

MEMORIAL OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ON THE PRELIMINARY OBJECTION

IN THE CASE OF:

000030

GEORGE CONSTANTINE *ET AL.*

AGAINST

THE REPUBLIC OF TRINIDAD AND TOBAGO (11.787)

I. BACKGROUND

This Memorial is submitted on behalf of the Inter-American Commission on Human Rights (hereinafter the "Commission") pursuant to Article 36(5) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter the "Honorable Court" or the "Court") in the Case of George Constantine *et al.* (11.787). It responds to the June 15, 2000 communication of the Honorable Court, Ref: CDH-11.787-005, transmitting to the Commission a copy of the communication from the Republic of Trinidad and Tobago (hereinafter the "State" or "Trinidad and Tobago") dated June 14, 2000, in which the State submitted its preliminary objection to the Honorable Court's jurisdiction in the Constantine *et al.* Case.

On February 22, 2000, the Commission filed with the Honorable Court an Application pursuant to Articles 51 and 61 of the American Convention on Human Rights (hereinafter the "Convention") and Articles 32 and 33 of the Rules of Procedure of the Honorable Court, in the Constantine *et al.* Case. This application consolidated the complaints of George Constantine and 23 other inmates on death row in the Republic of Trinidad and Tobago (hereinafter the "victims"), which had previously been lodged with the Commission by 15 firms of Solicitors in London, United Kingdom (hereinafter the "Petitioners"). The complaints relate to the victims' trials, convictions and sentencing to mandatory death penalties for the crime of murder under Trinidad and Tobago's *Offences Against the Person Act*.¹

In its Application before the Honorable Court, the Commission raises six principal claims in connection with the criminal proceedings of some or all of the victims in these cases. First, it argues that the State is responsible for violating the rights of all of the victims under Articles 4(1), 4(6), 5(1), 5(2) and 8(1) of the Convention, by sentencing them to mandatory death penalties, and by failing to provide these victims with effective or adequate opportunities to engage in the process for granting amnesty, pardon or commutation of sentence in Trinidad and Tobago. Second, the Commission argues that the State is responsible for violating the rights of victims in 17 cases under Article 7(5) and 8(1) of the Convention, in relation to the delays in their criminal proceedings. Third, the Commission argues that the State's failure to provide under its domestic law for the

¹ *Offences Against the Person Act*, (3 April 1925), Laws of Trinidad and Tobago, Ch. 11:06, Commission's Application, Exhibit 7.

rights under Articles 7(5) and 8(1) of the Convention to trial within a reasonable time violates its obligations under Article 2 of the Convention, and its failure to provide for recourse to a competent court or tribunal for protection against acts that violate Articles 7(5) and 8(1) of the Convention violates the rights of these same victims to judicial protection under Article 25 of the Convention. Fourth, the Commission contends that the State is responsible for violating the rights of the victims in 15 cases under Articles 5(1) and 5(2) of the Convention, by reason of the conditions of detention experienced by those victims. Fifth, the Commission argues that the State is responsible for violating the rights of the victims in two of the cases to a fair trial under Article 8(2) of the Convention, in connection with the criminal proceedings that resulted in their death sentences. Finally, the Commission submits that the State has violated the rights of the victims in 9 cases under Articles 8(1) and 25 of the Convention by failing to make legal aid effectively available to the victims to pursue Constitutional Motions in the domestic courts in connection with the criminal proceedings against them.

By communication dated April 14, 2000, a copy of which was received by the Commission on the same date, the Honorable Court notified the respondent State of the Commission's Application in accordance with Article 35 of the Court's Rules of Procedure.

By communication dated June 15, 2000 and received by the Commission on the same date, the Honorable Court informed the Commission that the State had submitted a preliminary objection and supporting legal arguments in the *Constantine et al.* Case.

II. STATE'S LEGAL ARGUMENTS ON ITS PRELIMINARY OBJECTION

In its preliminary objection, the State objects to the jurisdiction of the Honorable Court in the *Constantine et al.* Case on three grounds. First, the State argues that there is no evidence that the Court accepted jurisdiction in respect of the *Constantine et al.* matter within the three month period stipulated under Article 51 of the Convention.

Second, the State argues that its "second reservation" to the American Convention, by which it declared its acceptance of the Honorable Court's compulsory jurisdiction, precludes any jurisdiction of the Honorable Court in the *Constantine et al.* Case. The State's second reservation to the Convention provides as follows:

2. As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.

Based upon this provision, the State effectively contends that it subjected its acceptance of the Honorable Court's jurisdiction to two terms or conditions, namely: only to the extent that such recognition is consistent with the "relevant sections" of the State's Constitution; and provided that any judgment of the Court does not infringe, create or abolish any "existing right or duty" of any private citizen. The State argues that these qualifications preclude the Honorable Court from exercising jurisdiction in the

Constantine *et al.* Case. The State has not, however, particularized in its legal arguments the manner in which it alleges these qualifications should be interpreted so as to deprive the Honorable Court of jurisdiction in the present case. Consequently, the Commission is unable to respond fully to the State's objection in this respect.

Third, as an alternative to its second ground, the State argues that if the terms in the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction are found to be invalid, they cannot be severed, with the result that the State's declaration must be considered null *ab initio*.

III. SUMMARY OF COMMISSION'S POSITION

To summarize the Commission's legal arguments developed below, it is the Commission's position that the State's objections find no basis in law and should be rejected.

With respect to the State's first ground, the Commission considers that the phrase "its jurisdiction accepted" in Article 51 of the Convention is properly interpreted as modifying the reference in Article 51 to "the Court", so as to clarify that the Commission is precluded from preparing a report under Article 51 of the Convention in those cases where the State concerned has accepted the compulsory jurisdiction of the Court and either the Commission or the State submits the matter to the Court within the three-month period under Article 51. The phrase should not, as the State has suggested, be interpreted as modifying the reference in Article 51 to "the matter" so as to require the Honorable Court to accept jurisdiction over the application within the three-month period prescribed thereunder. In the present case, the Republic of Trinidad and Tobago had accepted the Honorable Court's compulsory jurisdiction on May 28, 1991, and the Commission filed the application with the Court within the three-month period following transmission to the State of the Commission's report under Article 50 of the Convention. Consequently, the provisions of Article 51 of the Convention present no bar to the Honorable Court's jurisdiction in the Constantine *et al.* Case.

With respect to the State's second and third grounds, the Commission submits that the two terms in the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction under Article 62 of the Convention do not preclude the Honorable Court's jurisdiction in the Constantine *et al.* Case. First, the terms, while obscure, can be interpreted conjunctively as concerning the non-self-executing nature under the State's domestic law of the Court's judgments and therefore as having a meaning that does not deprive the Court of jurisdiction to hear and determine the present Application. Alternatively, to the extent that the terms are interpreted to purport to deprive the Court of jurisdiction in this case, the terms should be considered excessively vague and ambiguous for this purpose, incompatible with Articles 62 and 75 of the Convention and its object and purpose, and therefore impermissible, and should be severed from the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction.

IV. THE REQUIREMENTS OF ARTICLE 51 OF THE CONVENTION HAVE BEEN SATISFIED IN THE PRESENT APPLICATION

The State first objects to the jurisdiction of the Honorable Court on the basis that there is no evidence that the Court "accepted jurisdiction" in respect of the *Constantine et al.* matter within the three-month period stipulated under Article 51(1) of the Convention. In so arguing, the State appears to rely upon the phrase "its jurisdiction accepted" in Article 51 of the Convention, as modifying the reference in the Article to "the matter" being submitted to the Honorable Court.

Article 51(1) of the Convention reads as follows:

If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court *and its jurisdiction accepted*, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration. [emphasis added]

It is the Commission's position that the phrase "and its jurisdiction accepted" under this provision should be interpreted as modifying the reference in Article 51 to "the Court", so as to clarify that the Commission is precluded from preparing a report under Article 51 of the Convention in those cases where the State concerned has accepted the compulsory jurisdiction of the Court in accordance with Article 62 of the Convention and either the Commission or the Court submits the matter to the Court within the three-month period under Article 51. The phrase should not, as the State has suggested, be interpreted as modifying the reference in Article 51 to "the matter", so as to require the Honorable Court to accept jurisdiction over the application within the three-month period prescribed thereunder.

To interpret Article 51 of the Convention in the manner advocated by the State would not accord with the ordinary meaning of the terms of the provision in their context and in the light of the object and purpose of the Convention,² and would be inconsistent with other provisions of the Convention, the Honorable Court's Statute, and the Court's well-established procedure and jurisprudence. More particularly, to adopt the State's interpretation of Article 51 of the Convention would necessarily require the Honorable Court to make a determination as to whether it has jurisdiction to entertain a matter within the same three-month period prescribed for the Commission or a state to submit a matter to the Court. Such an interpretation is plainly not viable, as it would inevitably provide parties with insufficient time following the reference of a matter to raise jurisdictional objections, for a hearing on jurisdictional issues, or for the Court to make a determination respecting its jurisdiction in a given case. As a consequence, the Honorable Court would lose jurisdiction in most, if not all, of the cases submitted to it. Such an interpretation of Article 51 would be irrational in the context of the Convention as a whole, and is plainly incompatible with the object and purpose of the Convention.

² Article 31(1) of the Vienna Convention on the Law of Treaties 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 light of its object and purpose."

Interpreting Article 51 as speaking to the acceptance by the state concerned of the Court's compulsory jurisdiction under Article 62 of the Convention, on the other hand, is consistent with the Convention's object and purpose, and is reinforced by other provisions of the Convention and the Honorable Court's Statute, as well as the Court's well-established procedure and jurisprudence. Article 61 of the Convention, for example, expressly mandates compliance with Articles 48 to 50, but not Article 51, as a precondition for the Court to hear a case. Similarly, Article 2 of the Honorable Court's Statute defines the Court's adjudicatory jurisdiction in terms of Articles 61, 62 and 63, but not Article 51, of the Convention. Further, Article 36 of the Honorable Court Rules of Procedures provides a period of two months from the date of notification of an application for parties to raise preliminary objections, and a further thirty days for the submission of any further written briefs on the preliminary objections. The timing of this process is clearly incompatible with an interpretation of Article 51 of the Convention that would require jurisdictional objections to be determined within three months of the date of transmission of the Commission's Article 50 report. Moreover, the Honorable Court has consistently determined in its jurisprudence that Article 51 of the Convention requires a matter to be filed with the Court within the three-month period under Article 51, but has never interpreted Article 51 to require the Court to determine its jurisdiction over the case within this same three-month period.³ Indeed, had such a requirement applied, the Honorable Court would have lost jurisdiction in most, if not all, of its previous contentious cases.

Even in respect of the requirement under Article 51 of the Convention that an application be filed with the Honorable Court within the three-month period prescribed thereunder, the Court has held that the time limit, while of a preclusive character, is not fatal with regard to the submission of a case to the Court where special circumstances exist.⁴ In particular, the Honorable Court has suggested in this connection that an application containing serious charges cannot be deemed to have lapsed simply on the grounds of a brief lapse in the time period under Article 51 of the Convention and, more generally, that the Court's procedural system as a means of attaining justice cannot be sacrificed for the sake of mere formalities.⁵ Given the urgency of the issues raised in the present Application before the Court, namely the legitimacy of the victims' pending executions, the Commission submits that the State should not be permitted to defeat the Honorable Court's jurisdiction over the case based upon a misguided interpretation of the procedural period under Article 51 of the Convention.

In the present matter, the Commission transmitted its Article 50 report to the State on November 22, 1999, and subsequently filed its application with the Honorable Court on February 22, 2000 and therefore within the three-month period under Article 51.⁶ In addition, the application was submitted in respect of a State, the Republic of Trinidad and Tobago, which had accepted the compulsory jurisdiction of the Honorable

³ See e.g. I/A Court H.R., *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 1, para. 63; *Fairén Gerbi and Solís Correles Case*, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 2, para. 63; *Godínez Cruz Case*, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 3, para. 65.

⁴ See I/A Court H.R., *Advisory Opinion OC-13/93 of July 16, 1993, Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Ser. A No. 13, para. 51.

⁵ See I/A Court H.R., *Cayara Case*, Preliminary Objections, Judgment of February 3, 1993, Ser. A No. 14, paras. 40, 42.

⁶ See e.g. *Paniagua Morales et al. Case*, Preliminary Objections, Judgment of January 25, 1996, Series C No. 23, paras. 24-30.

Court on May 28, 1991 and which remains bound by those obligations in respect of the present cases pursuant to 78(2) of the Convention. According, the provisions of Article 51 of the Convention have been satisfied in the Constantine *et al.* matter and present no bar to the Honorable Court's jurisdiction.

