CHAPTER 12

Compulsory Jurisdiction of the Inter-American Court of Human Rights under the American Convention on Human Rights
1 Separate Opinion[s] of Judge A.A. Cançado Trindade in the Case[s] of Hilaire [and Benjamin and Constantine and Others] versus Trinidad and Tobago (Preliminary Objections, Judgment[s] of 01.09.2001)

1. I vote in favour of the adoption by the Inter-American Court of Human Rights of the present Judgment on Preliminary Objections in the case of Hilaire versus Trinidad and Tobago, which, in my view, represents a significant contribution of the International Law of Human Rights to the evolution of a specific aspect of contemporary International Law, namely, that pertaining to the international compulsory jurisdiction (based on the acceptance of the optional clause of compulsory jurisdiction) of an international tribunal of human rights. Given the transcendental importance of this matter, I feel obliged to present, as the juridical foundation of my position on the matter, the thoughts that I allow myself to develop in this Separate Opinion, concerning the following points: first, the prior question of the competence de la compétence (Kompetenz) of the Inter-American Court; second, the origin and the evolution of the institute of the optional clause of compulsory jurisdiction, and the examination of the international practice on the matter; third, an evaluation lex lata of the international compulsory jurisdiction; fourth, the legal effect of the precise formulation of the optional clause in Article 62 of the American Convention on Human Rights (numerus clausus); and fourth, my considerations de lege ferenda on the international compulsory jurisdiction in the framework of the American Convention.

I The Prior Question: The Compétence de la Compétence of the Inter-American Court of Human Rights

2. The starting-point of my personal reading of the meaning and extent of the present Judgment of the Inter-American Court in the case of Hilaire versus Trinidad and Tobago lies in the prior question of the inherent faculty of the Court to determine the extent of its own competence. In fact, the instruments of acceptance of the optional clause of compulsory jurisdiction of international tribunals presuppose the admission, on the part of the States which present them, of the competence of the international tribunal at issue to