majority that the law requires.

p) On May 6, 1997, the Congressional Permanent Commission named a subcommittee to evaluate the request seeking impeachment. That subcommittee requested that the justices submit a report on the matters under investigation within 48 hours. The respondent justices stated that this was a "reprisal for their ruling on the Presidential Re-election Law";
q) On May 14, 1997, justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur forwarded the March 14, 1997 document wherein it is shown that they had express authority to enter the judgment that was the reason why their impeachment was being sought;
r) On May 15, 1997, the subcommittee especially appointed for that purpose filed its report with the Congressional Permanent Commission and recommended that Congress proceed with impeachment;
s) The Congressional Permanent Commission filed articles of impeachment against the three justices in question who, for the duration of the investigation, never had an opportunity to learn and rebut the charges against them or what breach of the Constitution they were alleged to have committed. The Commission also presented articles of impeachment against Justice Ricardo Nugent as President of the Constitutional Court, for having "facilitated the unlawful conduct of justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur by not convening the full membership of the Constitutional Court to rule on the petition filed by the Lima Bar Association seeking clarification;
t) On May 19, 1997, the President of the Congress summoned justices Aguirre Roca, Rey Terry and Revoredo Marsano de Mur to the May 23 session, to state their arguments before the Congressional Permanent Commission;
u) On May 28, 1997, Congress adopted legislative decisions Nos. 002-97-CR, 003-97-CR and 004-97-CR, wherein it resolved to remove justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur from the bench of the Constitutional Court, and
v) On June 25, 1997, Justice Manuel Aguirre Roca filed a petition seeking a writ of amparo against the decision to remove him from the bench. Justices Guillermo Rey Terry and Delia Revoredo Marsano de Mur followed suit on August 1, 1997. Those petitions were declared unfounded in rulings published in the El Peruano official gazette on September 25, 1998.

III. PROCEEDINGS WITH THE COMMISSION

3. On June 2, 1997, the Inter-American Commission received a petition signed by 26 deputies in Peru's National Congress concerning the removal of the justices from the bench of the Constitutional Court. On July 16 of that year, the Commission began to process that petition, forwarding the pertinent parts thereof to the State with the request that it supply information relevant to the matter.

4. On October 16, 1997, Peru presented a report prepared by the National Human Rights Council (Communication No. 1858-97-JUS/CNDH-SE) wherein it requested that the Commission declare the petition inadmissible "inasmuch as the petitioners [had] not exhaust[ed] local remedies."

5. On October 21, 1997, the Commission forwarded that report to the petitioners and requested that they present any comments they might have within 30 days.

6. The Commission convoked a public hearing for February 25, 1998, during its 98th session, to hear arguments from the parties concerning the petition's admissibility.

7. On April 30, 1998, the petitioners requested that the Commission find the petition admissible. That same day, the Commission informed the State of that request.

8. On May 5, 1998, during its 99th special session, the Commission approved the Report on the Admissibility of Petition No. 35/98. There, it concluded that "inasmuch as the exceptions provided for in Article 46(2)(c) of the Convention applied in the instant case, the local remedies need not be exhausted for the Commission to be competent to take up this petition." That report was forwarded to Peru and to the petitioners on December 11, 1998.

9. On June 29, 1998, the Commission placed itself at the disposition of the parties for purposes of a friendly settlement in accordance with Article 48(1)(f) of the American Convention.

10. By note of June 29, 1998, the State answered the Commission's April 30 note, stating that inasmuch as the Admissibility Report had been issued, "any comment on the allegations made prior to the admissibility decision was unnecessary" and announced that it would present a report concerning the admissibility of the petition in the instant case at some future date. That information was conveyed to the petitioners.

11. On August 14, 1998, via note No. 7-5-M/402, the State replied that there was no possibility of a friendly settlement, since in its view this type of solution did not apply in this case.

12. By note of August 17, 1998, the petitioners replied to the friendly settlement proposal, indicating that the only way the case could be settled was to restore to the bench those justices who had been removed in violation of the Constitution.