V. THE STATE'S DECLARATION OF ACCEPTANCE UNDER ARTICLE 62 OF THE CONVENTION AND THE HONORABLE COURT'S JURISDICTION

In the second and third grounds for its preliminary objection, the State argues that its "second reservation" to the American Convention, by which it declared its acceptance of the Honorable Court's compulsory jurisdiction, precludes any jurisdiction of the Honorable Court in the Constantine *et al.* Case, and in any event cannot be severed from the State's declaration.

Article 62 of the Convention provides as follows:

1. 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 special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.
2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
3. 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.

It is common ground that at the time of accession to the Convention, the State lodged a declaration, which it styled a second "reservation" to the Convention, in the following terms:

2. As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.

It is apparent from the wording of the State's second reservation that, in actuality, it constitutes a declaration of acceptance of the Honorable Court's compulsory jurisdiction by the State pursuant to Article 62 of the Convention, which the State was free to make. In arguing that the Honorable Court lacks jurisdiction in the Constantine *et al.* Case, the State appears to rely on both of the terms in its declaration, the first providing that it accepts the State's jurisdiction "only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago", and the second purporting to require that "any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen."

A. THE TERMS IN THE STATE'S DECLARATION ARE OBSCURE AND MUST BE INTERPRETED BY THE HONORABLE COURT

With respect to the second ground for the State's preliminary objection, the Commission first observes that the terms contained in the State's declaration of acceptance under Article 62 of the Convention are obscure, in that multiple meanings can be ascribed to them. Consequently, the Honorable Court must determine whether a discernable meaning can be drawn from the terms and, if so, what effect those terms may have on the Court's compulsory jurisdiction in the present Application. In this connection, the Honorable Court has exclusive authority to determine its own jurisdiction, including the meaning and scope of any qualifications purported to be attached to a State's declaration of acceptance under Article 62 of the Convention.⁷

The first term under the State's declaration is general in nature and has no assigned meaning. For example, the term could be interpreted to mean that the Court is precluded from hearing or rendering a judgment in a case if the rights under the Convention alleged to have been violated are not protected under the State's Constitution. Arguably, such an interpretation is unlikely to have been intended, as it is plain from Article 1(1) and Article 25(1) of the Convention that the purpose of the Convention is to ensure more effective protection of rights under the Convention and not merely those afforded in national law. The State has not purported to make reservations to these specific Articles, and must therefore have intended adherence to the Convention to give access to additional measures not already secured in domestic law.

Alternatively, the first term in the State's declaration could be interpreted to mean that, while the Honorable Court has jurisdiction to hear and determine a matter, the Honorable Court's judgment must be consistent with certain unstipulated sections of the State's Constitution. In this context it is pertinent to observe that the State specifically acknowledges in the second part of the declaration that the Honorable Court has competence to give judgments in cases arising from Trinidad and Tobago.

In the further alternative, the first term could be interpreted to mean that, provided that there is no provision in the Constitution expressly prohibiting the State from accepting the Honorable Court's compulsory jurisdiction, the recognition of the Honorable Court's compulsory jurisdiction is complete and effective. In this connection, the State does not suggest that there are provisions of the Constitution that prohibit the State from accepting the jurisdiction of the Honorable Court. Moreover, it can be argued that the State's Constitution allows for, rather than prohibits, the exercise of jurisdiction by the Court. For example, it is apparent from the judgment of the Judicial Committee of the Privy Council in the *Thomas and Hilaire* case⁸ that, far from prohibiting effective access to the Honorable Court, the domestic constitutional requirement of due process requires that such access be respected while the State adheres to the Convention. Moreover, with respect to a possible future judgment by the Honorable Court that the mandatory death penalty is unlawful, it is not the case that the Constitution requires that every person

⁷ See I/A Court H.R., *Baruch Ivcher Bronstein v. Peru*, Jurisdiction, Judgment (24 September 1999) (hereinafter the "*Ivcher Case*"), paras. 32-34. See also I/A Court H.R., *Constitutional Court Case*, Jurisdiction, Judgment (24 September 1999), paras. 31-33.

⁸ See Commission's Application, Part IV.B.

sentenced to death be executed. In certain cases, it is unconstitutional to execute people who have been unlawfully sentenced to death.³ In others, the Presidential right of pardon can be exercised to give effect to the State's obligations under Article 4(6) of the Convention. Thus, in a case where the judgment of the Honorable Court determines that to execute a person would be a violation of the right not to be arbitrarily deprived of life contrary to Article 4(1) of the Convention, the most urgent and apparent remedy would be commutation of the sentence of death. Such commutation of the sentence of death is an available remedy under the Constitution to give effect to such a conclusion, and therefore would not be contrary to the Constitution.

Similarly, the meaning and scope of the second term under the State's Declaration is indistinct. Indeed, it is doubtful whether it is a reservation to jurisdiction at all, since it refers to the effects of a judgment of the Court under domestic law rather than restriction upon the Court's jurisdiction to hear and determine a case. One cannot decide whether a court has jurisdiction by regard to what the possible effect of the judgment may be. Further, the judgments of the Honorable Court are directed to the State as a State Party to the Convention and not to any private citizen, and it is therefore difficult to see that any judgment could infringe or abolish any existing rights and duties of the private citizen. As to any judgment creating a right or duty, it could not do so unless the State's Constitution were amended to make the Honorable Court's judgments self-executing. Insofar as the second term in the declaration may be directed at the rights afforded under the Convention itself, it is apparent that the principal purpose of recourse to an international tribunal is to provide additional safeguards and redress to citizens where domestic law has not provided for them. In this regard, the State has not purported to take any reservations to Article 1 or 2 of the Convention, and further, has made no reservation to the competence of the Commission to act on complaints under the Convention.

Multiple meanings can therefore be ascribed to the terms of the State's declaration. In these circumstances, the Commission first submits that the Honorable Court should interpret the terms conjunctively as concerning the non-self-executing nature under the State's domestic law of the Court's judgments and therefore as having a meaning that does not deprive the Court of jurisdiction to hear and determine the present Application. Alternatively, to the extent that the terms are interpreted to deprive the Court of jurisdiction to hear and determine the present Application, the terms should be considered excessively vague and ambiguous for this purpose, incompatible with Articles 62 and 75 of the Convention and its object and purpose, and therefore impermissible.

