

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I completely agree with the instant Judgment of the Inter-American Court on the preliminary objection, which reflects its *jurisprudence constante* and the thesis I have been supporting for more than two decades¹, that is, that within the scope of International Human Rights Law, the preliminary objection of non-exhaustion of the domestic remedies is of pure *admissibility*, to be filed by the respondent government *in limine litis*, without which an implied waiver on the part of the respondent government is presumed.

2. I record that I am writing this Opinion, as usual, under the merciless pressure of time, and I state what I have just expressed in the fruitful public hearing on the preliminary objection which took place before this Court only ten minutes ago: my real satisfaction with the statements of the acting parties (the government which filed the objection —*reus in excipiendo fit actor*— the Inter-American Commission on Human Rights and the petitioners' Representatives), in the sense of the need for a deeper reflection regarding the improving of the proceedings under the American Convention on Human Rights, and a better understanding of the role of the Commission under the Convention.

3. My position on the matter is very clear, and it is so recorded in the *Protocol to the American Convention on Human Rights*, that I allowed myself to introduce in the name of the Inter-American Court before the competent organs of the Organization of American States (OAS) in 2001², which consecrates the direct access to international justice by the human being, the automatically compulsory jurisdiction of the Inter-American Court, the jurisdictionalization of the Inter-American system of protection and the retention, within the scope of the latter, at present, of the role of prosecutor of the Inter-American Commission.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary

¹. A.A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law*, Cambridge, Cambridge University Press, 1983; A.A. Cançado Trindade, *O Esgotamento de Recursos Internos no Direito Internacional*, 2nd. ed., Brasília, Editora Universidade de Brasília, 1997.

². A.A. Cançado Trindade, *Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer Su Mecanismo de Protección*, vol. II, 2nd. ed., San José de Costa Rica, Inter-American Court of Human Rights, 2003, pp. 1-1015.