13. On December 9, 1998, during its 101st session, the Commission approved Report No. 58/98, which was sent to the State on December 14 of that year. In that report the Commission concluded that:

…by removing justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur from the bench of the Constitutional Court for alleged procedural irregularities in the clarification of a ruling that found Law No. 26,657 did not apply to the incumbent President of Peru, the State violated the essential guarantee of the Constitutional Court's independence and autonomy (Article 25 of the American Convention); the right to a fair trial (Article 8(1) of the Convention) and the guarantee of the security of one's position in public service (Article 23(c)).

The Commission also made the following recommendations to the State:

[t]hat … it make appropriate reparations to Constitutional Court Justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur by restoring them to their seats on the

bench of the Constitutional Court and by compensating them for all income not received since the date of their unlawful removal from the bench.

The Commission also decided to send the report in question to the State, which was given three months to take the necessary measures to comply with these recommendations.

14. By note of December 15, 1998, the State expressed concern over the fact that "the media were reporting" the adoption of the Report pursuant to Article 50 of the Convention, as the matter ought to have been held in the "strictest confidence."

15, On February 1, 1999, the petitioners requested that the Commission bring the case to the Inter-American Court.

16. On February 12, 1999, Peru requested an extension of the deadline so that it might continue to study the recommendations the Commission had made in its Report. On February 26, 1999, the Commission granted the State the requested extension and suspended the time periods allowed under Article 51(1) of the Convention. On April 14, 1999, the State requested another extension. Again, the Commission acceded to its request.

17, During the time periods granted by the Commission, the State and the petitioners held meetings, with the Commission's knowledge and in its presence, in an attempt to reach a friendly settlement. In the end, however, no friendly settlement was reached.

18. On June 17, 1999, after formally notifying the parties, the Commission decided to submit the case to the Court under Article 51 of the Convention.

IV. PROCEEDINGS WITH THE COURT

19. On July 2, 1999, the Commission filed an application petitioning the Court to decide whether articles 8(1), 8(2)(c), 8(2)(d) and 8(2)(f) (Right to a Fair Trial), 23(1)(c) (Right to Participate in Government) and 25 (Right to Judicial Protection) of the Convention had been violated, all in relation to articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof.

It also petitioned the Court to order Peru to "make full and adequate restitution" to Constitutional Court justices Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano de Mur and restore them to their seats on the bench. It asked the Court to order that the resolutions ordering their removal from the bench –Nos. 002-97-CR, 003-97-CR, and 004-97-CR of May 28, 1997- be nullified. As part of said restitution, the Commission requested indemnification of the salary benefits that these justices ceased to receive in the interim between the time of their removal from the bench and the date of their effective reinstatement, as well as compensation for moral damages. Finally, the Commission asked that Peru be ordered to pay any "reasonable" costs and expenses that the victims and their attorneys incurred in litigating the case in Peruvian courts and before the Inter-American Commission and the Inter-American Court.

20. The Commission named Mr. Hélio Bicudo and Mr. Carlos Ayala Corao as its delegates; Hernando Valencia Villa and Christina M. Cerna as advisors, and Lourdes Flores Nano, Carlos Chipoco, Manuel Aguirre Rocal, Raúl Ferrero Costa, Juan Monroy Gálvez and Valentín Paniagua Corazao as assistants.

21. On July 12, 1999, an examination of the application found that a number of the appendices were either incomplete or illegible. The Commission was asked to retransmit them. The Commission forwarded part of the requested documentation on July 15 and 23, 1999.

22. By note of July 12, 1999, received at the Office of the Minister of Foreign Affairs of Peru on July 14, 1999, the Secretariat of the Court (hereinafter "the Secretariat") sent the State notice of the application and advised it of the time limits for answering the application, filing preliminary objections and designating its agents. The State was also advised that it had the right to designate an ad hoc judge.

23. On July 16, 1999, the Ambassador of Peru in Costa Rica came to the seat of the Court to return the application in the Constitutional Court case and its appendices. He also delivered to the Secretariat a note dated July 15, 1999, signed by the Minister in Charge of Foreign Affairs of Peru, which stated the following:

1. By Legislative Resolution, dated July 8, 1999, the Congress of the Republic approved the withdrawal of [Peru's] recognition of the contentious jurisdiction of the Inter-American Court of Human Rights.
2. On July 9, 1999, the Government of the Republic of Peru deposited with the General Secretariat of the Organization of American States the instrument wherein it declares that, pursuant to the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration consenting to the optional clause concerning recognition of the contentious jurisdiction of the Inter-American Court of Human Rights…
3. … The withdrawal of recognition of the Court's contentious jurisdiction takes immediate effect as of the date on which that instrument is deposited with the General Secretariat of the OAS, in other words, July 9, 1999, and applies to all cases in which Peru has not answered the application filed with the Court.

Lastly, in that same brief the State wrote that:

"…the notification contained in note CDH-11,760/002, dated July 12, 1999, concerns a case in which that Honorable Court is no longer competent to consider the applications filed against the Republic of Peru under the contentious jurisdiction provided for in the American Convention on Human Rights."

24. On September 10, 1999, the Commission submitted its observations concerning Peru's return of the application and its attachments. In its brief, the Commission stated the following:

a. The Court asserted jurisdiction to consider the instant case as of July 2, 1999, the dated on which the Commission filed the application. Peru's purported "withdrawal" of its recognition of the Court's contentious jurisdiction on July 9, 1999, and its return of the application and its

attachments on July 16, 1999, have no effect whatever on the Court's exercise of jurisdiction in the instant case.

b. A unilateral action by a State cannot divest an international court of jurisdiction it has already asserted; the American Convention contains no provision that would make it possible to withdraw recognition of the Court's contentious jurisdiction, as such a provision would be antithetical to the Convention and have no foundation in law. Even supposing a State could withdraw its recognition of the Court's contentious jurisdiction, formal notification would have to be given one year before the withdrawal could take effect, for the sake of juridical security and continuity.

Finally, the Commission petitioned the Court to find that Peru's return of the application in the Constitutional Court case and its attachments was legally ineffectual and to continue to exercise jurisdiction over the instant case.(**)

(**) On August 27 and September 9 and 15, 1999, the International Human Rights Law Group, Mr. Curtis Francis Doebbler and Mr. Alberto Borrea Odría,respectively, filed amicus curiae briefs, which were not formally added to the case files.

V. COMPETENCE

A. FACTS:

25. The Commission submitted the application in the Constitutional Court case on July 2, 1999. The Court forwarded note CDH-11,760/002 to the State on July 12, 1999, wherein it notified it of the application and sent it a copy of both the application and its attachments. The Court also advised the State that it had one month to designate an agent and alternate agent, two months to file preliminary objections and four months to answer the application.

26. By a second note of July 12, 1999, CDH-11,760/003, the Court informed the State that it had 30 days in which to designate an ad hoc judge.

27. By note of July 16, 1999, received at the Secretariat of the Court on July 27 of that year, the General Secretariat of the OAS reported that on July 9, 1999, Peru had presented an instrument wherein it advised that it was withdrawing its declaration consenting to the optional clause in the American Convention recognizing the contentious jurisdiction of the Court.

It also sent a copy of the original of that instrument, dated Lima, July 8, 1999. There, the Minister of Foreign Affairs of Peru stated that by Legislative Resolution No. 27,152 of July 8, 1999, the Congress of the Republic had approved the withdrawal in the following terms:

… that in accordance with the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration whereby it consents to the optional clause recognizing the contentious jurisdiction of the Inter-American Court of Human Rights, a declaration given by the Peruvian government at the time.

This withdrawal of recognition of the Inter-American Court's contentious jurisdiction will take effect immediately and will apply to all cases in which Peru has not answered the application filed with the Court.

28. On July 16, 1999, the Ambassador of Peru in Costa Rica appeared at the Secretariat of the Inter-American Court and stated that he was returning the application and appendices in the Constitutional Court case. The Secretariat made a record of these documents' return.

29. Peru has been a State Party to the American Convention since July 28, 1978. In its instrument of ratification of the Convention, the Government noted that the Convention had been approved by Decree Law No. 22,231, of July 11, 1978, and had become State law. On the honor of the Republic, it pledged to abide by the Convention. On January 21, 1981, Peru recognized the contentious jurisdiction of the Court as follows:

[a]s prescribed in paragraph 1 of Article 62 of the American Convention, the Government of Peru hereby declares that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention.

This recognition of jurisdiction is for an unspecified period and on condition of reciprocity.

30. Exercising its jurisdiction, the Court took cognizance of the Constitutional Court case on July 2, 1999, the date on which it formally received the corresponding application, filed in accordance with articles 48, 50, and 51 of the Convention and Article 32 of the Court's Rules of Procedure.

B. LAW:

31. The Court must settle the question of Peru's purported withdrawal of its declaration recognizing the contentious jurisdiction of the Court and of its legal effects. The Inter-American Court, as with any court or tribunal, has the inherent authority to determine the scope of its own competence (compétence de la compétence/Kompetenz-Kompetenz).

32. The Court cannot abdicate this prerogative, as it is a duty that the Convention imposes upon the it, requiring it to exercise its functions in accordance with Article 62(3) thereof. That provision reads as follows:

The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

33. The jurisdiction of the Court cannot be contingent upon events extraneous to its own actions. The instruments consenting to the optional clause concerning recognition of the Court's binding jurisdiction (Article 62(1) of the Convention) presuppose that the States submitting them

accept the Court's right to settle any controversy relative to its jurisdiction. An objection or any other action taken by the State for the purpose of somehow affecting the Court's jurisdiction has no consequence whatever, as the Court retains the compétence de la compétence, as it is master of its own jurisdiction.

34. Interpreting the Convention in accordance with its object and purpose (cf., infra 38), the Court must act in a manner that preserves the integrity of the mechanism provided for in Article 62(1) of the Convention. That mechanism cannot be subordinated to any restrictions that the respondent State might add to the terms of its recognition of the Court's binding jurisdiction, as that would adversely affect the efficacy of the mechanism and could obstruct its future development.

35. Recognition of the Court's binding jurisdiction is an ironclad clause to which there can be no limitations except those expressly provided for in Article 62(1) of the American Convention. Because the clause is so fundamental to the operation of the Convention's system of protection, it cannot be at the mercy of limitations not already stipulated but invoked by States Parties for internal reasons.

36. The States Parties to the Convention must guarantee compliance with its provisions and its effects (effet utile) within their own domestic laws. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning recognition of the Tribunal's contentious jurisdiction. [FN1] That clause, essential to the efficacy of the mechanism of international protection, must be interpreted and applied in such a way that the guarantee that it establishes is truly practical and effective, given the special nature of human rights treaties (cf. infra 41 to 44) and their collective enforcement.

[FN1] European Commission of Human Rights, Applications No. 15299/89, 15300/89 and 15318/89, Chrysostomos et al. v. Turkey (1991), Decisions and Reports, Strasbourg, C. E., [1991] vol. 68, pp. 216-253.

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37. Article 31(1) of the 1969 Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention") provides that:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

[…]

38. Article 62(1) of the American Convention stipulates that a State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare "that it recognizes as binding, ipso facto, and not requiring any special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention." There is no provision in the Convention that expressly permits the States Parties to

withdraw their declaration of recognition of the Court's binding jurisdiction. Nor does the instrument in which Peru recognizes the Court's jurisdiction, dated January 21, 1981, allow for that possibility.

39. An interpretation of the Convention done "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose" leads this Court to the view that a State Party to the American Convention can only release itself of its obligations under the Convention by following the provisions that the treaty itself stipulates. In the instant case, under the Convention, the only avenue the State has to disengage itself from the Court's binding contentious jurisdiction is to denounce the Convention as a whole (cf. infra 45, 49); if this happens, then the denunciation will only have effect if done in accordance with Article 78, which requires one year's advance notice.

40. Article 29(a) of the American Convention provides that no provision of the Convention shall be interpreted as permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the Convention or to restrict them to a greater extent than is provided for therein. Any interpretation of the Convention that allows a State Party to withdraw its recognition of the Court's binding jurisdiction, as Peru would in the instant case, would imply suppression of the exercise of the rights and freedoms recognized in the Convention, would be contrary to its object and purpose as a human rights treaty, and would deprive all the Convention's beneficiaries of the additional guarantee of protection of their human rights that the Convention's jurisdictional body affords.

41. The American Convention and the other human rights treaties are inspired by a set of higher common values (centered around the protection of the human person), are endowed with specific supervisory mechanisms, are applied as a collective guarantee, embody essentially objective obligations, and have a special character that sets them apart from other treaties. The latter govern mutual interests between and among the States Parties and are applied by them, with all the juridical consequences that follow therefrom for the international and domestic legal systems.

42. In its Advisory Opinion OC-2/82, of September 24, 1982, titled The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), the Court found that:

… modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. (paragraph 29)

43. That finding is consistent with the case-law of other international jurisdictional bodies. For example, in its Advisory Opinion on Reservations to the Convention for the Prevention and

Punishment of the Crime of Genocide (1951), the International Court of Justice held that with treaties of this nature, "the contracting States do not have any individual advantages or disadvantages nor interests of their own, but merely a common interest; hence the Convention's raison d'être is to accomplish its purposes."

44. For their part, the European Commission and Court of Human Rights (hereinafter "the European Commission" and "the European Court") have arrived at similar findings. In the Austria vs. Italy case (1961), the European Commission declared that the obligations undertaken by the States Parties to the European Convention on Human Rights (hereinafter "the European Convention") "are essentially objective in nature, and intended to protect the fundamental rights of human beings against violations on the part of the High Contracting Parties, rather than to create subjective and reciprocal rights between the High Contracting Parties." [FN2] Similarly, in Ireland vs. the United Kingdom (1978), the European Court held the following:

Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a "collective enforcement". [FN3]

In the Soering vs. United Kingdom case (1989), the European Court declared that in interpreting the European Convention "regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms…. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective." [FN4]

[FN2] European Commission of Human Rights, Decision as to the Admissibility of Application No. 788/60, Austria vs. Italy case, Yearbook of the European Convention on Human Rights, The Hague, M. Nijhoff, 1961, p. 140.
[FN3] European Court of Human Rights, Ireland vs. United Kingdom case, judgment of 18 January 1978, Series A no. 25, p. 90, paragraph 239.
[FN4] European Court of Human Rights, Soering Case, decision of 26 January 1989, Series A no. 161, paragraph 87.

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45. The optional clause recognizing the contentious jurisdiction of the Inter-American Court is of particular importance to the operation of the system of protection embodied in the American Convention. When a State consents to that clause, it binds itself to the whole of the Convention and is fully committed to guaranteeing the international protection of human rights that the Convention embodies. A State Party may only release itself from the Court's jurisdiction by renouncing the treaty as a whole (cf. supra 39, infra 49). The instrument whereby it recognizes the Court's jurisdiction must, therefore, be weighed in light of the object and purpose of the Convention as a human rights treaty.

46. No analogy can be drawn between the State practice detailed under Article 36.2 of the Statute of the International Court of Justice and acceptance of the optional clause concerning recognition of the binding jurisdiction of this Court, given the particular nature and the object and purpose of the American Convention. The European Court of Human Rights ruled similarly in its judgment on preliminary objections in the Loizidou vs. Turkey case (1995), in connection with optional recognition of the European Court's binding jurisdiction (Article 46 of the European Convention, before Protocol XI to the European Convention entered into force on January 1, 1998). [FN5] The European Court held that the European Convention was a law-making treaty. [FN6]

[FN5] European Court of Human Rights, Case of Loizidou vs. Turkey (Preliminary Objections), judgment of 23 March 1995, Series A no. 310 p. 25, paragraphs 82 and 68.
[FN6] Ibid., p. 25, paragraph 84.

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47. In effect, international settlement of human rights cases (entrusted to tribunals like the Inter-American and European Courts of Human Rights) cannot be compared to the peaceful settlement of international disputes involving purely interstate litigation (entrusted to a tribunal like the International Court of Justice); since, as is widely accepted, the contexts are fundamentally different, States cannot expect to have the same amount of discretion in the former as they have traditionally had in the latter.

