CONCURRING OPINION OF JUDGE MONTIEL ARGÜELLO

1. The jurisprudence of the Court has established that the preliminary objection of failure to exhaust domestic remedies may be waived (Viviana Gallardo *et al* Case. Decision of November 13, 1981, para. 26 and abundant subsequent jurisprudence) and the waiver is presumed when the objection is not invoked in the initial stages of the proceeding before the Commission (Velásquez Rodríguez Case. Judgment of June 26, 1987, para. 88 and abundant subsequent jurisprudence).

2. I am totally in agreement with the Court's jurisprudence summarized in the preceding paragraph and, for this reason, I have voted in favor of dismissing the objection in the instant case, taking into consideration that the State did not file it until a very advanced stage of the proceeding before the Commission, which, in no way could be considered one of the initial stages.

3. Nevertheless, I believe that there is a lack of precision in the expression, initial stages, since none of the instruments that regulate the proceeding to be applied to a petition before the Commission define which are these initial stages.

4. The American Convention on Human Rights indicates the cases in which the Commission must declare a petition inadmissible (Article 47) and then, that if a petition is considered admissible, it shall request information from the government of the State (Article 48.1.a). This acceptance, which in most cases, is at the discretion of the Secretariat, since the Commission is not assembled, is undoubtedly *prima facie*, as it would be if it was alleged that rights not recognized by the Convention had been violated, and it does not prejudge the right of the State to file grounds for inadmissibility.

5. The almost constant practice of the Commission has been to continue processing the petition without making a declaration of admissibility and the Court has stated that the lack of this declaration is not a requirement that can hamper the normal course of the proceeding before the Commission and, consequently, consideration of the case by the Court. (Velásquez Rodríguez Case, ibídem, paras. 39-41 and subsequent jurisprudence.)

6. In order to guarantee legal certainty, it would be advisable, from all points of view, for the Commission to reform its Regulations in order to specify which are the initial stages of the proceeding during which preliminary objections against the admissibility of the petition can be filed and that these initial stages should culminate with a formal decision on admissibility in every case. This has already been indicated in several studies on the improvement of the inter-American system for the protection of human rights, even in official OAS documents, and it is to be hoped that it becomes a reality. In recent cases, the Commission has already proceeded to consider admissibility prior to and separately from examination of the merits of the case.

Alejandro Montiel-Argüello
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary