In the Las Palmeras case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Article 36.6 of its Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the following judgment on the preliminary objections filed by the Republic of Colombia (hereinafter "the State" or "Colombia").

## I. INTRODUCTION OF THE CASE

1. This case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on July 6, 1998. The Commission's application originates from a petition (No. 11.237) received by its Secretariat and dated in Bogotá on January 27, 1994.

## II. FACTS SET FORTH IN THE APPLICATION

2. In its application, the Inter-American Commission set forth the facts on which its complaint is based.

It is alleged that on January 23, 1991, the Departmental Commander of the Putumayo Police Force had ordered members of the National Police Force to carry out an armed operation in Las Palmeras, municipality of Mocoa, Department of Putumayo. Members of the Armed Forces would provide support to the National Police Force.
That, on the morning of that same day, some children were in the Las Palmeras rural school waiting for classes to start and two workers, Julio Milcíades Cerón Gómez and Artemio Pantoja, were there repairing a tank. The brothers, William and Edebraiz Cerón, were milking a cow in a

neighboring lot. The teacher, Hernán Javier Cuarán Muchavisoy, was just about to arrive at the school.
That the Armed Forces fired from a helicopter and injured the child Enio Quinayas Molina, 6 years of age, who was on his way to school.
That in and around the school, the Police detained the teacher, Cuarán Muchavisoy, the workers, Cerón Gómez and Pantoja, and the brothers, William and Edebraiz Cerón, together with another unidentified person who might be Moisés Ojeda or Hernán Lizcano Jacanamejoy; and that the National Police Force extrajudicially executed at least six of these persons.
That members of the Police Force and the Army have made many efforts to justify their conduct. In this respect, they had dressed the bodies of some of the persons executed in military uniforms, they had burned their clothes and they had threatened those who witnessed the event. Also, that the National Police Force had presented seven bodies as belonging to rebels who died in an alleged confrontation. Among these bodies were those of the six persons detained by the Police and a seventh, the circumstances of whose death have not been clarified.
That, as a consequence of the facts described, disciplinary, administrative and criminal proceedings had been initiated. The disciplinary proceeding conducted by the Commander of the National Police Force of Putumayo had delivered judgment in five days and had absolved all those who took part in the facts at Las Palmeras. Likewise, two administrative actions had been opened in which it had been expressly acknowledged that the victims of the armed operation did not belong to any armed group and that the day of the facts they were carrying out their usual tasks. That these proceedings proved that the National Police Force had extrajudicially executed the victims when they where defenseless. As regards the criminal military action, after seven years, it is still at the investigation stage and, as yet, none of those responsible for the facts has been formally accused.

## III. PROCEEDING BEFORE THE COMMISSION

3. On January 27, 1994, the Commission received a petition for alleged human rights violations to the detriment of Artemio Pantoja Ordoñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas, William Hamilton Cerón Rojas, an unidentified person who could be Moisés Ojeda or Hernán Lizcano Jacanamejoy, and another person who has not been identified either and who died in unknown circumstances. On February 16, 1994, the Commission forwarded the pertinent parts of the petition to the State and requested the corresponding reply.

4. The State replied on May 25, 1994. The communication was forwarded to the petitioners, who presented their rejoinder on October 6, 1994. On November 3 that year, the Commission forwarded this to Colombia, who replied on December 15. Both the petitioners and the State transmitted other communications regarding the status of the investigations and the domestic judicial proceedings to the Commission, and the latter forwarded the pertinent parts to the other party.

5. On October 8, 1996, the Commission held a hearing in which the parties presented their verbal arguments about the facts and the law applicable to the instant case.

6. On February 20, 1998, the Commission approved Report No. 10/98 and transmitted it to the State on March 6 that year. In the operative part of this Report, the Commission recommended:

119. That the Colombian State should commence a serious, impartial and effective investigation into the facts denounced, so as to be able to clarify the facts of January 23, 1991, and determine in full detail in an official report the circumstances of and responsibility for the violations committed.
120. That the Colombian State should submit all those responsible for the violations to the pertinent judicial proceedings so that they may be punished.
121. That the Colombian State should adopt measures in order to provide due reparation for the violations verified, including a compensation for the next of kin of the victims who have still not received this.

7. On May 11, 1998, the Commission received a note from the State, dated April 30, 1998, in which the State requested an additional period of 45 days to reply to Report No. 10/98. On May 14 that year, the Commission informed the parties that it had conceded to the State an additional period of ten days.

8. On May 22, 1998, the State made a proposal for a friendly settlement, which was forwarded to the petitioners, who forwarded their observations on May 29. In this proposal, the State indicated that it did not "totally" share the considerations and conclusions of Report No. 10/98, particularly with regard to exhaustion of domestic remedies and application of rules of international humanitarian law. Furthermore, it indicated that it proposed the creation of a Committee to expedite the criminal investigation.

9. On June 2, 1998, the State and the petitioners informed the Commission that they had agreed on a period of 30 days to initiate negotiations designed to reach a friendly settlement and suspend the course of the periods established in Article 51.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

10. On July 1, 1998, the petitioners informed the Committee that, at that time, the conditions to reach a friendly settlement did not exist; they requested it to continue processing the case and to resume the course of the suspended periods. This information was forwarded to the State.

11. On July 6, 1998, the Commission submitted the case to the Inter-American Court (supra 1).

## IV. PROCEEDING BEFORE THE COURT

12. The Inter-American Commission set forth the conclusion and the requirements of its application as follows:

The Commission respectfully requests that Court:

Conclude and declare that the State of Colombia has violated the right to life, embodied in Article 4 of the Convention, and Article 3, common to all the 1949 Geneva Conventions [FN1], to the detriment of six persons: Artemio Pantoja Ordoñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas, William Hamilton Cerón Rojas and another person (Hernán Lizcano Jacanamejoy or Moisés Ojeda).
Establish the circumstances of the death of a seventh person, who had presumably died in combat (Hernán Lizcano Jacanamejoy or Moisés Ojeda), in order to determine whether the State of Colombia has violated his right to life embodied in Article 4 of the Convention and Article 3, common to all the 1949 Geneva Conventions.
Conclude and declare that the State of Colombia has violated the judicial guarantees established in Article 8 and the right to judicial protection established in Article 25 of the Convention to the detriment of Artemio Pantoja Ordoñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas, William Hamilton Cerón Rojas, Hernán Lizcano Jacanamejoy and Moisés Ojeda, and their next of kin.
Conclude and declare that, as a consequence of the violations of the rights to life and to judicial guarantees and protection, the State of Colombia has also violated its obligation to respect and guarantee the rights embodied in the Convention, pursuant to Article 1.1 thereof.

Order the State of Colombia:

a) To conduct a rapid, impartial and effective judicial investigation of the facts denounced and punish those responsible.
b) To identify precisely whether the other person extrajudicially executed on January 23, 1991, by members of the national Police Force was Hernán Lizcano Jacanamejoy or Moisés Ojeda. Furthermore, the Honorable Court is requested to order the State of Colombia to carry out a serious investigation in order to clarify the circumstances under which the seventh victim died and about whose death the Commission did not give an opinion.
c) To grant integral reparation to the next of kin of the victims; including payment of fair compensation (less the amount that has already been paid as pecuniary compensation in accordance with the judgments in the actions under administrative law in favor of Artemio Pantoja Ordoñez, Hernán Javier Cuarán Muchavisoy, Julio Milcíades Cerón Gómez, Edebraiz Cerón Rojas and William Hamilton Cerón Rojas) and the recovery of the victims' reputations.
d) To adopt the necessary reforms in the regulations and the training programs of the Colombian Armed Forces, so that all military operations are conducted in accordance with the international instruments and custom, applicable to internal armed conflicts.
e) That the Colombian State should bear the costs and expenses in which the next of kin of the victims have incurred to litigate this case both nationally and before the Commission and the Court, and reasonable honoraria for their lawyers.

---
[FN1] Hereafter in this judgment, the 1949 Geneva Conventions will be referred to as "Geneva Conventions" or "1949 Geneva Conventions".
---

13. The Commission appointed Robert K. Goldman and Carlos Ayala Corao as Delegates, and Verónica Gómez and David Padilla as advisors. Also, the Commission attested the

appointment of Luz Marina Monzón, Gustavo Gallón and Carlos Rodríguez as assistants and petitioners, and Pablo Saavedra and Viviana Krsticevic as assistants.

14. On July 15, 1998, the Secretariat of the Court (hereinafter "the Secretariat"), following the preliminary examination of the application by the President of the Court (hereinafter "the President"), notified the State of the application and its annexes, and informed it of the periods for replying to the application, filing preliminary objections and appointing those who would represent it during the proceeding.

15. On August 14, 1998, Colombia appointed Marcela Briceño-Donn as agent and Héctor A. Sintura Varela as deputy agent.

16. On September 14, 1998, Colombia filed the following preliminary objections;

First: Violation of due process for serious omission of information.
Second: The Inter-American Commission on Human Rights is not competent to apply international humanitarian law and other international treaties.
Third: The Inter-American Court of Human Rights is not competent to apply international humanitarian law and other international treaties.
Fourth: The Inter-American Court of Human Rights is not competent to hear a matter when domestic remedies have not been exhausted.
Fifth: The Inter-American Court of Human Rights is not competent to act as a trial court for individual facts.

17. On September 21, 1998, the Secretariat notified the brief filing objections to the Inter-American Commission, and the Commission replied to this on November 5, 1998.

18. On December 10, 1998, the President invited Colombia to appoint a Judge ad hoc, since Judge Carlos Vicente de Roux Rengifo, a Colombian national, had excused himself from hearing the instant case, pursuant to Articles 19 of the Statute of the Court and 19 of its Rules of Procedure.

19. On December 15, 1998, Colombia submitted its reply to the application.

20. On January 12, 1999, the Colombian State appointed Julio A. Barberis as Judge ad hoc.

21. On February 19, 1999, the President decided to invite the parties to a public hearing to be held at the seat of the Court on May 31, 1999, to hear arguments on the preliminary objections.

22. The public hearing was held at the seat of the Court on the date established.

There appeared:

for the State of Colombia:

Marcela Briceño-Donn, Agent;

Héctor Sintura Varela, Deputy Agent; and
Felipe Piquero Villegas, Advisor.

for the Inter-American Commission on Human Rights:

Robert K. Goldman, Delegate;
Verónica Gómez, Lawyer;
Viviana Krsticevic, Assistant;
Marina Monzón Cifuentes, Assistant; and
Carlos Rodríguez Mejía, Assistant.

## V. COMPETENCE

23. Colombia has been a State Party to the American Convention since July 31, 1973. On June 21, 1985, it recognized the contentious jurisdiction of the Court. Therefore, the Court is competent to hear the preliminary objections filed by the State, pursuant to the provisions of Article 62.3 of the Convention.

## VI. PRIOR CONSIDERATIONS

24. The preliminary objections filed by Colombia are submitted, joined and examined under the procedural concepts to which they refer, as follow: a) violation of due process due to a serious omission of information (cf. first objection); b) lack of competence of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights to apply international humanitarian law and other international treaties (cf. third and second objections, respectively); c) lack of competence of the Court to hear a matter when remedies under domestic law have not been exhausted (cf. forth objection), and d) lack of competence of the Court to act as a trial court for individual facts (cf. fifth objection).

## VII. FIRST PRELIMINARY OBJECTION: VIOLATION OF DUE PROCESS

25. In its first preliminary objection, Colombia affirmed that the Commission failed to provide complete information on the current status of the case under domestic law in the application, which constitutes a violation of due process.

The Commission's fundamental omission consisted in not having stated in the application that the domestic case had passed from the military criminal jurisdiction to the Human Rights Unit of the Office of the Prosecutor General. Colombia deemed that this change of jurisdiction was a "new and transcendental" fact. As the main piece of evidence, the State submitted the note that it had sent to the Executive Secretary of the Commission on May 22, 1998, setting forth this circumstance.

The State considered that the Commission had the obligation to include information on the existing circumstances of the case under domestic proceedings in the application and that this omission constituted a serious fact that affected procedural fairness and its status before the Court.

Colombia declared that this situation impeded the Court from hearing the case and pronouncing judgment on it. In another part of its brief filing objections, it stated that there was an "error that could not be corrected," since the statutory time limit for correcting the application had already passed.

Due to the foregoing, the State requested that the file should be returned to the Commission so that the latter could issue a final report pursuant to the provisions of the Convention. At the hearing, Colombia requested that the Court declare that the application was inadmissible due to the serious omission of information by the Commission.

26. The Commission stated that the application presented to the Court on July 6, 1998, was prepared on the basis of the facts set out in Report No. 10/98, which had been approved on February 20, 1998. Consequently, the facts invoked by Colombia had not been included in the application. Likewise, the Commission indicated that, according to the Rules of Procedure of the Court, the proceeding is held with the presence of both parties and each party has the opportunity to exercise its right to defense. Therefore, an omission by the Commission could not affect Colombia's procedural rights, and it requested that the objection filed should be dismissed.

27. As the Commission indicates, the proceeding before this Court is held in the presence of both parties. Moreover, this Court pronounces judgment in accordance with what each party has alleged and proved. Consequently, the circumstance that the plaintiff failed to mention specific facts does not impede the defendant from alleging and presenting the corresponding evidence. This Court does not understand how the Commission's conduct has affected Colombia's right to due process; it considers that the objection filed lacks grounds and therefore dismisses it.

