SEPARATE CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE JUDGMENT ON PRELIMINARY OBJECTIONS IN THE HILAIRE, CONSTATINE *ET AL.* AND BENJAMIN *ET AL.* CASES

1. I have added my vote to those of my colleagues of the Inter-American Court of Human Rights in the judgments on preliminary objections in the Hilaire, Constantine *et al.* and Benjamin *et al.* cases of September 1, 2001, which are based on similar reasoning and reach the same decisions with regard to the allegation that the Court is not competent to hear these cases.

2. I believe that the Court has proceeded appropriately by analyzing the arguments of the State and setting out its own arguments with specific reference to the cases under consideration and, for the time being, not examining the general issue of reservations to treaties and State declarations about the scope they allocate to the acceptance of the contentious jurisdiction of the Court, in accordance with the optional clause contained in Article 62 of the American Convention on Human Rights.

3. In this context, I agree with the judges of the Court when they indicate that the effect of the reservation or declaration with regard to the contentious jurisdiction of the Inter-American Court, formulated by Trinidad and Tobago in the instrument ratifying the Convention (dated April 3, 1991, and deposited on May 28, that year), would be to exclude the State from the jurisdictional system which it declares that it accepts in that same instrument, since it contains a general condition that subordinates the exercise of the jurisdiction almost entirely to the provisions of domestic law. Indeed, this declaration accepts the aforesaid contentious jurisdiction – a key element in the effective exercise of the inter-American human rights system – "only insofar as (its exercise) is compatible with the pertinent sections of the Constitution of the Republic of Trinidad and Tobago."

4. It is evident that – contrary to the usual practice in declarations of a similar nature – the formula that the State has used does not specifically define the matters that cannot be heard or decided upon by the Court (which of necessity applies the American Convention and not the provisions of a State's domestic law). Thus, this international court would be deprived of the possibility of exercising the powers that the Convention assigns to it autonomously and would have to subject itself to a method of casuistic comparison between the provisions of the Convention and those of domestic law, which, in turn, would be subject to interpretation by the national courts.

5. Obviously, a restriction of this nature – established, as mentioned above, in a general and indeterminate manner – is not consequent with the object and purpose of the American Convention on Human Rights and does not correspond to the nature of the inter-American jurisdiction designed to protect those rights.

6. Furthermore, the formula analyzed also includes some expressions that are very difficult to understand and that are ambiguous – and which could totally obstruct the Court's jurisdictional task – such as the statement that the compulsory jurisdiction of the international court is recognized "provided that a judgment of (the latter) does not infringe, establish or annul existing rights or obligations of certain individuals." We could cite some examples of the implications that this imprecise expression could have. Obviously, a judgment of the Court could have implications

for so-called “obligations of individuals” deriving from acts or measures which, in the Court’s opinion, violate the Convention. The decisions of the Inter-American Court would also have repercussions on “the rights of individuals” if they recognized certain juridical consequences in their favor, owing to the violations that had been committed: for example, the right to reparations. Moreover, it is not clear what is meant by indicating that the judgments of the Court may not establish “existing right or obligations” of certain individuals.

7. In brief, based on the foregoing – which expands the reasoning on which the Court’s judgments in the cases referred to in this opinion are based – it is not possible to recognize the validity of the declaration formulated by the State in the ratification instrument of May 28, 1991, and use it as grounds for the preliminary objection that has been raised.

8. In the judgments delivered in these three cases, the Inter-American Court has referred exclusively to the objection filed by Trinidad and Tobago and, consequently, has examined the characteristics of the declaration on which the State seeks to base itself, in the context of these cases. The issue of reservations and declarations that limit the jurisdictional exercise of the Court in general, and which are usually presented in different terms, is a separate matter. This does not negate the desirability of eliminating reservations and conditions that ultimately signify restrictions of a greater or lesser extent to the full exercise of such rights, in honor of the universality of human rights, a conviction that is common to the States that have contributed to constructing the corresponding inter-American system.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary