

PARTIAL DISSENTING OPINION OF JUDGE CARLOS VICENTE DE ROUX-RENGIFO

I dissent from the judgment adopted by the Court as to the first, second, and fourth preliminary objections raised by the respondent State, because I consider that questions pertaining to the alleged failure to exhaust domestic remedies should be joined to the merits of the case.

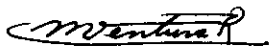
As I have argued on another occasion (*cf.* dissenting opinion in the judgment on preliminary objections in the Cantoral Benavides Case), I believe that if the controversy between the parties revolves clearly and forcefully around the alleged non-existence of legal due process or the presumed impossibility of accessing the remedies of the domestic jurisdiction, the Court should not decide, at the stage of preliminary objections, on the exhaustion of said remedies and whether there was or was not a final judgment in that respect. To the contrary, it is appropriate to join these issues to the questions on the merits, taking recourse in the provisions of Articles 46(2)(a) and 46(2)(b) of the American Convention. And among other reasons, for one reason very important for the present case: if the conditions for the nonexistence of legal due process (conditions that should be proved on the merits) are met, the complainants are excused from the obligation to exhaust domestic remedies.

Consequently, my vote is as follows:

1. To join the first, second, and fourth preliminary objections interposed by the Peruvian State to the merits.
2. To admit the third preliminary objection raised by the Peruvian State.
3. To dismiss the fifth, sixth, seventh, eighth, ninth, and tenth preliminary objections interposed by the Peruvian State.
4. To continue to hear the merits of the case, except with respect to the third objection.



Carlos Vicente de Roux-Rengifo
Judge



Manuel E. Ventura-Robles
Secretary