## VIII. THIRD PRELIMINARY OBJECTION: LACK OF COMPETENCE OF THE COURT

28. In the application submitted by the Commission, the Court is requested to "conclude and declare that the State of Colombia violated the right to life, embodied in Article 4 of the Convention and Article 3, common to all the 1949 Geneva Conventions... ." In view of this request, Colombia filed a preliminary objection affirming that the Court "does not have the competence to apply international humanitarian law and other international treaties."

In this respect, the State declared that Articles 33 and 62 of the Convention limit the Court's competence to the application of the provisions of the Convention. It also invoked Advisory Opinion OC-1 of September 24, 1982 (paragraphs 21 and 22) and stated that the Court "should only make pronouncements on the competencies that have been specifically attributed to it in the Convention."

29. In its brief, the Commission preferred to reply jointly to the objections regarding its own competence and that of the Court with regard to the application of humanitarian law and other treaties. Before examining the issue, the Commission stated, as a declaration of principles, that the instant case should be decided in the light of "the norms embodied in both the American Convention and in customary international humanitarian law applicable to internal armed conflicts and enshrined in Article 3, common to all the 1949 Geneva Conventions". The

Commission reiterated its belief that both the Court and the Commission were competent to apply this legislation.

The Commission then stated that the existence of an armed conflict does not exempt Colombia from respecting the right to life. As the starting point for its reasoning, the Commission stated that Colombia had not objected to the Commission's observation that, at the time that the loss of lives set forth in the application occurred, an internal armed conflict was taking place on its territory, nor had it contested that this conflict corresponded to the definition contained in Article 3 common to all the Geneva Conventions.

Nevertheless, the Commission considered that, in an armed conflict, there are cases in which the enemy may be killed legitimately, while, in others, this was prohibited. The Commission stated that the American Convention did not contain any rule to distinguish one hypothesis from the other and, therefore, the Geneva Conventions should be applied. The Commission also invoked in its favor a passage from the Advisory Opinion of the International Court of Justice on The Legality of the Threat or Use of Nuclear Weapons, as follows:

In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable lex specialis, namely, the law applicable in armed conflict that is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself. [FN2]

The Commission stated that, in the instant case, it had first determined whether Article 3, common to all the Geneva Conventions, had been violated and, once it had confirmed this, it then determined whether Article 4 of the American Convention had been violated.

The plaintiff also set out in its brief the nature of international humanitarian law and its relation to human rights.

Lastly, the Commission invoked Article 25 of the American Convention. The Commission interpreted this article in the sense that it was a norm that allowed it to apply humanitarian law.

The Commission stated that, in its opinion, the objection filed by Colombia is not a jurisdictional objection that can affect the elements required for the Court to exercise its competence. It stated that it was perhaps premature to consider the State's objection with regard to the invocation of the Geneva Conventions, since this issue is linked to the merits of the case. However, in the conclusion to its brief, the Commission requested the Court to dismiss the preliminary objection filed and to declare that it had competence to apply international humanitarian law and other international treaties.

---

[FN2] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 240.

---

30. During the public hearing, Colombia tried to refute the arguments set out by the Commission in its brief. In this respect, the State emphasized the importance of the principle of consent in international law. Without the consent of the State, the Court may not apply the Geneva Conventions.

The State's representative then affirmed that neither Article 25 or Article 27.1 of the American Convention may be interpreted as norms that authorize the Court to apply the Geneva Conventions.
Lastly, Colombia established the distinction between "interpretation" and "application." The Court may interpret the Geneva Conventions and other international treaties, but it may only apply the American Convention.

31. At the hearing, the Commission made a detailed statement on its thesis about the applicability of international humanitarian law by the Court, in which it stated that "the premise that the Commission and the Court are required to determine whether States Parties have violated the American Convention in a way that excludes other sources of international law" is inexact.

The Commission affirmed in its arguments that there is a specific relationship between Article 4 of the American Convention and Article 3 common to all the Geneva Conventions, and that,

> as it has understood […] the purpose and goal of the American Convention and the need to apply it effectively uphold the competence of the organs of the system to decide on violations of Article 4 in a way which is coextensive with the norm of general international law embodied in Article 3 common to all the Geneva Conventions.
>
> [...]
>
> In view of its specificity and relevance for this precise case and its context, the Commission deems that the common Article 3 was considered in its character of a norm of international law that obliges the Illustrious State and that even forms an integral part of Colombian domestic law. The Commission considers that ignoring the meaning and scope of certain international obligations of the State and renouncing the task of harmonizing them with the competence of the organs of the inter-American system in an integral and teleological context, would imply betraying the ethical and juridical benefit promoted in Article 29, which is to say the best and most progressive application of the American Convention.
>
> [...]
>
> Consequently, the alleged violations of the right to life committed in a context of internal armed conflict may not always be resolved by the Commission, solely by invoking Article 4 of the American Convention. The American Convention does not expressly remit to international humanitarian law under these circumstances; however, in view of the status of this branch of international law and its recognized interrelation and complementarity with human rights, it is evident that this is not a deliberate omission, but rather an omission that affects a fundamental right that may not be suspended.
>
> [...]
>
> The Commission considers that, in this case, its conclusion regarding the violation of Article 4, in a way which is coextensive with the common Article 3, not only does not exceed its

competence, but rather constitutes part of its mandate as an organ entrusted with ensuring observance of the fundamental human rights under the jurisdiction of the States Parties. This determination is based on the application of a universally ratified conventional law that codifies general international law.

[...]

The Commission considers that the conclusions [...] with regard to this norm of international humanitarian law, in relation to Article 4 of the Convention in the instant case, entail a justified pro-active interpretation of the mandate of the organs of the system, consistent with the purpose and goal of international human rights law and, at the same time, essentially respectful of the rule of consent and the importance of existing norms of international law.

Lastly, the Commission deemed that the objection filed by Colombia was not a jurisdictional objection and that the question was related to the de facto and de jure determination of the merits of the case.

32. The American Convention is an international treaty according to which States Parties are obliged to respect the rights and freedoms embodied in it and to guarantee their exercise to all persons subject to their jurisdiction. The Convention provides for the existence of the Inter-American Court to hear "all cases concerning the interpretation and application" of its provisions (Article 62.3).

When a State is a Party to the American Convention and has accepted the contentious jurisdiction of the Court, the Court may examine the conduct of the State to determine whether it conforms to the provisions of the Convention, even when the issue may have been definitively resolved by the domestic legal system. The Court is also competent to determine whether any norm of domestic or international law applied by a State, in times of peace or armed conflict, is compatible or not with the American Convention. In this activity, the Court has no normative limitation: any legal norm may be submitted to this examination of compatibility.

33. In order to carry out this examination, the Court interprets the norm in question and analyzes it in the light of the provisions of the Convention. The result of this operation will always be an opinion in which the Court will say whether or not that norm or that fact is compatible with the American Convention. The latter has only given the Court competence to determine whether the acts or the norms of the States are compatible with the Convention itself, and not with the 1949 Geneva Conventions.

Therefore, the Court decides to admit the third preliminary objection filed by the State.

## IX. SECOND PRELIMINARY OBJECTION: LACK OF COMPETENCE OF THE COMMISSION

34. As its second preliminary objection, Colombia alleged the lack of competence of the Commission to apply international humanitarian law and other international treaties. In this respect, the State indicated that the American Convention limits the competence ratione materiae to the rights embodied in the Convention and does not extend it to those embodied in any other convention. It added that the Court has never determined the faculty of the Court or the

Commission to hear matters outside the attributions of competence set out in the Convention and, to this end, it invoked Advisory Opinion OC-1 and Article 33 of the Convention. The fact that States members of the Organization of American States must observe the Geneva Conventions in good faith and adapt their domestic legislation to comply with those instruments does not give the Commission competence to infer State responsibility based on them.

At the public hearing, the State indicated that it agreed that the Convention should be interpreted in harmony with other treaties, but it did not accept that the common Article 3 could be applied as a norm infringed by Colombia in an individual case. In view of their place in the text of the Convention, neither Article 25 nor Articles 27.1 or 29.b may be considered to be norms that attribute competence; they are norms that establish rights and the last one is a norm of interpretation.

As may be inferred from international law and practice, the preliminary objections filed in limine litis by the defendant have the following purposes essentially: to contest the admissibility of the defendant's petitions or to restrict or deny, partially or totally, the competence of the international jurisdictional organ.

Although the Inter-American Commission has broad faculties as an organ for the promotion and protection of human rights, it can clearly be inferred from the American Convention that the procedure initiated in contentious cases before the Commission, which culminates in an application before the Court, should refer specifically to rights protected by that Convention (cf. Articles 33, 44, 48.1 and 48). Cases in which another Convention, ratified by the State, confers competence on the Inter-American Court or Commission to hear violations of the rights protected by that Convention are excepted from this rule; these include, for example, the Inter-American Convention on Forced Disappearance of Persons [FN3].

Therefore, the Court decides to admit the second preliminary objected filed by the State.

---

[FN3] In the Paniagua Morales et al. Case. Judgment of March 8, 1998. Series C No. 37, para. 136 and the Villagrán Morales et al. Case. Judgment of November 12, 1999. Series C No. 63, para. 252, the Court declared that the Inter-American Convention to Prevent and Punish Torture had been violated; this attributes competence to the Inter-American Commission on Human Rights.

---

## X. FOURTH PRELIMINARY OBJECTION: FAILURE TO EXHAUST DOMESTIC REMEDIES

35. Colombia stated in its brief filing objections that this Court does not have competence to hear the matter because remedies under domestic law have not been exhausted. The State submitted a report of the procedural actions that had taken place between January and August 1998 that, in its opinion, "[had] modified substantially" the situation. Colombia affirmed that the measures taken by the Human Rights Unit of the Office of the Prosecutor General demonstrate

"the existence of an adequate, appropriate and effective recourse in the instant case". By virtue of its arguments, the State requested the Court to abstain from hearing this case.

In its written reply, the Commission stated that it had duly submitted this application, on the basis of Article 46.2 of the American Convention, because, when it approved Report No. 10/98, seven years had passed since the facts occurred and the case was still in its preliminary phase under the military criminal justice system. The plaintiff rejected the notion that the change in the jurisdiction under which the case was being processed was a circumstance that substantially modified the situation. The Commission affirmed that, in the instant case, the domestic remedies filed had been neither adequate nor effective.

36. The issue of failure to exhaust domestic remedies was considered at greater length in the public hearing held before the Court on May 31, 1999.

Colombia emphasized the subsidiary nature of international jurisdiction on human rights compared with the domestic jurisdiction. In the instant case, the State maintained that the action under administrative law had been exhausted and had been appropriate, while the criminal action had still not been exhausted and was "evolving in one way in the face of probative difficulties". The State requested that the Court declare the application inadmissible "since there are still domestic remedies that have not been exhausted."

The Commission recalled that the facts on which this case was based occurred on January 23, 1991, and that up until March 1998, the proceeding was being processed before the military criminal justice system without the investigation stage having been completed. It stated that, in comparison with this case, in April 1993, the Tribunal for actions under administrative law of the Department of Nariño had already rendered judgment on the responsibility of the members of the National Police Force, and this was confirmed by the Council of State. The Commission mentioned also that the proceeding in which the police who took part in the facts were absolved of disciplinary responsibility had only lasted one week. The Commission then considered the conduct of the military criminal justice system in Colombia and said that "it did not qualify as an independent, impartial tribunal, as required by the law and by international human rights legislation." Lastly, it referred to the scope that action under administrative law should have in the instant case.

37. One of the conditions established by the American Convention for a petition or communication to be admitted by the Commission is that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law" (Article 46.1a). There are some exceptions to this rule, including "unwarranted delay" in the final judgment (Article 46.2c).

38. In the instant case, the parties agree that the facts on which the case is based occurred in January 1991. The State has not provided a satisfactory explanation regarding the procedural measures between that date and the beginning of 1998. The State's silence must be evaluated taking into account that, during the first seven years the procedural measures did not get beyond the investigation stage. Colombia has mentioned the progress that took place since the Human Rights Unit of the Office of the Prosecutor General took charge of the matter. But the issue in

question is not what happened in 1998, but rather in the first seven years after the facts occurred. That lapse was more than sufficient for a tribunal to pronounce judgment. By considering this so, the Court follows its previous jurisprudence. In the Genie Lacayo Case, the Court deemed that a period of five years that had elapsed since the time of the order to initiate the proceeding exceeded the limits of reasonableness [FN4]. The Court has reiterated this criterion on other occasions [FN5]. The State has not provided any convincing explanation to justify the delay in the instant case.

---

[FN4] Genie Lacayo Case. Judgment of January 29, 1997. Series C No. 23, para. 81.
[FN5] Suárez Rosero Case. Judgment of November 12, 1997. Series C No. 35, para. 73 and Paniagua Morales et al. Case, supra note 3, para. 155.

---

39. Consequently, the Court dismisses this objection.

## XI. FIFTH OBJECTION: LACK OF COMPETENCE OF THE COURT TO ACT AS A TRIAL COURT

40. Colombia also presented as a preliminary objection the argument that this Court does not have competence to act as a trial court for individual facts. In its brief filing objections, the State declared that the Commission had requested that the circumstances of the death of a seventh person, presumably dead in combat, should be established, in order to determine whether his right to life had been violated. Colombia affirmed that this request was beyond the competence of the Court, since the latter could not transform itself into a trial court or a technical police unit to investigate the death of a person, since its function consisted only in "hearing matters related to compliance with commitments entered into by the States Parties to the American Convention." The State reiterated that this Court does not have competence to examine individual conduct and that its function is limited to being a "Judge of States" and not a "Judge of individuals."

During the hearing, Colombia insisted on the same argument. It affirmed that it did not seek to limit the probative faculty of the Court, but that the evidence should tend merely to prove State responsibility. In this respect, it stated that "the competence of the organs of the American Convention is to establish State responsibilities and not individual responsibilities."

41. In the instant case, the Commission considered that the State incurs international responsibility for the death of a seventh person and offered evidence to prove this. It is not a question of determining the criminal responsibility of the person who killed that individual, but rather the international responsibility of the State, since the Commission affirmed that this individual was deprived of his life by an agent of the State, that is, by someone whose conduct may be attributed to Colombia. To this end, it is necessary to determine the circumstances in which the seventh victim died and whether an organ of the Colombian State took part in this fact. By doing this, the Court does not set itself up as a judge of individuals but of States.

42. The preliminary objection should be dismissed for the reasons set forth.

XII

43. Therefore,

THE COURT,

DECIDES:

unanimously
1. To dismiss the first, fourth and fifth preliminary objections filed by the State of Colombia.
unanimously
2. To admit the third preliminary objection filed by the State of Colombia.
By six votes to one
3. To admit the second preliminary objection filed by the State of Colombia.
Judge Jackman dissenting
unanimously
4. To continue hearing the instant case.
Judge Cançado Trindade and Judge García Ramírez informed the Court of their respective Reasoned Opinions and Judge Jackman of his Partially Dissenting Opinion.

Done in Spanish and English, the Spanish text being authentic, at San José, Costa Rica, on the fourth day of February, 2000.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez

Julio A. Barberis
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred with my vote to the adoption of the present Judgment of the Inter-American Court of Human Rights on Preliminary Objections in the Las Palmeras case concerning Colombia, whereby the Court has dismissed the first, fourth and fifth objections, and has sustained the second and third preliminary objections interposed by the respondent State. I understand that the Court has reached a well-founded decision and in full conformity with the relevant norms of the American Convention on Human Rights. As, moreover, the debates on the case in the public hearing before the Court have transcended the question of the application of such norms and have raised theoretical points of juridical epistemology of great importance, I feel obliged to express, for the records, my personal reflections on the matter, oriented towards the progressive development of the International Law of Human Rights.

2. In the public hearing of 31 May 1999 before the Court on the present Las Palmeras case, the Inter-American Commission on Human Rights, in seeking to sustain a coextensive interpretation and application of Article 4 of the American Convention on Human rights and of Article 3 common to the four Geneva Conventions on International Humanitarian Law (of 1949), related this point to the question of the existence and observance of the obligations erga omnes of protection [FN6]. This is a theme which is particularly dear to me, as already for some time I have been sustaining, within the Court, the urgent need to promote the doctrinal and jurisprudential development of the legal regime of the obligations erga omnes of protection of the rights of the human being aiming at securing their application in practice, what is bound to foster greatly the future evolution of the International Law of Human Rights [FN7].

---

[FN6] Cf. Inter-American Court of Human Rights, Las Palmeras Case - Transcripción de la Audiencia Pública sobre las Excepciones Preliminares Celebrada el 31 de Mayo de 1999 en la Sede de la Corte, pp. 19-20 and 35-38 (mimeographed - internal circulation).

[FN7] Thus, for example, in my Separate Opinion in the Court's Judgment (of 24.01.1998) in the Blake versus Guatemala case (Merits), I pondered: - "The consolidation of erga omnes obligations of protection, as a manifestation of the emergence itself of imperative norms of international law, would represent the overcoming of the pattern erected upon the autonomy of the will of the State. The absolute character of the autonomy of the will can no longer be invoked in view of the existence of norms of jus cogens. It is not reasonable that the contemporary law of treaties continues to align itself to a pattern from which it sought gradually to free itself, in giving expression to the concept of jus cogens in the two Vienna Conventions on the Law of Treaties. (...)" (paragraph 28). - Subsequently, in my Separate Opinion in the Court's Judgment (of 22.01.1999) in the same Blake versus Guatemala case (Reparations), I added: - "Our purpose ought to lie precisely upon the doctrinal and jurisprudencial development of the peremptory norms of International Law (jus cogens) and of the corresponding obligations erga omnes of protection of the human being. It is by means of the development in this sense that we will achieve to overcome the obstacles of the dogmas of the past, as well as the current inadequacies and ambiguities of the law of treaties, so as to bring us closer to the plenitude of the international protection of the human being" (paragraph 40).

---

3. The pleadings of the Inter-American Commssion in the aforementioned public hearing before the Court of 31.05.1999 in the present Las Palmeras case, pertaining to Colombia, correspond, thus, to the concerns which I have already expressed in the Court - mainly in the Blake versus Guatemala case (1998-1999) - about the need to devote greater attention to this theme [FN8]. In that memorable hearing in the present Las Palmeras case, there was no discrepancy between the Commission and the respondent State - in a noticeable demonstration, on the part of both, of procedural cooperation and loyalty - as to the possibility to take into account Article 3 common to the four Geneva Conventions on International Humanitarian Law as element of interpretation for the application of Article 4 of the American Convention on Human Rights.

---

[FN8] Cf. quotations in note (2), supra.

---

4. But up to this point took place the concurrence, on the issue, between the Commission and the State at the above-mentioned public hearing. As a matter of fact, it could hardly have been otherwise, as the interpretative interaction between distinct international instruments of protection of the rights of the human person is warranted by Article 29(b) of the American Convención (pertaining to norms of interpretation). In fact, such exercise of interpretation is perfectly viable, and conducive to the assertion of the right not to be deprived of the life arbitrarily (a non-derogable right, under Article 4(1) of the American Convention) in any circumstances, in times of peace as well as of non-international armed conflict (in the terms of Article 3 common to the Geneva Conventions of 1949).

5. There is, nevertheless, a distance between the exercise of interpretation referred to, - including here the interpretative interaction, - and the application of the international norms of protection of the rights of the human person, the Court remaining entitled to interpret and apply the American Convention on Human Rights (Statute of the Court, Article 1 [FN9]). In characterizing the second and third objections interposed by the respondent State in the present case as preliminary objections properly (as to competence and not as to admissibility), rather than as defenses as to the merits, the Court proceeded to decide them, in my understanding correctly, in limine litis [FN10], - by an imperative of juridical stability as well as of "prudence and economy of the judicial function" [FN11].

---

[FN9] Cf. also the Statute of the Commission, Article 1(2).

[FN10] Cf., on the need to decide preliminary objections in limine litis, my Separate Opinions in the Gangaram Panday versus Suriname case (Judgment of 04.12.1991), paragraph 3; and in the Castillo Páez versus Peru case (Judgment of 30.01.1996), paragraph 4; and in the Loayza Tamayo versus Peru case (Judgment of 31.01.1996), paragraph 4.

[FN11] G. Abi-Saab, Les exceptions préliminaires dans la procédure de la Cour Internationale, Paris, Pédone, 1967, pp. 182-183; cf. also, on the matter, S. Rosenne, The Law and Practice of the International Court, 2nd. rev. ed., Dordrecht, Nijhoff, 1985, p. 464.

---

6. At the sustantive level, the considerations developed on the protection of the fundamental right to life lead us to enter, unequivocally, into the domain of jus cogens [FN12], with the corresponding obligations erga omnes of protection [FN13], to which reference was made in the public hearing. In this respect, in spite of sharing the concern expressed by the Inter-American Commission at the aforementioned public hearing of 31.05.1999 before this Court, my line of reasoning on the matter is distinct.

---

[FN12] Inter-American Court of Human Rights, Villagrán Morales and Others versus Guatemala case (case of the "Street Children"), Judgment of 19.11.1999, Joint Concurring Opinion of Judges A.A. Cançado Trindade and A. Abreu Burelli, paragraph 2: - ""There can no longer be any doubt that the fundamental right to life belongs to the domain of jus cogens".

[FN13] On the relationship between jus cogens and erga omnes obligations, cf., inter alia: M. Byers, "Conceptualising the Relationship between Jus Cogens and Erga Omnes Rules", 66 Nordic Journal of International Law (1997) pp. 211-239; A.J.J. de Hoogh, "The Relationship between Jus Cogens, Obligations Erga Omnes and International Crimes: Peremptory Norms in Perspective", 42 Austrian Journal of Public and International Law (1991) pp. 183-214.

---

7. In sustaining, as I have been doing, for years, the convergences between the corpus juris of human rights and that of International Humanitarian Law (at normative, interpretative and operational levels) [FN14], I think, however, that the concrete and specific purpose of development of the obligations erga omnes of protection (the necessity of which I have been likewise sustaining for some time) can be better served, by the identification of, and compliance with, the general obligation of guarantee of the exercise of the rights of the human person, common to the American Convention and the Geneva Conventions (infra), rather than by a correlation between sustantive norms - pertaining to the protected rights, such as the right to life - of the American Convention and the Geneva Conventions.

---

[FN14] Such as I have developed, inter alia, in my essay "Aproximaciones o Convergencias entre el Derecho Internacional Humanitario y la Protección Internacional de los Derechos Humanos", in Seminario Interamericano sobre la Protección de la Persona en Situaciones de Emergencia - Memoria (Santa Cruz de la Sierra, Bolivia, junio de 1995), San José, CICR/ACNUR/Gob. Suiza, 1996, pp. 33-88.

---

8. That general obligation is set forth in Article 1.1 of the American Convention as well as in Article 1 of the Geneva Conventions and in Article 1 of the Additional Protocol I (of 1977) to the Geneva Conventions. Their contents are the same: they enshrine the duty to respect, and to ensure respect for, the norms of protection, in all circumstances. This is, in my view, the common denominator (which curiously seems to have passed unnoticed in the pleadings of the Commission) between the American Convention and the Geneva Conventions, capable of leading us to the consolidation of the obligations erga omnes of protection of the fundamental right to life, in any circumstances, in times both of peace and of internal armed conflict. It is

surprising that neither doctrinea, nor case-law, have developed this point sufficiently and satisfactorily up to now; until when shall we have to wait for them to awake from an apparent and prolonged mental inertia or lethargy?

9. It is about time, in this year 2000, to develop with determination the early jurisprudential formulations on the matter, advanced by the International Court of Justice precisely three decades ago, particularly in the cas célèbre of the Barcelona Traction (Belgium versus Spain, 1970) [FN15]s. It is about time, on this eve of the XXIst century, to develop systematically the contents, the scope and the juridical effects or consequences of the obligations erga omnes of protection in the ambit of the International Law of Human Rights, bearing in mind the great potential of application of the notion of collective guarantee, underlying all human rights treaties, and responsible for some advances already achieved in this domain.

---

[FN15] It may be recalled that, in that case, the International Court of Justice for the first time distinguished, on the one hand, the inter-State obligations (proper to the contentieux diplomatique), and, on the other hand, the obligations of a State vis-à-vis the international community as a whole (erga omnes obligations). These latter - added the Court - derive, e.g., in contemporary international law, inter alia, from the "principles and rules concerning the basic rights of the human person", - it so occurring that certain rights of protection "have entered into the body of general international law", and others "are conferred by international instruments of a universal or quasi-universal character"; Barcelona Traction case (Belgium versus Spain, 2nd. phase), ICJ Reports (1970) p. 32, par. 34, and cf. also par. 33.

---

10. The concept of obligations erga omnes has already marked presence in the international case-law [FN16], as illustrated, in so far as the International Court of Justice is concerned, by its Judgments in the cases of the Barcelona Traction (1970), of the Nuclear Tests (1974), of Nicaragua versus United States (1986), of East Timor (1995), and of Bosnia-Herzegovina versus Yugoslavia (1996), and by the arguments of the parties in the cases of the Northern Cameroons (1963) and of South West África (1966), as well as by its Advisory Opinion on Namibia (1971) and the (written and oral) arguments pertaining to the two Advisory Opinions on Nuclear Weapons (1994-1995) [FN17]. Nevertheless, in spite of the distinct references to the obligations erga omnes in the case-law of the International Court of Justice, this latter has not yet extracted the consequences of the affirmation of the existence of such obligations, nor of their violations, and has not defined either their legal regime [FN18].

---

[FN16] Including with a reference to them in the tenth Advisory Opinion (of 1989) of the Inter-American Court of Human Rights, on the Interpretation of the American Declaration on the Rights and Duties of Man (paragraph 38).

[FN17] Cf. M. Ragazzi, The Concept of International Obligations Erga Omnes, Oxford, Clarendon Press, 1997, pp. 12-13; C. Annacker, "The Legal Regime of Erga Omnes Obligations in International Law", 46 Austrian Journal of Public and International Law (1994) pp. 132-133, and cf. 131-166.

[FN18] The Hague Court had a unique occasion to do it in the East Timor case (1995), having regrettably wasted such opportunity, in relating the erga omnes obligations to something antithetical to them: the State consent as basis of the exercise of its jurisdiction in contentious matters. Nothing could be more incompatible with the very existence of the erga omnes obligations than the positivist-voluntarist conception of International Law and the emphasis on the State consent as basis of the exercise of international jurisdiction.

---

11. But if, on the one hand, we have not yet succeeded to reach the opposability of an obligation of protection to the international community as a whole, on the other hand the International Law of Human Rights nowadays provides us with the elements for the consolidation of the opposability of obligations of protection to all the States Parties to human rights treaties (obligations erga omnes partes [FN19] - cf. infra). Thus, several treaties, of human rights [FN20] as well as of International Humanitarian Law [FN21], provide for the general obligation of the States Parties to guarantee the exercise of the rights set forth therein and their observance.

---

[FN19] On the meaning of the obligations erga omnes partes, opposable to all States Parties in certaing treaties or to a given community of States, cf. C. Annacker, op. cit. supra n. (12), p. 135; and cf. M. Ragazzi, op. cit. supra n. (12), pp. 201-202.
[FN20] Cf., e.g., American Convention on Human Rights, Article 1(1); United Nations Covenant on Civil and Political Righs, Article 2(1); United Nations Convention on the Rights of the Child, Article 2(1).
[FN21] Article 1 common to the four Geneva Conventions on International Humanitarian Law of 1949, and Article 1 of the Additional Protocol I of 1977 to the Geneva Conventions of 1949.

---

12. As correctly pointed out by the Institut de Droit International, in a resolution adopted at the session of Santiago of Compostela of 1989, such obligation is applicable erga omnes, as each State has a legal interest in the safeguard of human rights (Article 1) [FN22]. Thus, parallel to the obligation of all the States Parties to the American Convention to protect the rights enshrined therein and to guarantee their free and full exercise to all the individuals under their respective jurisdictions, there exists the obligation of the States Parties inter se to secure the integrity and effectiveness of the Convention: this general duty of protection (the collective guarantee) is of direct interest of each State Party, and of all of them jointly (obligation erga omnes partes). And this is valid in times of peace [FN23] as well as of armed conflict [FN24].

---

[FN22] Cf. I.D.I., 63 Annuaire de l'Institut de Droit International (1989)-II, pp. 286 and 288-289.
[FN23] As to the general duty of guarantee of the exercise of the protected human rights, cf. the arguments of Ireland before the European Court of Human Rights (ECtHR), in the Ireland versus United Kingdom case, in: ECtHR, Ireland versus United Kingdom case (1976-1978), Pleadings, Oral Arguments and Documents, Strasbourg, 1981, vol. 23-II, pp. 21-23 and 27, and vol. 23-III, pp. 17-19 and 21-26.

[FN24] Thus, a State Party to the Geneva Conventions of 1949 and its Additional Protocol I of 1977, even if it is not involved in a given armed conflict, is entitled to demand from the other States Parties - which are so involved - compliance with the conventional obligations of a humanitarian character; L. Condorelli and L. Boisson de Chazournes, "Quelques remarques à propos de l'obligation des États de `respecter et faire respecter' le droit international humanitaire `en toutes circonstances'", in Études et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet (ed. C. Swinarski), Genève/La Haye, CICR/Nijhoff, 1984, pp. 29 and 32-33.

---

13. Some human rights treaties establish a mechanism of petitions or communications which comprises, parallel to the individual petitions, also the inter-State petitions; these latter constitute a mechanism par excellence of action of collective guarantee. The fact that they have not been used frequently [FN25] (on no occasion in the inter-American system of protection, until now) suggests that the States Parties have not yet disclosed their determination to construct a the international ordre public based upon the respect for human rights. But they could - and should - do so in the future, with their growing awareness of the need to achieve greater cohesion and institutionalization in the international legal order, above all in the present domain of protection.

---

[FN25] For a study of this point in particular, cf. S. Leckie, "The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?", 10 Human Rights Quarterly (1988) pp. 249-301.

---

14. In any case, there could hardly be better examples of mechanism for application of the obligations erga omnes of protection (at least in the relations of the States Parties inter se) than the methods of supervision foreseen in the human rights treaties themselves, for the exercise of the collective guarantee of the protected rights [FN26]. In other words, the mechanisms for application of the obligations erga omnes partes of protection already exist, and what is urgently need is to develop their legal regime, with special attention to the positive obligations and the juridical consequences of the violations of such obligations.

---

[FN26] Y. Dinstein, "The Erga Omnes Applicability of Human Rights", 30 Archiv des Völkerrechts (1992) pp. 16 and 22, and cf. 16-37; and cf. M. Byers, op. cit. supra n. (8), pp. 234-235; M. Ragazzi, op. cit. supra n. (12), pp. 135 and 213.

---

15. At last, the absolute prohibition of grave violations of fundamental human rights - starting with the fundamental right to life - extends itself, in fact, in my view, well beyond the law of treaties, incorporated, as it is, likewise, in contemporary customary international law. Such prohibition gives prominence to the obligations erga omnes, owed to the international community as a whole. These latter clearly transcend the individual consent of the States [FN27], definitively burying the positivist-voluntarist conception of International Law, and heralding the advent of a new international legal order committed with the prevalence of superior common

values, and with moral and juridical imperatives, such as that of the protection of the human being in any circumstances, in times of peace as well as of armed conflict.

---

[FN27] C. Tomuschat, "Obligations Arising for States Without or Against Their Will", 241 Recueil des Cours de l'Académie de Droit International de La Haye (1993) p. 365.

---

Antônio A. Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

REASONED CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ

1. I join the majority of the judges of this Court in the reasoning and decision on the preliminary objections in the Las Palmeras Case (judgment of February 4, 2000). However, I believe it is advisable to expand on the reasoning with regard to the second preliminary objection filed by the State (the lack of competence of the Commission, paras. 16, second, and 34, and the third ruling), which the Court admitted. This decision is consistent with the one adopted on the third objection (the lack of competence of the Court, paras. 28-33, and the second ruling), which is extensively reasoned in the judgment.

2. In this Concurring Opinion, I set forth some specific considerations on the third objection, without detriment to the shared concepts that underlie the decision made by the Court with regard to both objections.

3. It is possible to discuss the nature of the assertions filed by the State as preliminary objections. When examining this point, it is necessary to take into account that the method of defense characterized as preliminary objections serves to prevent, detain or restrict the exercise of jurisdiction. To the contrary, exceptions or defenses of a substantive nature relate to the merits of the case, seek to adversely affect the claim of the plaintiff and are aimed at sustaining a judgment for dismissal.

4. In my opinion – and with the greatest respect for other points of view – the procedural defenses filed by the State have the characteristics mentioned in the first instance, independent of their legal basis and of the possibility that the problem they pose could be approached from another perspective under some circumstances. The purpose of the objection to the competence of the Commission was to detain a procedure that had been initiated, in the State's opinion, beyond the attributions of the respective organ. The fact that, to this end, it could have been sufficient to file the objection of the incompetence of the Court does not deprive the argument submitted regarding the competence of the Commission of its nature of preliminary objection. The Court considered it thus, and proceeded to decide on both objections.

5. In the second preliminary objection examined in the judgment, the State maintained – and the Court accepted – that the Commission did not have competence to apply international humanitarian law and other international treaties. Here, the allusion is to competence in its broadest sense, synonymous with terms of reference or power of an authority, not in the strict sense, as an ambit within which jurisdiction is exercised; the latter would only be applicable to a jurisdictional organ, which is the case of the Court, but not of the Commission.

6. In view of the foregoing, it is pertinent to examine briefly the Commission's terms of reference with regard to the instant case. This important organ of the inter-American system has an essential function with a generic scope: "to promote respect for and defense of human rights" (Article 41, initial paragraph, of the American Convention on Human Rights (hereinafter "the Convention").

7. Within these generic terms of reference, the Commission has different specific powers, which constitute other expressions or perspectives of its "competence." It is useful to distinguish between: a) the functions that the Commission performs for the respect for and defense of human rights, in genere, that do not terminate in a contentious jurisdictional proceeding with an application filed before the Inter-American Court (Article 41, subparagraphs a, b, c, d and g, of the Convention); and b) the function that does culminates in an application before the Inter-American Court (idem, subparagraph f). Each of these functions has its own nature, regulation and effects, in the terms of the Convention.

8. With regard to the power or "competence" mentioned sub b), subparagraph f) of Article 41 sets out a specific task which must be considered in order to establish the corresponding legal assumptions, characteristics and consequences: "to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention."

9. As may be seen, the competence assigned to the Commission in subparagraph f) of Article 41 covers the different acts that culminate in the submission of an application before the Court in order to receive from this a jurisdictional decision. Consequently, it refers to an ambit in which the powers of the Commission and the Court are adjusted, at their respective times.

10. The first provision expressly mentioned in subparagraph f) of Article 41 encompasses two fundamental issues, one of a subjective nature (giving legal standing to the procedure) and the other objective (material competence): a) the legal standing to take action on petitions and thus set in movement the procedure that will culminate in the deployment of the contentious jurisdiction of the Court; and b) the subject-matter of these petitions, which is also that of the respective procedure before the Commission and before the Court: behavior that constitutes "a violation of this Convention by a State Party." The same consideration exists in Article 45.1, which regulates the hypothesis of a complaint by one State Party against another, due to "a violation of a human right set forth in this Convention."

11. The same indication with regard to the subject-matter of the petition, the procedure that this sets in motion and the possible application that the Commission will submit to the Court appears in various parts of Article 48.1, initial paragraph, which refers to "a petition or

communication alleging violation of any of the rights protected by this Convention;" and subparagraph f) which alludes to friendly settlement on the basis of "respect for the human rights recognized in this Convention."

12. Throughout the body of regulations applicable to the Commission there are other provisions which are relevant for the matter in hand, such as Articles 1 and 23.1 of the Statute and 31, 41.b and 45.1 of the Rules of Procedure.

13. In this way, exercise of the contentious jurisdiction of the Court is initiated. According to the Convention, this jurisdiction extends to interpretation or application of the American Convention (Article 62.1 and 3), which, in this regard, is implemented in matters relating to the "violation of a right or freedom protected by this Convention" (Article 63.1). Thus the ambit of the Court's material competence on contentious matters is also established.

14. Evidently, preparatory activities for the contentious proceeding before the Court and participation in these in no way exhaust the powers of the Commission and the Court. The former can and does carry out other activities of great importance for the promotion and defense of human rights, and even endeavors to expand the inter-American regime of protection; this may be inferred from the last subparagraphs of Article 19 of its Statute, in particular. Likewise, the advisory competence of the Court covers both the American Convention and "other treaties concerning the protection of human rights in the American States" (Article 64.1).

15. Once the rule for the intervention of the Commission and the Court in matters to be heard under contentious proceedings has been posed in this way, it is in order to indicate that there are exceptions to this limitation of material competence. These exceptions are to be found in other instruments of our human rights protection system.

16. An exception of this nature appears in the Inter-American Convention to Prevent and Punish Torture. Article 8, in fine, authorizes access "to international fora whose competence has been recognized by (that) State" to whom the violation of the said treaty has been attributed. The Court has had the opportunity to make a pronouncement on this point in the Paniagua Morales et al. Case (Judgment of March 8, 1998, para. 136 and the third ruling, and the Villagrán Morales et al. Case (Judgment of November 19, 1999, paras. 247-252 and the seventh ruling).

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE JACKMAN

I am unable to join the majority of the Court in its decision to admit the second preliminary objection raised by the State in this case.

By the motion in question, the State has called upon the Court to hold that the Inter-American Commission on Human Rights "lacks competence to apply (aplicar) international humanitarian law and other international treaties…". The Court has so held.

It is my respectful submission that the motion ought to have been dismissed as being impertinent and irrelevant, and as not possessing the juridical character of a preliminary objection.

Although Article 36 of the Court's Rules of Procedure does not define the term "preliminary objections", the scope and purpose of such pleas or motions are abundantly clear from international law and practice. The Dictionnaire de la terminologie du droit international proposes the following definition:

"Method employed in the preliminary phase of a proceeding with the aim of obtaining a decision from the tribunal on a preliminary question before entering into an analysis of the merits of the case, the purpose of the motion most often being to prevent the question from being dealt with in the context of the merits themselves." [FN28]

---

[FN28] Translated by the Secretariat of the Court.

---

The learned writer Shabtai Rosenne (The Law and Practice of the International Court, 1985 at p. 457) argues that

"…it is not sufficient for a party to entitle a document 'preliminary objection'… In addition to matters of form, the plea has to show the essential juridical characteristics which gave it its preliminary character in the concrete case, which demonstrate that, in the concrete case, it is a challenge to the jurisdiction of the Court. As the anticipated effect of a judgment on a preliminary objection is to determine whether the proceedings on the merits will or will not be resumed, if the plea does not have that anticipated effect, it will not be a genuine preliminary objection…[T]he plea has to relate to the jurisdiction of the Court on the merits of the case as presented in the application…"(Emphases added)

The present objection purports to challenge, not the jurisdiction of the Court, which is the tribunal seised of the case, but, rather, the jurisdiction of the Commission, which, from the moment it presents a case before the Court, is automatically disseised, having no juridical role in the matter other than that assigned to it in Article 57 of the American Convention on Human Rights,: "The Commission shall appear in all cases before the Court."

Thus, the question whether or not the Commission is competent to apply international humanitarian law is, at best, moot, and at worst impertinent and irrelevant, since an answer in the affirmative would in no way affect the jurisdiction of the Court to hear the case. While I entirely support the view that neither the Court nor the Commission is authorised by the Convention to apply international humanitarian law in matters brought before them, I find it impossible to hold

that the nature and purpose of the State's plea falls within the clearly defined scope of preliminary exceptions in international law.

Judge
Oliver Jackman

Manuel E. Ventura-Robles
Secretary