

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."¹

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