B. THE TERMS IN THE STATE'S DECLARATION OF ACCEPTANCE CAN BE INTERPRETED AS HAVING A MEANING THAT DOES NOT DEPRIVE THE HONORABLE COURT OF JURISDICTION

It is the Commission's principal position that the terms contained in the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction should be interpreted as having neither the intention nor the effect of depriving the Court of jurisdiction to hear and determine the present Application. Rather, the qualifications

³ See e.g. *Pratt and Morgan v. A.G. for Jamaica* [1994] 2 A.C. 1 (P.C.), Commission's Application, Exhibit 33.

should be interpreted conjunctively as concerning the non-self-executing nature of the Honorable Court's judgments under the State's domestic law and therefore as having no effect upon the State's acceptance of the Court's compulsory jurisdiction.

In this connection, where the meaning of a qualification under an Article 62 declaration is obscure, the Commission submits that the Court should endeavor to interpret any such qualifications in a manner consistent with the presumed intent of a declaration under Article 62 of the Convention, namely to recognize and give effect to the compulsory jurisdiction of the Honorable Court as provided for under the Convention.

In the present case, the Commission contends that the first qualification is to be read with and confirmatory of the second qualification. As the second qualification is limited to the effect of the Court's judgments under domestic law and not the jurisdiction of the Court to hear and determine claims against the State, it is the Commission's position that the terms in the State's declaration can and should be interpreted as being concerned with the interrelationship with the binding effect of the Court's judgments under Article 67 and 68 of the Convention and the State's domestic Constitution. In particular, the terms should be interpreted as confirming that judgments of the Court are not self-executing under Trinidad's domestic law, but rather that executive action is necessary in order to give effect to the State's duties of compliance with such judgments.¹⁰ The terms, so interpreted, do not diminish the State's full acceptance of the Honorable Court's compulsory jurisdiction to hear and determine cases against the State, including the present Application. As construing the terms in this manner is consistent with the presumed intent of a declaration under Article 62 of the Convention, namely to recognize and give effect to the compulsory jurisdiction of the Honorable Court as provided for under the Convention, the Commission submits that the Court should adopt this interpretation of the State's declaration and reject the State's preliminary objection on this basis.

C. TO THE EXTENT THAT THE TERMS IN THE STATE'S DECLARATION OF ACCEPTANCE ARE INTERPRETED AS INTENDING TO DEPRIVE THE HONORABLE COURT OF JURISDICTION IN THIS APPLICATION, THE TERMS SHOULD BE CONSIDERED IMPERMISSIBLE AND SEVERED FROM THE DECLARATION

1. THE TERMS ARE INSUFFICIENTLY CLEAR AND SPECIFIC

To the extent that the State relies upon the terms of its declaration under Article 62 of the Convention to deprive the Honorable Court of jurisdiction to hear and determine the present Application, the Commission submits that the terms of the declaration are not sufficiently clear and specific for this purpose. In particular, the character and scope of the terms are not precisely defined so as to provide the Court, the Commission, State Parties, or protected individuals in Trinidad and Tobago with adequate notice of the nature and extent of obligations assumed by the State under the Convention. Rather, the terms are excessively vague and ambiguous to determine their exact meaning and effect and should therefore be considered incapable of properly limiting the Court's jurisdiction

¹⁰ See similarly Amicus Brief of Professor Vaughan Lowe, 10 November 1999, paras. 26-30, 43.

and therefore invalid. The Commission reiterates its arguments on this point asserted in Part V.B of its Application in this Case.

In this regard, the Commission argues that a reservation to an international instrument or restrictions placed upon an international tribunal's jurisdiction must be clear and specific so that all of the parties concerned are aware of the scope of the obligations undertaken and the limitations to them. Restrictions on obligations under human rights instruments such as the Convention must be particularly clear and discernable, and especially in the context of conditions placed upon the Honorable Court's compulsory jurisdiction, which are specifically limited to those prescribed in Article 62 of the Convention.¹¹

While the American Convention does not contain a provision equivalent to Article 64(1), now Article 57(1), of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits reservations of a "general character",¹² the Commission considers that the purposes and principles underlying the prohibition of reservations of this nature apply equally as a matter of general international law to the interpretation of reservations and declarations under international human rights instruments, including the American Convention.¹³ In a similar vein, the U.N. Human Rights Committee has indicated that reservations to human rights treaties must be specific and transparent, so that supervisory tribunals, those under the jurisdiction of the reserving State, and other State Parties may be clear as to what obligations of human rights compliance have or have not been undertaken.¹⁴ To permit otherwise weakens the effectiveness of human rights regimes, by rendering uncertain the content and universality of the minimal protections prescribed under those regimes, as well as the mechanisms by which those rights are ensured and enforced.

¹¹ *Ivcher Case, supra*, para. 36. See also *Constitutional Court Case, supra*.

¹² Article 57 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (ETS No. 155) of 11 May 1994, reads as follows:

1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2 Any reservation made under this article shall contain a brief statement of the law concerned.

See also Eur. Court H.R., *Belilos v. Switzerland*, Judgment, 23 March 1988, Series A No. 132, para. 55 (interpreting Article 64(1) of the European Convention to prohibit reservations that are "too vague or broad for it to be possible to determine their exact meaning and scope").

¹³ The International Court of Justice has recognized that the regime relating to the interpretation of declarations made under Article 36 of that Court's Statute is not identical to that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties. At the same time, the ICJ has articulated similar standard rules that should guide the interpretation both of reservations and of declarations of acceptance under optional clauses. See *Fisheries Jurisdiction Case, supra*, para. 46 (finding that the relevant words of a declaration of acceptance of the Court's jurisdiction should be interpreted in a "natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court"); I.C.J., *Anglo-Iranian Oil Co. Case*, Preliminary Objections, ICJ Reports, 1952, p. 105 (holding that a declaration of acceptance of a tribunal's jurisdiction "must be interpreted as it stands, having regard to the words actually used"); I.C.J., *Certain Norwegian Loans Case*, Judgment, ICJ Reports, 1957, p. 27 (finding that every reservation to a treaty must be given effect "as it stands").

¹⁴ U.N.H.R.C., General Comment 24(52), General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (1994), para. 19.

The terms in the State's declaration clearly fail to meet this standard. As outlined previously, multiple meanings can be ascribed to the terms of the State's declaration, each with varying implications for the extent and nature of the State's obligations under the Convention. To the extent that the State relies upon the terms to qualify or modify the extent to which the State is bound by the Honorable Court's compulsory jurisdiction, therefore, it is manifestly unclear from the plain words of the declaration what restrictions the State has or has not purported to place upon its obligations under Article 62 and related provisions of the Convention. Further, the State has offered no clarification in its legal arguments on this preliminary objection as to the proper interpretation of this provision or in what specific manner it is alleged to deprive the Honorable Court of jurisdiction in the *Constantine et al.* Case.

For example, as discussed above, the first term in the declaration could be interpreted to mean that the Court is precluded from hearing or rendering a judgment in a case if the rights under the Convention alleged to have been violated are not protected under the State's Constitution. Alternatively, it could mean that, while the Honorable Court has jurisdiction to hear and determine a matter, the Honorable Court's judgment must be consistent with certain unstipulated sections of the State's Constitution. In the further alternative, the term could be interpreted to mean that, provided that there is no provision in the Constitution expressly prohibiting the State from accepting the Honorable Court's compulsory jurisdiction, the recognition of the Honorable Court's compulsory jurisdiction is complete and effective. Similarly, the second term under the State's declaration can be interpreted as not addressing the jurisdiction of the Court at all, but rather the domestic legal effect of the Court's judgments. Alternatively, the second term can be interpreted as encompassing rights and duties under both domestic and international law, so as to prohibit a judgment of the Court from creating or abolishing rights that were not previously protected under that law.

These observations illustrate that both terms are obscure, with no definite means of determining in what cases, and to what extent, the Honorable Court may hear, consider and render binding judgments in respect of the State regarding the interpretation and application of the Convention. Consequently, the terms should be considered fatally ambiguous. Moreover, to the extent that the meaning and scope of the terms may ultimately depend upon a subjective judgment by the State as to what provisions of the Constitution are "relevant", in what respect the State's acceptance of the Honorable Court's jurisdiction must be "consistent" with those provisions, or the content of the "existing rights or duties" of any private citizen, the term would undermine the Court's exclusive authority to determine its own jurisdiction and thereby also render the term invalid.¹⁵

¹⁵ In the context of the International Court of Justice, "subjective" or "self-judging" reservations to the compulsory jurisdiction of the ICJ are universally recognized as contrary to Article 36(5) of the ICJ Statute pursuant to which the ICJ itself decides the issue of its jurisdiction. These types of reservations most commonly leave it to the state claiming the reservation to determine whether a matter is "essentially within the domestic jurisdiction" of the state and therefore excluded from the ICJ's jurisdiction. Many authors have declared such reservations to be invalid. See RENATA SZAFARZ, *THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE* (1993) at 54.

2. THE TERMS ARE NOT AUTHORIZED UNDER ARTICLES 62 OR 75 OF THE CONVENTION AND ARE INCOMPATIBLE WITH THE OBJECT AND PURPOSE OF THE CONVENTION

Even in the event that the terms in the State's declaration under Article 62 of the Convention could be interpreted with sufficient clarity to purport to deprive the Honorable Court of jurisdiction to hear and determine the present Application, the Commission considers that both terms are impermissible, because they are not authorized under Articles 62 or 75 of the Convention, and are incompatible with the object and purpose of the Convention.

At page 7 of its legal argument on preliminary objections, the State advances the following interpretation of its declaration:

The State submits that the reservation of the State precludes the assertion of jurisdiction by the Court in these cases. In the absence of any special agreement on the part of the State recognizing the jurisdiction of the Court in these specific cases the Court can exercise no contentious jurisdiction in these matters. The exercise of compulsory jurisdiction by the Court would not be consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago. The exercise of compulsory jurisdiction by the Court in this case in favour of the applicants would create rights for private citizens which do not exist under the laws of Trinidad and Tobago.

However, the State offers no explanation or clarification as to the precise manner in which these terms are alleged to deprive the Honorable Court of jurisdiction. For example, State does not identify the relevant sections of its Constitution with which the State's recognition of jurisdiction is alleged to be inconsistent, nor does it identify which rights it alleges a judgment of the Honorable Court in the *Constantine et al.* Case would create. To this extent, the Commission has been precluded from fully responding to the State's preliminary objection in this matter.

To the extent that the terms may be interpreted to condition the exercise of the Honorable Court's compulsory jurisdiction on the provisions of the State's domestic law, they are not authorized by Articles 62 or 75 of the Convention, nor are they compatible with the object and purpose of the Convention. For the same reasons, the justifications offered by the State for the condition are fundamentally unsound.

First, the terms are not authorized under Article 62(2) of the Convention as valid conditions on the acceptance of the Honorable Court's jurisdiction.¹⁵ By its expressed provisions, the only qualifications to the Court's jurisdiction permitted under Article 62(2) are those based on reciprocity, temporal conditions or conditions which limit the jurisdiction of the Court to a specific case or cases. The Honorable Court recently held that Article 62 of the Convention provides an exhaustive enumeration of the terms that a State Party may place upon its acceptance of the Honorable Court's compulsory jurisdiction:

¹⁵ Article 62(2) of the Convention provides: "Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court."

Acceptance 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.*¹⁷ [emphasis added]

The terms in the State's declaration in the present case cannot reasonably be interpreted as falling into any of the categories of conditions stipulated under Article 62. A requirement of reciprocity is not stipulated, no temporal limitations are prescribed, and the terms do not define or prescribe a specific case or cases to which the Honorable Court's jurisdiction will be considered to apply. As the terms of the State's declaration are not authorized as valid conditions within the terms of Article 62, they are not sanctioned by the Convention and are therefore impermissible.

Moreover, the terms of the State's declaration of acceptance are not authorized as a reservation under Article 19 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention")¹⁸ and corresponding principles of international law, as incorporated by reference through Article 75 of the Convention.¹⁹ In particular, the terms are impermissible by reason of Article 19(c) of the Vienna Convention, because they are incompatible with the object and purpose of the American Convention.

In particular, to the extent that the terms contained in the State's declaration of acceptance may be interpreted to condition the exercise of the Honorable Court's compulsory jurisdiction upon the content of Trinidad and Tobago's domestic law, it is the Commission's position that conditions of this nature are inconsistent with the object and purpose of the Convention, and of Article 62 of the Convention in particular.

In this regard, the Honorable Court and other international supervisory bodies have recognized and emphasized the distinct nature of human rights treaties, in respect of which States Parties are deemed to submit themselves to a legal order within which they assume various obligations, not in relation to other states parties, but toward all individuals within their jurisdiction.²⁰ It must also be considered that the obligations

¹⁷ *Ivcher Case, supra*, para. 36. See also *Constitutional Court Case, supra*.

¹⁸ Article 19 of the Vienna Convention on the Law of Treaties provides as follows:

Article 19 - Formulation of Reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

¹⁹ Article 75 of the Convention provides: "This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969."

²⁰ See I/A Court H.R., *The Effect of Reservations in the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75)*, Advisory Opinion OC-2/82 of September 24, 1982, Ser. A No. 2 (1982), para. 29 (declaring 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

incurred by states parties to the Convention take precedence over those under their domestic law,²¹ but that the jurisdiction of the supervisory bodies under the Convention is essentially subsidiary in nature, being reserved for situations in which domestic remedies are not available or effective.²² Further, it is clear from the terms of Article 62 of the Convention that, where States Parties declare their acceptance of the Honorable Court's compulsory jurisdiction, whether conditionally or unconditionally, that jurisdiction necessarily extends to "all matters relating to the interpretation and application of the Convention." In this connection, the Honorable Court has held that Article 62 of the Convention is essential to the efficacy of the mechanism of international protection, and therefore 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 and their collective enforcement.²³

When interpreted in the context of these principles and purposes underlying the Convention and its supervisory organs, it is plain that the apparent motive underlying the terms of the State's declaration of acceptance of the Honorable Court's jurisdiction is impermissible under Article 19(c) of the Vienna Convention and general principles of international law. In particular, to the extent that the terms seek to subjugate the Court's authority to interpret, apply and issue judgments respecting the Convention to the requirements of the State's internal law, such consequences are clearly inconsistent with the requirements of the Convention and general principles of international law that prohibit a state from invoking the provisions of its internal law as justification for its failure to perform a treaty. In this connection, Article 2 of the Convention specifically requires States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislation or other measures as may be necessary to give effect to the rights and freedoms exercised under the Convention, where the exercise of those rights and freedoms are not already ensured by legislative or other provisions. The apparent intent of the terms in the State's declaration is patently inconsistent with these most fundamental provisions of the Convention. The Commission notes in this regard that Trinidad and Tobago did not purport to take any reservations to Articles 1 or 2 of the Convention, nor to any other procedural or substantive provisions,

which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.)

²¹ See I/A Court H.R., *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994, Ser. A No. 14 (1994), para. 25 (recognizing that "[p]ursuant to international law, all obligations imposed by it must be fulfilled in good faith; domestic law may not be invoked to justify nonfulfillment. These rules may be deemed to be general principles of law and have been applied by the Permanent Court of International Justice and the International Court of Justice even in cases involving constitutional provisions."). See also Convention, Article 2 (providing that "[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.").

²² See Convention, Preamble (recognizing that "the essential rights of man are based upon attributes of the human personality and therefore justify protection in the form of a convention 'reinforcing or complementing the protection provided by the domestic law of the American states.'"); Article 46(1)(2) (predicating the admissibility of petitions before the Commission in part on the requirement that "the remedies under domestic law have been pursued and exhausted in accordance with generally accepted principles of international law"). See also I/A Comm. H.R., *Marzióni v. Argentina*, Case No. 39/96, ANNUAL REPORT 1996, para. 48 (indicating that the "international protection provided by the supervisory bodies of the Convention is of a subsidiary nature.").

²³ *Ivcher Case*, *supra*, para. 37. See also *Constitutional Court Case*, *supra*, para. 36.

save Article 4(5) of the Convention.²⁴ In this regard, the Honorable Court has held that a state's duty to guarantee domestic compliance with the Convention applies to both the substantive and procedural provisions of the treaty:

[t]he States Parties to the Convention must guarantee compliance with its provisions and its effects (*effete 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.²⁵

The terms of the State's declaration are also inconsistent with the object and purpose of the Convention, and of Chapter VIII in particular, because they undermine the function of the Convention's supervisory regime as a reinforcing and complementary system of human rights protection, by apparently denying individuals human rights protection before the Honorable Court in circumstances where the domestic protection of Convention rights is also unavailable.²⁶ In the circumstances of the victims in the *Constantine et al.* case, for example, the State appears to advocate an interpretation of the declaration that would deny them effective protection before both the Honorable Court and domestic courts, against laws which authorize the State to deprive them of their lives, laws which the Commission has determined violate the fundamental tenets of Article 4 of the Convention.

Finally, the terms of the State's declaration, if interpreted so as to deprive the Honorable Court of jurisdiction in the present case, would appear to limit the Honorable Court's authority to interpret and apply certain provisions of the Convention in all cases before the Court involving Trinidad and Tobago, by permitting the Honorable Court to interpret and apply only those rights which are already protected under Trinidad and Tobago's domestic law, and only to the extent that doing so is consistent with the State's domestic constitution. This is clearly contrary to the terms and intent of Article 62 of the Convention, which preserves the authority of the Court over "all matters relating to the interpretation and application of this Convention." If anything, the appropriate means for Trinidad and Tobago to attempt to condition its substantive obligations under the Convention would be to take appropriate and clearly-defined reservations to the clauses on protected rights, and not by endeavoring to restrict the jurisdiction of the Court to interpret and apply the Convention through general and ill-defined qualifications such as those in the State's declaration.

For similar reasons, the justifications offered by the State for the impugned term are fundamentally unsound. The State argues that its "reservation" cannot be considered

²⁴ Trinidad and Tobago's first reservation to the Convention provides as follows:

As regards Article 4(5) of the Convention the Government of The Republic of Trinidad and Tobago makes reservation in that under the laws of Trinidad and Tobago there is no prohibition against the carrying out a sentence of death on a person over seventy (70) years of age.

²⁵ *Jocher Case, supra*, para. 37, citing European Commission of Human Rights, Applications No. 15299/89, 15300/89 and 15318/89, *Chrysostomos et al. v. Turkey, Decisions and Reports*, Strasbourg, C.E., [1991] vol. 68, pp. 216-253.

²⁶ The Commission notes in this regard that Article 6 of the Constitution of the Republic of Trinidad and Tobago precludes the challenging under domestic human rights protections of laws that had effect as part of the law of Trinidad and Tobago before the enactment of the Constitution. Such laws include the mandatory death penalty under the *Offences Against the Person Act*.

contrary to the object and purpose of the Convention, because, in the State's view, the provisions of its Constitution are, and were at the date of ratification of the Convention, compatible with the provisions of the Convention. The State also argues that the reservation only relates to the optional procedure contained in Article 62 of the Convention, and therefore "in no way affects the substantive rights contained in the Convention." However, the State's position disregards the fact that it is the responsibility of the Honorable Court, and not the State, to determine whether the State's internal law, including its Constitution, is consistent with the rights under the Convention. It also fails to consider the fact that the Commission has already determined that the State has committed serious violations of the victims' rights under Articles 4, 5 and 7 of the Convention, violations for which the State has provided no effective or sufficient remedy. Further, given that the Honorable Court has the authority to issue a judgment in respect of the victims with which the State is obliged to comply under Article 63 of the Convention,²⁷ it cannot be said that the impugned term of the State's declaration of acceptance does not affect the substantive rights contained in the Convention. Indeed, in the present circumstances interpreting Article 62 of the Convention to authorize the State's terms of acceptance would, in the Commission's view, contravene Article 29(a) of the Convention, by effectively permitting the State to violate the Convention in respect of the victims with impunity.²⁸ The Honorable Court recently made the following pertinent observations respecting the connection between declarations under Article 62 of the Convention and the guarantee of substantive rights under the Convention:

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 rights that the Convention's jurisdictional body affords.²⁹

Accordingly, to the extent that a meaning or purpose can be derived from the terms of the State's declaration so as to purport to deprive the Honorable Court of jurisdiction to hear and determine the present case, the Commission contends that both terms are impermissible, because they are not authorized under Articles 62 or 75 of the Convention, and are inconsistent with the object and purpose of the Convention.

3. THE TERMS CAN BE SEVERED FROM THE STATE'S DECLARATION OF ACCEPTANCE OF THE HONORABLE COURT'S COMPULSORY JURISDICTION

As indicated previously, the Commission submits that the terms in the State's declaration can be interpreted as verifying the non-self-executing nature of the Honorable

²⁷ The Commission notes in this respect that the State did not take any reservations in respect of Article 62 of the Convention when it ratified the Convention.

²⁸ Article 29(a) provides: "No provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein."

²⁹ *Ivcher Cese, supra*, para. 41. See also *Constitutional Court Case, supra*, para. 40.

Court's judgment's under the State's domestic law, rather than as limiting the Court's compulsory jurisdiction under the Convention to hear and determine cases against the State. Alternatively, should the terms be interpreted as purporting to deprive the Court of jurisdiction in this case, the Commission considers that the terms are impermissible and can be severed from the State's declaration, leaving the State's recognition of the Court's compulsory jurisdiction intact.

The Honorable Court has emphasized that it is for the Court as master of its own jurisdiction, and not for State Parties, to determine its competence to entertain a case.³⁰ This necessarily extends to interpreting and evaluating the validity of terms placed upon declarations of acceptance under Article 62 of the Convention. In its recent judgments in the *Baruch Ivcher Bronstein* and *Constitutional Court* Cases, the Honorable Court specifically disapproved of restrictions placed upon its compulsory jurisdiction that would threaten the integrity of the mechanism under Article 62(1) of the Convention:

Interpreting the Convention in accordance with its object and purpose (cf. *infra* 39), 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 recognition, as that would adversely affect the efficacy of the mechanism and could obstruct its future development.³¹

In light of these considerations, the Commission is of the view that the impugned terms of Trinidad and Tobago's acceptance of the Honorable Court's jurisdiction, or the offending portions thereof, can be severed from the State's declaration of acceptance of the Court's compulsory jurisdiction, leaving the latter valid and effective. In analyzing the effect of the term, it should first be considered that, by accepting the Honorable Court's compulsory jurisdiction, ipso facto the State intended to be bound by the jurisdiction of the Honorable Court in respect of at least some matters. Otherwise, the declaration would serve no purpose. Indeed, it is apparent from the penultimate clause of the declaration that the State contemplated and intended that the Honorable Court would give judgments in cases arising from Trinidad and Tobago, and the State has accordingly intended to submit to this jurisdiction.

Moreover, it must be considered that the American Convention is of a distinct nature, in that it is intended to protect the human rights of individuals within the jurisdiction of States Parties to the Convention.³² Accordingly, the State's reservation should be interpreted in a way to strengthen, rather than weaken, this regime, and therefore to enhance rather than diminish the human rights protections of individuals in the hemisphere.³³ Similarly, the effect of the State's condition must be interpreted in light of the fact that the Convention imparts upon the Honorable Court a vital role in ensuring

³⁰ See *Ivcher Case*, *supra*, paras. 32, 33, 34; *Constitutional Court Case*, *supra*, paras. 31, 32, 33.

³¹ *Ivcher Case*, *supra* para. 35; *Constitutional Court Case*, *supra*, para. 34.

³² In its decision in the *Viviana Gallardo* Case, the Honorable Court defined the object and purpose of the Convention to be the protection of the basic rights of human beings. The Court also concluded that, taken together with the need to protect the integrity of the Convention system, the Convention should be "interpreted in favor of the individual who is the object of international protection, as long as such an interpretation does not result in the modification of the system." I/A Court H.R., *In the matter of Viviana Gallardo*, Ser. A No. G101/81 (1984), para. 16.

³³ See *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*, Advisory Opinion OC-2/82, paras. 32-34. See also American Convention, Article 29(a).

respect for the Inter-American human rights regime, by rendering final and binding judgments on all matters relating to the interpretation and application of the Convention. Consequently, the impugned terms should be severed from the State's declaration of acceptance, and should not be considered to nullify the declaration *in toto*, in order to ensure the fundamental human rights of the victims in the Constantine *et al.* Case and similarly-situated individuals who otherwise have no effective means of protection.

Further, in the current circumstances, the State must have been aware that its putative restrictions on the Court's jurisdiction were of questionable validity. It would have been plainly obvious to the State that restrictions of this nature were not authorized under the terms of Article 62 of the Convention. In addition, no other states that had accepted the Court's jurisdiction at the time of Trinidad and Tobago's accession to the Convention in May 1991 had claimed terms or conditions of this nature, nor have any since. Indeed, most had accepted the Court's jurisdiction unconditionally.³⁶ Moreover, as noted previously, it is a well-established principle of international law, and a fundamental precept underlying the American Convention, that states may not invoke the provisions of their internal law as justification for their failure to perform a treaty, a principle recognized and reinforced in Article 2 of the Convention as a binding obligation on States Parties, including Trinidad and Tobago. This is, however, effectively what the State seeks to accomplish through its interpretation of the terms of its acceptance. These factors suggest that the State accepted the Honorable Court's jurisdiction with the understanding that its impugned term may subsequently be determined invalid by the Honorable Court.

The European Court of Human Rights in the case *Loizidou v. Turkey*³⁵ took a similar view in determining that an invalid condition could be severed from Turkey's acceptance of the European Court's compulsory jurisdiction. As noted at Part V.B of the Commission's Application, the European Court in the *Loizidou* case found that restrictions *ratione loci* attached to Turkey's declarations under Article 25³⁶ and 46³⁷ of the European Convention accepting the compulsory jurisdiction of the European Commission and Court

³⁶ As of May 29, 1991, when the Republic of Trinidad and Tobago deposited its instrument of adherence to the American Convention on Human Rights, 12 of the 13 States Parties that had accepted the Court's compulsory jurisdiction did so unconditionally or on condition of reciprocity or non-retroactivity only. See Basic Document Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.92 doc. 31 rev. 3 (3 May 1996), pp. 53-57.

³⁵ Eur. Court H.R., *Loizidou v. Turkey* (Preliminary Objections) (Judgment 23 March 1995) Ser. A No. 310, 20 E.H.H.R. 99.

³⁶ The relevant provisions of Article 25 of the European Convention, prior to the coming into force of Protocol 11, provided as follows:

1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in (the) Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be for a specified period.

³⁷ Article 46 of the Convention, prior to the coming into force of Protocol 11, stated:

1. Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the ...Convention.
2. The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
3. These declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

were invalid as being incompatible with the object and purpose of the European Convention.³⁸

As a consequence of this finding, it was also necessary for the Court to determine the effect of the invalid condition on Turkey's acceptance of the European Court's jurisdiction. Turkey, like Trinidad and Tobago in the present case, argued that if the restrictions attached to its Articles 25 and 46 declarations were not recognized to be valid, the declarations should be considered null and void in their entirety.

The European Court ultimately determined that the restrictions in Turkey's declarations could be separated from the remainder of the text of the declarations, leaving intact the acceptance of the optional clauses, and therefore that Turkey's declarations under Articles 25 and 46 of the Convention constituted valid acceptances of the competence of the jurisdiction of the Commission and the Court.³⁹ In so finding, the Court emphasized the "special character of the Convention as an instrument of European public order (*ordre public*) for the protection of individual human beings", as well as the Court's mission under Article 19 of the Convention to "ensure the observance of the engagements undertaken by the High Contracting Parties."⁴⁰ The Court also considered that Turkey "must have been aware, in view of the consistent practice of Contracting Parties under Articles 25 and 46 to accept unconditionally the competence of the Commission and the Court, that the impugned restrictive clauses were of questionable validity under the Convention system and might be deemed impermissible by the Convention organs".⁴¹ Finally, the Court considered that the "special character" of the Convention regime also militated in favor of the severance of the impugned clauses, since "it is by this technique that the rights and freedoms set out in the Convention may be ensured in all areas falling within Turkey's "jurisdiction" within the meaning of Article 1 of the Convention."⁴² In light of all of these considerations, the European Court examined the text of the declarations and concluded that the restrictions *ratione loci* could be severed, leaving Turkey's acceptance of the Court's compulsory jurisdiction intact.⁴³

Based upon the above considerations, the Commission submits that the impugned terms in Trinidad and Tobago's declaration can be severed without altering the State's acceptance of the Honorable Court's compulsory jurisdiction.

³⁸ Turkey's January 22, 1990 declaration under Article 46 of the European Convention accepting the compulsory jurisdiction of the European Court provided in part as follows:

The Government of the Republic of Turkey acting in accordance with Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, hereby recognizes as compulsory *ipso facto* and without special agreement the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of the Convention that relate to the exercise of jurisdiction within the meaning of Article 1 of the Convention, *performed within the boundaries of the national territory of the Republic of Turkey*, and provided further that such matters have previously been examined by the Commission within the power conferred upon it by Turkey.³⁹ [emphasis added]

The complaint in *Loizidou* related to a violation of the European Convention alleged to have been perpetrated by Turkish soldiers in the Turkish-occupied area of northern Cyprus. Turkey therefore alleged that the restriction *ratione loci* on its acceptance of the jurisdiction precluded the European Commission and Court from entertaining the case.

³⁹ *Loizidou v. Turkey*, *supra*, paras. 97, 98.

⁴⁰ *Id.*, para. 93.

⁴¹ *Id.*, para. 95.

⁴² *Id.*, para. 96.

⁴³ *Id.*, para. 97.

VI. CONCLUSION

In summary, the Commission takes the following positions on the issues raised by the State in its preliminary objection.

With respect to the State's first ground, the Commission considers that the phrase "its jurisdiction accepted" in Article 51 of the Convention is properly interpreted as modifying the reference in Article 51 to "the Court", so as to clarify that the Commission is precluded from preparing a report under Article 51 of the Convention in those cases where the State concerned has accepted the compulsory jurisdiction of the Court and either the Commission or the Court submit the matter to the Court within the three-month period under Article 51. The phrase should not, as the State has suggested, be interpreted as modifying the reference in Article 51 to "the matter" so as to require the Honorable Court to accept jurisdiction over an application within the three-month period prescribed thereunder. In the present case, the Republic of Trinidad and Tobago had accepted the Honorable Court's compulsory jurisdiction on May 28, 1991 and remains bound by those obligations in respect of the present cases pursuant to 78(2) of the Convention, and the Commission filed the application in this case with the Court within the three month period following transmission of the Commission's report under Article 50 of the Convention to the State. Consequently, the provisions of Article 51 of the Convention present no bar to the Honorable Court's jurisdiction in the *Constantine et al.* Case.

With respect to the State's second and third grounds, the Commission submits that the two terms in the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction under Article 62 of the Convention do not preclude the Honorable Court's jurisdiction in the *Constantine et al.* Case. First, the terms, while obscure, can be interpreted conjunctively as concerning the non-self-executing nature under the State's domestic law of the Court's judgments and therefore as having a meaning that does not deprive the Court of jurisdiction to hear and determine the present Application. Alternatively, to the extent that the terms are interpreted to purport to deprive the Court of jurisdiction in this case, the terms should be considered excessively vague and ambiguous for this purpose, incompatible with Articles 62 and 75 of the Convention and its object and purpose, and therefore impermissible, and should be severed from the State's declaration of acceptance of the Honorable Court's compulsory jurisdiction.

VII. PETITION

On the basis of the foregoing analysis and conclusions, the Commission reiterates the relief sought in Part VIII of its Application in the *Constantine et al.* Case, and respectfully requests that the Honorable Court:

1. Reject the preliminary objection presented by the Republic of Trinidad and Tobago;
2. Proceed with the consideration of the instant case;

3. Convoke a hearing on the merits of the case at its earliest convenience, given that the rights of the victims continue to be prejudiced by the actions of the Republic of Trinidad and Tobago, and given the urgent nature of the case as involving the implementation of capital punishment.