48. A unilateral juridical act carried out in the context of purely interstate relations (e.g. recognition, promise, protest, renunciation) and independently self-consummated, can hardly be compared with a unilateral juridical act carried out within the framework of treaty law, such as acceptance of an optional clause recognizing the binding jurisdiction of an international court. That acceptance is determined and shaped by the treaty itself and, in particular, through fulfillment of its object and purpose.

49. A State that recognized the binding jurisdiction of the Inter-American Court under Article 62(1) of the Convention, is thenceforth bound by the Convention as a whole (cf. supra 39 and 45). The goal of preserving the integrity of the treaty obligations is from Article 44(1) of the Vienna Convention, which is based on the principle that the denunciation (or "withdrawal" of recognition of a treaty's mechanism) can only be vis-à-vis the treaty as a whole, unless the treaty provides or the Parties thereto agree otherwise.

50. The American Convention is very clear that denunciation is of "this Convention" (Article 78) as a whole, and not denunciation of or "release" from parts or clauses thereof, since that would undermine the integrity of the whole. Applying the criteria of the Vienna Convention (Article 56(1)), it does not appear to have been the Parties' intention to allow this type of denunciation or release; nor can denunciation or release be inferred from the character of the American Convention as a human rights treaty.

51. Even supposing, for the sake of argument, that "release" was possible –a hypothetical that this Court rejects-, it could not take effect immediately. Article 56(2) of the Vienna

Convention stipulates that a State Party must give "not less than 12 months' notice" of its intention to denounce or withdraw from a treaty. This is to protect the interests of the other Parties to the treaty. The international obligation in question, even when undertaken by means of a unilateral declaration, is binding for the State. The latter is thenceforth "legally required to follow a course of conduct consistent with its declaration", and the other States Parties are authorized to demand that that obligation be honored. [FN7]

[FN7] Nuclear Tests case (Australia vs. France), Judgment of 20 December 1974, ICJ Reports 1974, p 268, paragraph 46; Nuclear Tests case (New Zealand vs. France), Judgment of 20 December 1974, ICJ Reports 1974, pp. 473 and 267, paragraphs 49 and 43, respectively.

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52. Despite the fact that it is optional, the declaration of recognition of the contentious jurisdiction of an international tribunal, once made, does not give the State the authority to change its content and scope at will at some later date: "… The right of immediate termination of declarations with indefinite duration is far from established. It appears from the requirements of good faith that they should be treated, by analogy, according to the law of treaties, which requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity." [FN8] Thus, in order for an optional clause to be unilaterally terminated, the pertinent rules of the law of treaties must be applied. Those rules clearly preclude any possibility of a termination or "release" with "immediate effect".

[FN8] Cf. Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment of 26 November 1984, ICJ Reports 1984, p. 420, para. 63 and cf. p. 418, paragraphs 59 and 60.

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53. For the foregoing reasons, the Court considers inadmissible Peru's purported withdrawal of the declaration recognizing the contentious jurisdiction of the Court effective immediately, as well as any consequences said withdrawal was intended to have, among them the return of the application, which is irrelevant.

54. Given the foregoing, the Court considers that it must continue to adjudicate the Constitutional Court case in accordance with Article 27 of its Rules of Procedure.

VI. OPERATIVE PARAGRAPHS

55. Now therefore,

THE COURT

RESOLVES

Unanimously

1. To declare that:
   a. The Inter-American Court of Human Rights is competent to take up the present case;
   b. The State's purported withdrawal of the declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights is inadmissible.
2. To continue to examine and adjudicate the instant case.
3. To commission its President, at the appropriate time, to convene the State and the Inter-American Commission on Human Rights to a public hearing on the merits of the case, to be held at the seat of the Inter-American Court of Human Rights.
4. To notify Peru and the Inter-American Commission on Human Rights of this judgment.

Done in Spanish and English, the Spanish version being authentic, in San José, Costa Rica, on the 24th day of September 1999.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Oliver Jackman
Sergio García-Ramírez
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary