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Session:	Thirty-First Session (15 - 25 October 1973)
Title/Style of Cause:	Henrique Pereira Neto and others v. Brazil
Doc. Type:	Resolution
Decided by:	President: Dr. Justino Jimenez de Aréchaga (Uruguay) Vice-President: Dr. Carlos A. Dunshee de Abranches (Brazil) Members: Professor Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Dr. Robert Woodward (United States); Dr. Genaro R. Carrio (Argentina); Dr. Andrés Aguilar (Venezuela) For health reasons, Dr. Gabino Fraga was unable to attend the Thirty-First Session.
Dated:	15 - 25 October 1973
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[1] Case 1684. By communications dated June 25 and July 24, 1970, a denunciation was made of several events occurring in Brazil in 1969 and 1970, allegedly in violation of the following rights set forth in the American Declaration of the Rights and Duties of Man: right to life, liberty, and personal security; right to protection from arbitrary arrest; right to due process of law (articles I, XXV, and XXVI, respectively).

In view of the length of the allegations, the pertinent parts of the complaints are herewith transcribed, in the order in which they were dated:

i. Communication of June 26, 1970:

"We hereby request that the Inter-American Commission on Human Rights conduct a thorough on site investigation of the charges of torture and repression in Brazil, as cited in the accompanying documentation.

"We understand such an investigation to be in accordance with the provisions of Article II, paragraph C, of the basic documents of the Inter-American Commission on Human Rights.

"On May 26, 1969, one year ago today, Father Henrique Pereira Neto was brutally murdered in Recife, Brazil, his only crime being an active concern for social justice and human freedom.

"No isolated instance, Father Pereira Neto's death must be seen as part of a wider picture of systematic terror. The crippling of a Catholic student leader, the imprisonment and beating of others, including nuns and priests, the deportation of North American and European missionaries, the baseless accusation brought against several Brazilian bishops, even the attempted suicide of a tortured Dominican friar --these are "instances" which add up to a campaign of terror against the Catholic Church."

ii. Communication of June 25, 1970:

"We respectfully request that the Inter-American Commission on Human Rights of the Organization of American States take the appropriate action to investigate these charges and to determine in accordance with Article 53 of your Regulations of May 2, 1967, whether; there have been violations of human rights in Brazil.

"The detention of Murilo Pinto da Silva, Mauricio Vieira de Paiva, Afonso Celso Lana Leite, Jorge Redo Nahas, Maria Jose Carvalho Nahas, Nilo Sergio Menezas Macedo, and Julio Antonio

Betancourt Almeida took place on January 29, 1969, about 4:00 a.m., the neighborhood of Sao Geraldo in the city of Belo Horizonte (Mines Gerais). On being taken prisoner, Mauricio was hit by two police bullets.

"All the prisoners were immediately put up against the back wall of a house, beaten severely, and prepared to be shot by the police, who exultantly set up their machine guns. They were stopped by Luis Soaras da Rocha, chief of the patrol, who feared the consequences such an act might provoke.

"Frustrated in their shooting attempt, the police began to beat the prisoners more violently with their machine gun clips. All of them were beaten, receiving deep scalp wounds, including Mauricio, who, despite the fact that he could no longer stand up, had his head beaten so badly that later, in the emergency hospital, doctors thought he had been wounded in the head by a bullet. Still in back of the building in Rua Itacarambu, the prisoners were shackled and tied with wire about the wrists and neck. Some of the police tried to strangle them with these wires.

"The prisoners were then taken to the Political Police headquarters, five of them in the trunk of a car. On arrival, they were again beaten with fists and machine gun clips and kicked. No longer able to withstand the beatings--he had been bleeding for more than an hour--Mauricio fell to the ground, still shackled and tied with wires. He was dragged away from the others and lay where he was thrown on the ground, being kicked from time to time by policemen. It was not until 8:00 a.m., four hours after he had been shot, that they decided to take him to the emergency hospital.

"The policemen who participated in the arrest, imprisonment, and torture were: Luiz Soares da Rocha (superintendent of police for the State of Minas Gerais), deputies Lara Rezende, Mario Candido da Rocha (from the Petty Larceny and Robberies Division in Belo Horizonte), Jose Pereira, Haydn Saraiva, and Jose Reis (also from Larceny and Robberies), along with other policemen and civil guardsmen.

The beating began when the prisoners arrived and continued for the whole time they remained there. After they arrived they were made to stand in a cell, facing the wall, where they remained without food or water until the following morning. DVS police, civil guardsmen, and military police entered frequently to club, kick, and beat them, leaving them lacerated from head to foot. Nearly all of them had to have stitches in their heads. In addition, they were submitted to every sort of psychological torture, threatened constantly with being killed.

"Mauricio Vieira de Paiva, because he had been operated on, gave his deposition in the emergency hospital. For that reason he was not beaten during this first interrogation, but he was threatened with being killed and with being taken that same day to DVS, where he 'would be put in the pau-de-arara and clubbed,' in the words of the DVS notary public, Ariosvaldo Hora, who interrogated him in the presence of Fabio Bandeira.

"Angelo Pezzuti da Silva and Erwin Rezende Duarte, both taken prisoner on the morning of January 15, 1969, also passed through the DVS, where they were clubbed and kicked by the deputy Thacir Sia. Jose Raimundo de Oliveira was also beaten in the DVS and suspended several times by a rope around his neck.

"Several days after Mauricio had arrived at the emergency hospital, Antonio Jose de Oliveira was admitted with extremely serious bullet wounds. He was thrown into a DVS cell for more than two hours 'waiting to die,' according to the police of that delegation, all the while being beaten. Two days later Delio Fantini arrived at the emergency hospital, with a leg and an arm broken in several places, open sores on his body, and several cuts on his head. He had been cruelly mistreated in the DVS, where he shared a cell with Julio Antonio Betancourt de Almeida, who saw him led out by guards after being

tortured. According to Julio Antonio, Delio Fantini had had 'teeth pulled out, an arm broken and bent to one side, and his toes hammered; his legs were very swollen, he had two deep cuts in his head, and his whole body was scarred from being clubbed and from cigarette burns.' He was in such a serious state, according to Mauricio, that the people working in the emergency hospital (doctors, nurses, etc.) were horrified at the savagery of the police.

"Irahy Campos, 17 days after having been operated on for a ruptured liver (he had been in a bus accident in which thirty persons were killed), and with a postoperative abscess, was thrown into a DVS cell, where he slept on the floor and had no medical care. It was not until the director of the emergency hospital intervened, saying that his life was in danger, that he was given a bed, blanket, and medical attention.

"DVS torturers: Thacir Menezes Sia, Ariosvaldo Hora, Seoralick, Jose do Carmo, Joel, Corporal Ferreira, Marcio, Jose Aparecido, Anesio, Geraldo, Vander, Bicalho.

"The first interrogations were carried out in the Larceny and Robberies Division of Belo Horizonte. The inquiry was directed by Luiz Soares da Rocha. Under his orders and those of the deputies Lana Rezende and Mario Candido da Rocha, the prisoners were barbarously tortured.

"Angelo Pezzuti da Silva and Erwin Rezende Duarte were taken there twice during the last two weeks of January 1969. Erwin was forced to lie naked on the floor, where he was beaten and kicked all over by Lara Rezende, Mario Candido da Rocha, police officers Rodrigo and Saraiva, and others. Army Captain Gomes Carneiro, who was also present, beat him and gave him the 'telephone' treatment (clapping both hands at once over the victim's ears). On another occasion, electric shocks were applied to him and he was whipped, besides being threatened with death, with the arrest of members of his family, etc. Apollo Pezzuti da Silva was a 'pau-beaten' by Jose Pereira. While Pereira applied 'hydraulics' (pouring water in the victim's nostrils), Jose Maria beat him violently on the soles of his feet with a rubber paddle, and Subinspector Cacildos, together with the deputy Mario Candido da Rocha, applied electric shocks to him with a portable generator.

"In February 1969, the other prisoners who were in either the DVS or the Magalhaes Pinto Penal Colony began to be interrogated in the Larceny Division. "Nilo Sergio Reneges Macedo was whipped and beaten for several days by deputies Lara Rezende and Mario Rocha and by inspectors Jose Pereira, Haydn Saraiva, and others. He was stripped nude and kept for three days and nights Saraiva, and others. He was stripped nude and kept for three days and nights in a filthy cell filled with enormous rats which kept him from sleeping at night. (Angelo and Erwin were in another cell.) Finally, the above-mentioned policemen hanged Nilo Sergio in the 'pau-de-arara,' beat the soles of his feet with rubber paddles, applied electric shocks to him, and suffocated him with a water-soaked sponge.

"Jorge Raimundo Nahas was tortured in this station by Mario Candido da Rocha, Jose Pereira, Saraiva, Jose Maria, and Pionoro, who used electric shocks and paddles. He was left with his hands and fingernails split open and scars all over his body.

"Pedro Paulo Bretas was tortured in January 1969 by deputies Lara Rezende and Mario Rocha and by inspectors Adao, Haydn Saraiva, Jose Pereira, and others. He was hung in the 'pau-de-arara' and subjected to electric shocks and paddling. He was forced to remain in a rat-infested cell for three days and nights.

"In the Larceny and Robberies Division adolescents between twelve and fifteen years of age --common prisoners-- were tortured in the presence of Angelo Pezzuti da Silva, Erwin Rezende Duarte, Pedro Paulo Bretas, and Julio Antonio Betancourt de Almeida to induce them to talk.

"After being taken there, Julio Antonio was suspended, nude in a cell where the sanitary facilities were out of order, the air was virtually impossible to breathe, and there were dozens of enormous rats. During the whole time he remained there he could hear the screams of people being tortured. He saw some 15 (fifteen) or 20 (twenty) persons in a cell measuring two meters by two meters.

"In September 1969 the following prisoners were submitted to tortures in the PE: Murilo Pinto da Silva, tortured with electric shocks, slaps, and kicking for four uninterrupted hours. Tortures: Major Enio de Albuquerque de Lacerda (PE commander), Captain Joao Luis (CIG cavalry), Lieutenant Hamilton (PE-Guanabara), Sergeant Oliveira, Sergeant Montes, in the presence of Sergeant Rangel and Lieutenant-Colonel Ary (in charge of the inquiry). During the torture, Lieutenant Haylton brought a child

approximately eight years of age into the room. The torturers stopped for a moment, but Lieutenant Haulton said: 'No problem. Go ahead. He (referring to the child) needs to get used to this.'

"Angelo Pezzuti da Silva, tortured with electric shocks and wooden paddles. At a certain point in the tortures Angelo could take no more and threw himself into a glass window, cutting himself in several places and losing consciousness. He was taken to the military hospital, where he received several stitches on his back and on one arm. His admittance to the hospital was registered. He was tortured by corporals Mendonca and Povoreli on drones from Lieutenant Haylton.

"Afonso Celso Lana Leite, tortured with electric shocks, slaps, and 'telephones' for several hours by Sergeant Andrade, who, even after the interrogation was over, continued giving him shocks to watch the 'interesting' contortions which the shocks produced in Afonso Celso's body..

"Julio Antonio Betancourt de Almeida was hung in the 'pau-de-arara' and subjected to shocks, 'telephones,' and beatings with paddles. A police club was forced into his anus. He was tortured by Captain Guimaraes, Sergeant Andrade, Corporal Mendonca, Corporal Povoreli, and a private named Marcelino.

"Marcos Aurelio, a journalist for the newspaper Correio da Manha, received shocks and was beaten and burned with cigarette butts. The torturers wanted him to confess to assaulting a banking house in Bonsucesso. Since he was the English teacher of the wife of the president of Light Power (the electric company), he hinted that she had participated in the assault in order to stop the torture and be taken to the residence of the president of Light in order to reveal what was happening to him (which in fact is what happened). He was also forced to denounce Almir and Walmir as being guilty of revolutionary activities.

"May-June 1969

"Julio, a medical student from Guanabara. He was imprisoned because his address was found on the person of a student arrested in Belo Horizonte (he had given his address to the student during an excursion that the latter had made with other friends to Guanabara). He was tortured with shocks and beaten with paddles.

"Roil Noronha Soares, second-class sergeant of the airborne troops. After having been tortured with shocks, etc., he was thrown into a small cell where he spent more than 100 days.

"Severino Beatriz da Silva, ex-president of the autonomous chauffeurs' union of Guanabara. He is more than 50 years old. He was tortured during more than 30 days, as a result of which he lost blood for a long time and had to have an eye operation.

"Walter Fernandes de Araujo, an employee with the urban transit company. He was subjected to shocks and beaten barbarously all over his body. He had to remain in a cell, naked for more than 120 days.

"Sergio Lara, a physicist at the Institute of Nuclear Research. He was beaten with paddles and made to confess to assaulting a police station, which he had not done.

"Marco Antonio Azevedo Veiyer, was beaten for more than 14 hours at the Political Police head-quarters in Guanabara. A piece of wood was pushed into his anus. He was kicked and beaten with fists and handcuffs. He was hit in the face with a towel and made to stand holding weights until he fainted. This happened on May 28, 1969. At the end of July he was taken to PE, where he was subjected to shocks (anus, feet, hands, breast) and kicked, beaten with fists, paddled, and had the 'telephone' treatment and finger irons applied. For 30 days he slept on the ground. In October 1969, when the prisoners Angelo, Murilo, Nilo, Bretas, Mauricio, Mattos, Irany, and Afonso Celso were there, he was once again subjected to 'pau-de-arara,' shocks, paddling, etc.

"June-July 1969

"Jose Cosme Alves Neto, director of the film library of the Museum of Modern Art. He was arrested for having harbored in his home a young woman, Lotus, his fiancée, who was being sought as the sister-in-law of Juarez Guimaraes, held to be subversive. He spent a week without sleep (they threw water in his cell every hour during the night). During the day he was made to run in circles. He received shocks, slaps, and blows with paddles all over his body. Major Lacerda, the PE commander, wanted to tear a confession out of him no matter what it took. Since he had gone to a film festival in Peru as representative of the film library, they alleged that he had been with Peruvian guerrillas. He spent more than 60 days in the cells, dressed only in shorts. Since nothing had been proven, or 'torn out of him;' he was sent to Cenimar

(Naval Secret Service), where, they say, the methods are better 'perfected.'

"The PE torturers: Major Lacerda, Captain Joao Luis, Lieutenant Haylton, Captain Guimaraes, Sergeant Oliveira, Sergeant Andrade, Sergeant Rangel, Sergeant Rossoni, Sergeant Montes, Corporal Povoreli, Corporal Mendonca, Corporal Gilberto, Private Marcolino, Private Rosa. Nearly all of them are members of the Death Squadron and have the shield of that organization on their cars, king rings, etc.

"We are now in the Linhares Regional Penitentiary and, despite having been in jail for nearly a year, we have nothing on our records which would indicate misconduct (the director of this penitentiary himself praised our conduct). We are still subjected to many absurd restrictions which characterize a prison regime from which we are supposedly exempt under the National Security Law. We are shut into individual cells 19 hours a day, forbidden to have matches, lighters, newspapers, magazines, or radios in our cells. We cannot receive books which are not didactic. Visits are hampered by endless restrictions, and it is impossible to have private contact with our lawyers, etc.

"Loreta Kieder Valadares, a Brazilian, 26 years of age, born in Porto Alegre, on May 1, 1943, married to Carlos Antonio Melgaco Valadares. She is a graduate of University of Bahia.

"She was arrested on the morning of June 16, 1969, at the home of a friend, Miss Vera Magalhaes, where she had spent the night. The house is located on Rua Estavao Pinto, in Belo Horizonte. The arresting squad was led by Captain Portela (army) and included about ten men, all carrying machine guns. Also arrested were Vera Magalhaes, Luiz Raul Machado, and another man whose name cannot be recalled. They were all dragged from their beds, the two men being brutally beaten in the process, and taken to Central Police Headquarters (G2 in Praca da Libertade), including the claimant, whose name was not known to the police at that time.

"On June 29 she was taken along with others to the Estavao Pinto Women's Prison, where she was locked up for 45 days. Incommunicado, in a cell during those 45 days, she was required to answer questions put by Lieutenant-Colonel Goes every night from 7:00 p.m. until 8:00 a.m., for 30 days. On July 15, her sister-in-law, Marilene Melgaco Veladares, and her father-in-law, Irineu Valadares de Fonseca, were arrested. The latter, an old man, was held in prison for approximately 15 days and deprived of his eyeglasses, without which he could hardly see.

"Gisela Maria Cosenca Avelar, is a Brazilian, married, 25 years old, December 12, 1943, in Paraguassu, Minas Gerais, who lives at Rua Leopoldina 196, Barrio San Antonio, in Belo Horizonte. She is a social worker, graduated in 1967 from the School of Social Service of Catholic University in Minas Gerais. She has one daughter, born February 27, 1969.

"She was arrested on June 17, 1969, taken to the Department of Inspection, where dozens of persons were being held prisoner. During the 10 days that she stayed in the Department, she was subjected to enormous psychological pressure by the interrogators (army officers and military police from Minas Gerais), who made threats against her then three-month-old daughter. The interrogators said they would go get the baby. They described to her what they would do to it in her presence--leave it without food, put in a tub of cold water, etc.

"On June 28, together with other prisoners, she was transferred to the Estavao Pinto Women's Prison and put incommunicado in cell No. 5, in which she stayed for two months. The cell had a 100-watt bulb, giving off a dazzling light in such a small cubicle with one tiny opening. On August 23, at 5 o'clock she was taken before Lieutenant-Colonel Valdir Teixeira Goes, in the 12th Infantry Regiment of the 4th Military District, where Captain Lacerda and prisoners Delcy Goncalves de Paula, Laudelina Maria Carneiro, and Loreta Kieder Valadares were also present. Lieutenant-Colonel Goes informed her that she 'would be handed over to torturers Captain Jesu and Sergeant Leo, both of the Military Police, who would beat her, hang her in the pau-de-arara, have fun with her body, and finally violate her.'

"She was subjected to the following physical, psychological, and sexual tortures:

"Beatings - Slaps all over her body, karate blows in the stomach and neck, blows with fists, violent pressure to her neck and ears, pinching and twisting of her nipples, blows with police clubs.

"Telephones - Strong, simultaneous slaps on the ears, causing her to completely lose her senses.

"Electric Shocks - She was put on a table and had the wires from a small crank generator tied to her toes. One of the policemen held her down on the table, another held a gag over her mouth, and the third turned

the crank, producing electric discharges. They stopped this treatment only when they saw she was about to become unconscious without having been able to emit a single sound. Her legs and arms were twisted and rigid, and her body was trembling with involuntary spasms.

"Cans - She was made to stand barefoot for long periods of time on top of one or two opened sausage cans of various heights. Shortly, the cans began to cut into the soles of her feet, the muscles of the legs began to cramp, causing great pain. When she lost balance and fell, she was beaten and put back into the same position. When she was no longer able to stand alone on the cans, she was held up by Sergeant Leo, who, at the same time, twisted her nipples and increased both her physical pain and moral torture by lasciviously fondling all parts of her body.

"Laudelina Maria Carneiro, a Brazilian, 22 years old, unmarried, a graduate of the Social Service School of the Catholic University of Sao Paulo.

"She was arrested on June 15, 1969, at 5:50 p.m., in her home at Rua Melium 479, where she lived with her friend Maria do Rosario da Cunha Peixoto. Her home was broken into by a police patrol headed by Captain Portela, of the Army.

"In the midst of shouts and vulgar comments, she was made to disrobe completely and taken into the kitchen. For about an hour Sergeant Leo Machado brutally beat her with his club and with fist blows to the stomach, abdomen, kidneys, and buttocks, in addition to violent kicks on the ankles, Captain Pedro Ivo then took her to the bedroom, where he beat her in the face until her lips bled. Because of the violence of the blows, the victim fell several times and was made to get upon by the captain, who extinguished a cigarette and a match on her bare stomach.

"That same day, at 11:30 p.m., she was taken to G2 Headquarters in Praca da Libertade, where she was made to disrobe by Captain Portela who, together with another officer (whose name is not known), tried to make her do a striptease. On that same night, Captain Portela subjected her to electric shocks, applying about five electric discharges with a crank generator which had 'US Army' inscribed on it. As a result of the torture she suffered, her ankles were red and swollen, producing such sharp pain that it was practically impossible for her to walk for a week.

"Maria do Rosario de Cunha Peixoto, a Brazilian, unmarried, 26 years old, born May 16, 1943, in Almenaba, Municipality of Jequetinhonha, Minas Gerais. She is a primary school teacher, with advanced study in history at the School of Philosophy of Catholic University in Minas Gerais.

"She was taken prisoner on June 15, 1969, by Sergeant Leo Machado of the PM, at 8:00 p.m., upon arriving at her home, where Laudelina Maria Carneiro was already under arrest. Present were Major Rubens and Lieutenant Padua. They were soon joined by Captain Portela, of the army (whom the others addressed as commander) and by Captain Pedro Ivo of PM, who made her take off her clothes and perform a striptease in front of Major Rubens and Sergeant Leo. When she refused, she had her clothing ripped off by Captain Pedro Ivo, being scratched in the process, while the others shouted vulgarities. After putting her clothes on again, she was brutally beaten by Captain Portela, Captain Ivo, and Sergeant Leo, who took turns giving her karate blows in the stomach and chest, slapping her on the face, applying 'telephones,' and pinching her nipples, all the while continuing to insult her. Meanwhile, in the bedroom, Laudelina Maria Carneiro was also being beaten. At 10:30 p.m., another prisoner arrived at her house. Her name was Delcy Goncalves de Paula, and she was brought by PM policemen and beaten by Captains Ivo and Portela.

"Delcy Goncalves de Paula, a Brazilian, unmarried, 26 years old, born in Pote, Minas Gerais, on November 4, 1943. She is primary school teacher and a student of the social sciences at the School of Philosophy of the Federal University of Minas Gerais.

"She was arrested on the street on June 14, 1969, and taken to the Estevao Pinto Prison. On June 15, 1969, at approximately 8:00 p.m., she was taken to an unknown house in the Renascenca neighborhood in Belo Horizonte, where she was beaten after having her clothes completely torn off by Captain Pedro Ivo of PM. The torture consisted of karate blows to the neck, stomach, and kidneys, slaps in the face, and kicking. When she was threatened with having her breasts burned with a candle, she began screaming so loud that Captain Portela, fearing they would be heard by the neighbors, ordered the torture interrupted. In that house she witnessed the beating of two young women whose names were shouted by their torturers:

Laudelina and Maria do Rosario. The torturers present in the house were: Captain Portela (Army), Captain Pedro Ivo (PM), Lieutenant Padua (PM), Sergeant Leo (PM), Major Rubens (PM), and another, unidentified man.

iii. Communication of July 24, 1970:

"Gravely concerned by allegations of systematic ill treatment of prisoners in Brazil. Have issued detailed statement of allegations which have been denied by Brazil Government who state there are no political prisoners in Brazil. Respectfully request Inter-American Commission on Human Rights initiate full investigation into treatment of prisoners in Brazil to ensure the United Nations standard minimum prison rules at least are applied.

"There were at least 12,000 political prisoners in Brazil, in July 1970. General Garrastazu Medici, President of the Republic, held a press conference in May 1970 and declared that there were no political prisoners in Brazil.

"The techniques of torture are numerous and varied. Except for the interior states (Goias, Mato Grosso, the Northeast Sertao, the Amazon), where police brutality is reported in numerous documents, torture follows scientific principles in most camps, barracks, and prisons on the coast. Since January 1970, when the first European press campaign warned the Brazilian Government, documents have indicated the presence of army doctors in the torture chambers. These doctors regularly attend interrogations conducted by officers and petty officers from the Naval Secret Service (CENIMAR). Among other teams of repression, their presence is sporadic. According to the prisoners themselves, the task of these doctors seems to be twofold: By administering medicines and injections, they deprive the prisoner of the benefit of unconsciousness and allow the torturers to go on for several consecutive hours. On the other hand, they try to see that the captive, who later on may appear before a military or even civil judge, does not receive wounds which are too apparent. In this way the 40 persons freed in exchange for the release of the West German Ambassador Von Hollebed by the 'guerrilleros' who arrived in Algiers in June 1970 carried few signs of their ill treatment. Yet 34 of them had been tortured, some on several occasions, by different services and during periods of up to 24 consecutive hours (in the case of Mr. Apalhonio de Carvalho, for instance). Only one young girl had the lower part of her body (hips and legs) completely paralyzed. Others bore only traces of burns (on arms, nose, ears, genital organs) from electric shocks.

"The most common are the following:

1. Water torture: The head of the prisoner is repeatedly and for varying periods (and always to the extreme limit of suffocation) submersed in a bucket of dirty water or a bucket filled with urine or excrement.

2. Electric tortures: The captive is hung by his feet and arms (or more generally by his knees, with hands tied to the feet, in a fetal position) from an iron bar. Electrodes are then applied to his genital organs, ears, nostrils, breasts, or the underside of the eyelids. Electric shocks, always with increasing intensity, are then passed through the victim's body. Army field telephones or current drawn from the supply to the special chamber are used for the job. In the last phase of the treatment the body is showered with cold water to increase the conductivity of the shocks.

3. Blows: A current technique is to strike the ears of the captive with both hands open. This causes the eardrums to rupture. Another method is to strike the genital organs and other delicate parts of the body with iron or lead clubs.

4. Rape of women prisoners is frequently committed.

5. Other widespread tortures are of a moral kind. Frequently a child is tortured in front of its mother; husbands and wives are tortured in the same room at the same time; sham executions and methodical deprivation of sleep or water often occur.

6. In numerous barrack prisons, as well as city police stations and camps, special cells consisting of a concrete cylinder, 5' x 5', have been arranged. They are fitted with a single air vent and often permanently lit by a strong bulb; there the prisoner spends sometimes days and weeks in a curled up position, close to suffocation. Some accounts indicate that cases of mental disturbance are frequent among

the prisoners.

7. Another type of torture, which recurs in the accounts of survivors and which is partly confirmed by expert medical evidence, seems not to result from systematic instructions given to the torturers but rather from the individual initiative of one or other agents of repression. Thus the military prison at Belo Horizonte has its own police dogs, specially trained to attack the delicate parts of the human body. These dogs are sometimes unleashed on prisoners (men or women) in the yard of the place of detention. On the premises of the DOPS of Sao Paulo, notably the barracks in General Osorio Square, special practices such as the pulling out of fingernails or toenails, or the crushing of testicles, are among commonly applied measures. Fingernails and toenails, as well as eyelids, are also torn out by some groups of officers and noncommissioned officers of the 1st army stationed in the State of Guanabara. In Sao Paula, Curitiba, and Juiz de Fora, captives have been burnt with oxyacetylene. Others have had white-hot needles stuck under their nails, in their joints, or in their wrists and knees."

[2] Pursuant to the procedures set forth in its Regulations (articles 42 and 44), the Commission, by a note dated September 18, 1970, requested the Government of Brazil to furnish the pertinent information. Moreover, at its twenty-fourth Session (October 1970) the Commission, in light of the seriousness and urgency of the denunciations, decided to repeat the September 18 request for information from that government; to appoint Dr. Durward V. Sandifer as rapporteur for this case (together with other cases regarding the same country); and, in application of Article 11.c of its Statute and Article 50 of its Regulations, to request the Government of Brazil to consent to a visit to that country by the rapporteur, accompanied by the Executive Secretary of the Commission, in order to gather the information necessary to the performance of his duties. To that end, a communication was sent to the Government of Brazil on October 26, 1970, and again on December 10, 1970.

[3] By a note dated January 11, 1971 (AAA/1/602.60(20), the Government of Brazil replied to the aforesaid communications. In summary, the reply dealt with the following points:

1. In suppressing both political crimes and common crimes with political pretexts --such as those that, in its consideration of terrorism, the Organization of American States classified as common crimes against humanity-- the Government of Brazil has taken into account the precept expressed in Article 10 of the Statute of the Inter-American Commission on Human Rights: "... the rights of each man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy."

2. In defense of that principle and out of respect for human rights, the Government of Brazil "... did not hesitate to put aside serious and compelling considerations affecting the country's national security by freeing offenders whom the Organization of American States itself has classified as perpetrators of crimes against humanity. Moreover, the Government of Brazil is now willing to free seventy offenders in order to save the life of the Swiss Ambassador, the innocent victim of kidnappers who stop at no crime in order to achieve their loathsome objectifies."

3. In this regard, it wished to call attention "to the irrefutable fact that, in exchange for the freedom of the three diplomats kidnapped one after the other in Brazil, a total of sixty offenders have been set free and sent abroad, all of them having been declared guilty (indeed, some even boasting of their guilt) of the most abhorrent and repugnant attacks against that which is most inviolate in human dignity and human rights, and that all those offenders appeared in public in a completely normal state of health."

In the opinion of the Government of Brazil, this fact constituted the most eloquent public proof of the falsehood and perfidy of the charges leveled against Brazil; moreover, the Brazilian authorities have repeatedly declared their rejection and condemnation of any violation of human rights in Brazil.

4. To achieve their objectives, the subversive groups have organized an urban guerrilla force and have not hesitated to resort to all kinds of crime and violence, such as:

- Assaults on 370 banks, with the theft of 12 million cruzeiros (US\$2.5 million).
- Assaults on individuals and business establishments, with the theft of 25 million cruzeiros (US\$5

million).

- Assassination of 78 persons and wounding of 196, including members of the police and armed forces.

- Four hundred forty-five violent acts of various kinds, such as explosions in motion picture theaters, factories, the Santos gas works (245 injured), newspaper offices, airports (an assassination attempt against President Costa e Silva), schools, the Peace Corps, consulates and embassies, public establishments, police headquarters, rail installations, police vehicles, libraries, television stations, and business and other establishments.

- Kidnapping of three ambassadors (United States, Germany, and Switzerland) and one consul (Japan).

6. The energetic counteraction taken by the Government of Brazil was commensurate with the measures adopted by the terrorists, but was kept within the limits of the laws in effect in the country. There were no exceptional cases. Matters were handled in "police-military investigations because they were within the jurisdiction of military justice, which is part of the judicial branch. All phases of the prosecution and trial were public.

7. Those who were arrested and convicted were treated humanely. Besides following the regular prison regime, they wore no uniforms, had access to radio and television, received visits from their families, and were given medical and dental care.

8. In keeping with the policy of the Government of Brazil with regard to human rights, Law No. 4319 of 1964 created the Council for the Protection of Human Rights, which was set up in 1968 and whose membership and activities sought to reflect the principal social forces concerned with respect for human dignity, including the Minister of Justice, the majority and minority leaders of the Senate and Chamber of Deputies, the president of the Brazilian Press Association, the president of the Bar Association, and other persons not connected with the government.

9. As for the Commission's request that the Government of Brazil authorize the visit of Dr. Durward V. Sandifer to that country in order to obtain firsthand information on communications 1686 and 1684, the Government of Brazil expressed "its great surprise at such a request," since no reason had been given for such a decision nor had it been made clear why, before the end of the period in which pertinent information on those communications was to be provided, the Commission "suddenly and without awaiting the end of the regulatory periods, wished to send a representative to Brazilian territory."

10. The Government of Brazil therefore fails to understand why the procedure set forth in the last part of Article 50 of the Regulations of the Commission is being invoked, since "simple fact" that the periods for the requests for information have not yet run out demonstrates that the Inter-American Commission on Human Rights has not abided by Resolution XXII of the Second Special Inter-American Conference, which directs that the Commission, in the exercise of its assigned powers, shall verify whether the internal legal procedures and remedies of each member state have been duly applied and exhausted. This provision has been incorporated into Article 54 of the Regulations of the Commission."

11. The Government of Brazil considers that the sending of an observer constitutes an "exceptional measure that should be applied only when the commission has no other means of verifying the facts."

12. Therefore, the measure of sending an observer should be both necessary and timely; and the measure sought by the Commission was not necessary, in that other means of verifying the facts had not been exhausted, or timely, in that "no case of violation of human rights had occurred in Brazil."

13. The Commission has not complied with articles 38 (especially paragraph b), 39 (paragraph b), 50, 51, and 54 of its Regulations, according to which the resolutions adopted by the Commission should be upheld and implemented to the maximum, and all the members were present at the meeting held last October 15.

14. On the basis of the foregoing, the Government of Brazil replied *de merito* to communications 1683 and 1684, attaching documentation as an integral part of its reply.

The documentation referred to includes the following: Part One, subdivided into chapters on terrorist activities in Brazil (Chapter I); the absence of political prisoners in Brazil (Chapter II); genocide against Indians (Chapter III); religious persecution (Chapter IV); and a chapter on publications issued in France

and other countries on the question of torture of political prisoners. Part Two, comprising 20 chapters, contains information furnished by the government on denunciations of an individual nature submitted to the Commission. This information is supplemented by a section containing final considerations and other documentation on the cases denounced.

[4] The Chairman of the Commission, Dr. Justino Jimenez de Arechaga, by a note to the Government of Brazil dated January 26, 1971, acknowledged receipt of the communication. While thanking that government for having sent the information and documentation, the Chairman stated that he deeply deplored that government's refusal to allow Dr. Durward V. Sandifer, rapporteur for communications 1683 and 1684, to visit Brazilian territory in order to carry out his assignment from the Commission. He also stated that the Commission, in accordance with established practice and in strict compliance with its regulatory standards, requests consent to visit the territory of an American state solely on the basis of the seriousness and urgency of the events as set forth in the denunciations, without this in any way constituting pre-judgment on the part of the Commission.

[5] In carrying out his assignment from the Commission, the rapporteur of communications 1683 and 1684, Dr. Durward V. Sandifer, prepared a report containing the conclusions and recommendations he considered appropriate (doc.7-25, res.).

The report (cited earlier in connection with case 1683) dealt with the points summarized below:

a. The note of January 11, 1971, from the Government of Brazil contained several statements that should not go unanswered, for otherwise a precedent might be established that could weaken the powers of the Commission insofar as application of those powers under Article 11.c of its Statute is concerned.

b. That note also asserts that "the simple fact that the periods for the requests for information have not yet run out demonstrates that the Inter-American Commission on Human Rights has not abided by Resolution XXII of the Second Special Inter-American Conference, which directs that the Commission, in the exercise of its assigned powers, shall verify whether the internal legal procedures and remedies of each member state have been duly applied and exhausted. This provision has been incorporated into Article 54 of the Regulations of the Commission."

c. In the rapporteur's opinion, Article 50 of the Regulations sets forth a number of methods by which the Commission is empowered to gather evidence or "learn the facts," and observation in loco is one of the ways.

d. Moreover, Article 50 grants the Commission discretion in the manner of collecting information necessary to the examination of denunciations submitted to it; accordingly, the measure contemplated in Article 50, observation in loco, is not exceptional, for the Regulations do not provide for such measures, it being possible to consider observation in loco as exceptional "only in that it is not used as often as some of the other methods, since it is generally more costly and requires the consent of the government concerned."

e. The interpretation of the Government of Brazil with regard to Article 51 of the Regulations of the Commission was not in keeping with the spirit of that article, because the history of the Commission shows that "it has sent rapporteurs on various occasions, with the consent of the government concerned, without awaiting the expiration of the period mentioned in Article 51."

f. The rapporteur did not share the objection of the Government of Brazil to the effect that the Commission had failed to comply with Resolution XXII of the Second Special Inter-American Conference and Article 54 of its Regulations, because "one can imagine only with difficulty a person isolated in jail and claiming to be the victim of tortures and yet having complete freedom to inform the Commission of his lot." Moreover, observation in loco provides a means of verifying whether the internal procedures and remedies have been duly applied and exhausted,.. As in the case of Article 50, there is nothing in the Regulations to link Article 54 to Article 51.

g. The documentation sent by the Government of Brazil, as part of its note of January 11, 1971, for

the most part ignored the basic point of the denunciations, namely, the torture of many political prisoners by elements of the Brazilian police and army.

h. With regard to the cases communicated to the Government of Brazil by a note dated September 18, 1970, that government's reply, except for comments on the good health of the prisoners, furnished no information on the alleged acts of torture denounced to the Commission; furthermore, that reply made only passing reference to the judicial procedures followed in such cases.

i. Some of the cases that had been communicated to the Government of Brazil, with a request for information, mentioned that persons who had received criminal sentences had been tried in military tribunals instead of ordinary courts.

j. The interpretation of the Government of Brazil with regard to the application of articles 38 and 39 of the Regulations of the Commission was unacceptable, inasmuch as the denunciations submitted to the Commission (1683 and 1664)--the pertinent parts of which had been communicated to the government, with a request for information, in accordance with articles 42 and 44 of the Regulations--contained the names of the victims and an account of the acts denounced, and met the other requirements set forth in those articles.

On the basis of the conclusions contained in his report, the rapporteur recommended that the Commission:

- i) request the Government of Brazil to furnish all available information on the alleged torture of the persons mentioned in the denunciations communicated to that government in Case 1684; and
- ii) forward to the claimants the pertinent parts of the reply from the Government of Brazil, so they might respond to them.

[6] The Commission began its examination of Case 1684 at its Twenty-fifth Session (March 1971), together with the information provided by the Government of Brazil and the report prepared by the rapporteur.

In the course of that examination the Commission considered the observations made by Dr. Carlos A. Dunshee de Abranches, which can be summarized as follows:

- a) There was no justification for an overall examination of and a decision on claims dealing with a number of different events involving various persons and occurring at different times and in different places, as in Case 1684;
- b) Each event should be examined separately so as to avoid generalizations and, within each individual case in communication 1684, each subject should be examined separately so that separate decisions can be reached; and
- c) The Commission should consider as a prior question compliance with Article 54 of its Regulations, to the effect that it shall verify, as a condition precedent, whether the internal legal procedure and remedies of each member state have been duly applied and exhausted.

By a majority vote, with Dr. Carlos A. Dunshee de Abranches casting a negative vote, the Commission approved the recommendations contained in the report of the rapporteur (doc.7-25), and at the same session, decided to:

- a. Request the Government of Brazil to furnish additional information on the acts of torture to which some of the persons mentioned in case 1684 had allegedly been subjected, and
- b. Forward to the claimants the pertinent parts of the reply of January 11, 1971, from the Government of Brazil.

[7] Accordingly, a note dated March 12, 1971, was sent to the Government of Brazil and a communication dated April 8, 1971, was sent to the claimants.

[8] By a note dated August 27, 1971 (No. 7), the Government of Brazil, in light of paragraph 2 of Article 51 of the Regulations of the Commission, requested a six-month extension of time for furnishing the information requested by the Commission.

[9] That request was considered at the Twenty-sixth Session of the Commission (October-November 1971), during which the rapporteur presented a "Second Report on Case 1684" (doc.13-26), recommending that the extension be granted.

During that session Dr. Carlos A. Dunshee de Abranches, after reiterating the observations on the procedure followed by the Commission in this case, proposed that the Government of Brazil be granted an extension of only three months, since that government had had sufficient time, from the date on which the Commission had requested additional information (March 12, 1971), to gather that information. Dr. Dunshee de Abranches presented a reasoned vote base on those points.

At that same session the Commission, in accordance with the rapporteur's recommendation as modified, by Dr. Dunshee de Abranches' proposal, decided to grant the Government of Brazil an extension until December 28, 1971, for furnishing the information requested, "so that the rapporteur for Case 1684 might have the time necessary for preparing his report and submitting it to the Commission for consideration at its Twenty-seventh Session."

[10] This decision was communicated to the Government of Brazil by a note dated November 17, 1971.

[11] To a note dated December 28, 1971, handed delivered to the Secretariat on January 8, 1972, the Government of Brazil attached an introduction and six volumes of documents on the case: two volumes referring to the exhaustion of internal remedies regarding the same persons on whom the government had furnished information earlier, and four volumes containing the same kind of specific information regarding persons, on whom such information had not been provided earlier.

[12] By a communication dated December 6, 1971, the claimants sent additional information on the events denounced and commented on the information supplied by the Government of Brazil.

[13] The Commission received a petition dated February 15, 1972, and signed by more than 150 persons from 13 countries, of which 9 are member states of the Organization of American States, urging the Inter-American Commission on Human Rights to insist that an observation in loco on the status of human rights in Brazil be conducted by an international agency.

[14] At its Twenty-seventh Session (February-March 1972), the Commission proceeded with its examination of Case 1684, taking into Account the additional material furnished by the government and by the claimants.

The rapporteur of the case presented a third report (doc.4-27) in which, after pointing out that this case constituted "one of the most extensive and complex cases submitted to the Commissions judging by the number of persons and organizations making claims the number of alleged victims of violations of human rights, and the documentation received," he offered several recommendations. On basis of those recommendations, the Commission decided to hold a special session to consider this case and the other matters that might be left pending at the Twenty-seventh Session, and to request the Chairman of the Commission, Dr. Justino Jimenez de Arechaga, to collaborate with the rapporteur in preparing a report on this case. It also decided to set May 1-5, 1972, as the date for the special session, to be held at the permanent seat of the Commission.

Pursuant to point b) of that decision, the rapporteur, with the collaboration of the Chairman of the Commission, Dr. Justino Jimenez de Arechaga, prepared a document entitled "Fourth Report on Case 1684" (Brazil)" (doc. 6-28 rev. 1).

That report consisted of an introduction followed by a study of the prior questions of the case, namely, forwarding to the claimants the information furnished by the government denounced, verification of whether the internal legal remedies had been exhausted, and the activities of the Council for the Protection of Human Rights of Brazil. The subsequent five chapters covers matters dealt with in the denunciations (I); replies from the Government of Brazil (II); obstacles to proving the events denounced (III); conclusions (IV); and recommendations (V). A draft resolution was attached to the document.

[15] On the basis of that report, the Commission examined Case 1684 at its Twenty-eighth Session (May 1-5, 1972).

The first issue to be examined was the basic premise of the report, namely, that Case 1684 constituted a "general cases of violation of human rights and that, accordingly, in examining that case the Commission was exempt from the requirement stipulated in Article 9 (bis).d of its Statute and Article 54 of its Regulations in the sense of verifying, "as a condition precedent ... whether the internal legal procedures and remedies ... have been duly applied and exhausted." Together with this question of prior pronouncement, other incidental points were considered, such as the scope of the procedural principle of equality of parts in the examination of cases submitted to the IACHR, particularly whether equal validity should be accorded the denunciations and the information furnished by the denounced government; the scope of articles 9.c and 9 (bis) of the Statute of the Inter-American Commission on Human Rights, depending on whether "general cases" or "individual cases" of alleged violations of human rights are involved, with respect to the exhaustion of internal remedies and the formulation of recommendations to the Governments concerned; the scope of requests for consent covered in Article 11.c of the Statute of the Commission, to the effect that the Commission may move to the territory of an American state; and other issues involved in the question of prior pronouncement.

The question of prior pronouncement being put to a vote, it was decided to absolve it by considering Case 1684 to be a "general case" of violations of human rights, thus exempting the Commission from requiring compliance with Article 9 (bis).d of its Statute, on exhaustion of internal remedies, in carrying out a full examination of the matter. At the same time, several decisions were taken to modify the form of Document 6-28, presented by the rapporteurs.

As a result of the foregoing decision, the Commission examined Case 1684 on its merit, on the basis of the draft resolution prepared by the rapporteurs, Dr. Justino Jimenez de Arechaga and Dr. Durward V. Sandifer.

By a majority vote, the Commission approved the following resolution (OEA/Ser.L/V/ /II.28, doc.14, May 3, 1972):

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN the report prepared by the rapporteur and the Chairman of the Commission on Case 1684 (doc.6-28) concerning alleged violations of human rights in Brazil; and

CONSIDERING:

That Article 9, paragraph b) of its Statute empowers it to "make recommendations to the governments of

the member states in general, if it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic legislation and, in accordance with their constitutional precepts, appropriate measures to further the faithful observance of those rights,"

RESOLVES:

To approve the "Fourth Report on Case 1684 (Brazil)" (doc.6-28) concerning alleged violations of human rights in Brazil, prepared by the rapporteur, Dr. Durward V. Sandifer, and the Chairman of the Commission, Dr. Justino Jimenez de Arechaga; and

DECIDED:

1. To declare that, because of the difficulties that have hindered the carrying out of the examination of this case, it has not been possible to obtain absolutely conclusive proof of the truth or untruth of the acts reported in the denunciations. However, the evidence collected in this case leads to the persuasive presumption that in Brazil serious cases of torture, abuse, and maltreatment have occurred to persons of both sexes while they were deprived of their liberty.
2. To exercise the power granted to it by Article 9, paragraph b) of its Statute and recommend to the Government of Brazil that it carry out a thorough investigation, the results of which the Commission would like to be able to examine at its next regular session, in charge of independent judges, not subject to military or police influence, with a view to determining, with all the guarantees of due process,
 - a. Whether acts of torture, abuse, and maltreatment have been carried out against persons detained in any of the places of incarceration indicated in Chapter IV of this report; and
 - b. Whether acts of torture, abuse, and maltreatment of prisoners have been carried out by any of the military or police authorities whose names are included in Chapter IV of this report.
3. To request the Government of Brazil that, once the investigation is completed,
 - a. It inform the Commission of the results (Statute, Article 9, paragraph d) and forward to it a copy of the basic parts of the report, and
 - b. It punish, to the full extent of the law, those persons whom the evidence proves to have been responsible for violations of human rights.
4. To forward to the Government of Brazil a copy of the report of the rapporteur and the Chairman of the Commission, as well as this resolution; and to inform the claimants of the contents of this resolution.

Pursuant to the above-cited resolution, the Commission addressed the Government of Brazil in a note dated May 5, 1972, and the claimants in communication dated May 11, 1972.

Dr. Carlos A. Dunshee de Abranches presented an explanation of the vote.

[16] At its twenty-ninth Session (October 16-27), the Commission again considered this case in connection with whether the Government of Brazil had reported on measures taken with respect to the recommendations contained in the resolution of May 3, 1972.

Taking into account the fact that the 180-day period set forth in Article 51 of the Regulations, for the Government of Brazil to furnish information on measures adopted in accordance with the aforesaid resolution, had not yet expired, the Commission decided to postpone the matter until its next session.

[17] In a note dated April 3, 1973, the Government of Brazil sent a petition requesting reconsideration of that resolution and raising objections to the report that had been presented by the rapporteurs and that had served as the basis for the examination of the case (doc.6-28 rev..1).

The points expressed by the Government of Brazil are summarized below:

- a. The resolution on this case approved by the Commission is defective both in form and in substance. The Government therefore proposed that the information and criteria on Case 1684 be reexamined, so that the Commission might reconsider the aforesaid resolution.
- b. The examination of the case and the adoption of the resolution of May 3, 1972, failed to take into account Article 9 (bis) d) of the Statute, which requires verifying "as a condition precedent... whether the internal legal procedures and remedies of each member state have been duly applied and exhausted," the case having been included among the so-called "general cases" and the Commission thus being exempt from the requirement of verification of the exhaustion of internal remedies.
- c. The documents supplied by the Government of Brazil in connection with case 1684 revealed the followings i) All persons mentioned in Case 1684 were tried by regular Courts; ii) All were represented by counsel who enjoyed complete freedom in the exercise of their powers; and iii) Once judged, all the accused had, through their counsel, access to the resources provided for in the law of Brazil. Of 50 persons sentenced, 12 had their sentences reduced on appeal before the Superior Military Tribunal and 16 were given a stay of judgment by virtue of being exchanged for the ambassadors of Germany and Switzerland and subsequently leaving Brazilian territory.
- d. The Government of Brazil considered the bases for the presumption that violations of human rights had occurred in Brazil to be both insufficient and fragile.
- e. The Government of Brazil strenuously rejected the insinuation that some judges in that country might not be independent, inasmuch as the independence of the magistracy is constitutionally guaranteed so as to ensure that civil or military judges cannot be removed from office.
- f. Considering the Commission's decision to be defective, the Government of Brazil stated that it had no intention of adopting the measures that had been requested, having done so opportunely, and in turn made the following observations:
 - i. On receiving the first communication in the case (note dated September 18, 1970), the government appointed a high-level commission, under the supervision of the Minister of Justice, to carry out a "rigorous investigation" of the alleged violations, and that commission declared that such acts had not occurred. The findings of that commission, comprising eight thick volumes, were sent to the CIDH. The Government of Brazil therefore considers that appointing another commission would produce the same result as the first.
 - ii. In requesting the Government of Brazil to appoint a commission of "independent judges," the CIDH seems to have overlooked the constitutional principle of separation and independence of powers. Out of respect for that principle, the Government of Brazil cannot convoke judges for one task or another, since it is bound by the procedures set forth in the laws in effect.

[18] At its Thirtieth Session (April 1973), the Commission examined the petition for reconsideration of the resolution of May 3, 1972 (doc.14-28).

The prior question of the timeliness or ultimeness of the petition was studied in order to rule on its admissibility.

The view favoring admission of the petition prevailed, the complexity of Case 1684 being considered justification for the eleven-month delay with which it was presented by the Government of Brazil. By a majority vote, with Dr. Gabino Fraga abstaining, the Commission accordingly decided to admit the petition, appointing Dr. Justino Jimenez de Arechaga as rapporteur, with the understanding that a new examination of Case 1684 was not involved, but merely an examination of the points covered in the petition.

[19] In a note dated April 24, 1973 (No. 156), the Government of Brazil sent additional reports to supplement those accompanying its note of April 3, 1973 (No. 137). This new material was forwarded to

the rapporteur, so that he might take it into account in studying the matter.

[20] In carrying out this assignment, the rapporteur prepared a document entitled "Report on Case 1684 (Brazil)" (doc.24-30 rev.1) and an addendum (doc.33-30), which were submitted to the Commission for consideration. Likewise, and as a related matter, consideration was given to the doctrine applicable by the Inter-American Commission on Human Rights in regard to exhaustion of internal legal remedies, and several substantive modifications were introduced in the points proposed by the rapporteur. The draft resolution submitted by the rapporteur was also considered, together with his report, and several modifications in form were approved, with the rapporteur's acquiescence. Dr. Carlos A. Dunshee de Abranches presented a draft resolution as a substitute for that submitted by the rapporteur.

By a majority vote, with Dr. Carlos A. Dunshee de Abranches casting a negative vote and Dr. Gabino Fraga abstaining, the Commission approved the report of the rapporteur and the following resolution (OEA/Ser.L/V/II.30, doc.37, April 26, 1973);

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN the notes presented by the Government of Brazil, dated April 3, 1973, relative to cases 1683 and 1684, and April 24, 1973, relative to case 1684;

After a careful examination of those documents, as much with respect to their form and timeliness as to their substance;

Having evaluated the efficacy of the evidence that was presented with the first of those notes;

After having decided not to review its decision in case 1683, and to review that of case 1684, due to the fact that the length of time that had elapsed before the Government of Brazil requested a review of the decision can be explained by the complexity of the latter case; and

CONSIDERING:

1. That the procedures followed during the examination of case 1684 are in accord with the provisions of the Statute and Regulations that govern the activities of the Commission, and that it can not be sustained that different treatment has been accorded to the interested parties or that evidence has been withheld from any one of them;
2. That the allegations set forth in the notes in which a review of the resolution adopted in case 1684 is requested add nothing to those contained in the previous documents presented by the Government of Brazil and those formulated in the course of the deliberations that preceded its adoption; and
3. That any observation in the sense that resolution 1684 represents a judgment on the conduct of the Government of Brazil is inadequate, in that the resolution limits itself to the possibility that cases of violations of human rights might have occurred in its territory and requests investigations in that respect, so that any persons found responsible will be punished,

RESOLVES:

1. To confirm, in all of its parts, resolution 1684, and to communicate this confirmation to the Government of Brazil, with the clarification that what has been requested is an investigation under an administrative authority independent of the police or military and with the request that the Commission be informed of the measures that are adopted in accordance with the text of that resolution, in such a manner that the Commission may take due note of them at its next session.
2. To forward copies of this resolution to the Government of Brazil and to the claimants.

Dr. Abranches presented an explanation of his vote against the resolution. Dr. Carrió presented an explanation of his vote in its support.

In compliance with operative paragraph 2 of that resolution, the Commission sent a note dated June 15, 1973, to the Government of Brazil and a letter dated June 21, 1973, to the claimants.

[21] Through its Representative to the OAS, the Government of Brazil addressed the Commission in a note dated October 12, 1973 (No. 311), stating that it considered inadmissible the impugnation of jurisdiction resulting from the decision of the Inter-American Commission on Human Rights with regard to case 1684.

[22] At its thirty-first Session (October 1973), the Session took cognizance of that note and appointed Dr. Genaro R. Carrió as rapporteur, to study the statute of the case and to make such recommendations as he deemed appropriate.

The rapporteur presented a report (doc.28-31 rev. 1) in which, after giving the background of the matter, he analyzed the points raised in the note of October 12, 1973, as follows:

By a note dated October 12 of this year, the Government of Brazil informed the Commission that "the competent investigation of the facts was carried out in detail by means of 'inquest' held within the Brazilian juridical order and under the direct supervision of the Minister of Justice, which means that, in that way, at the applicable measures have been taken, to which no other could be added"

For that reason--the note concludes--"the Brazilian Government considers inadmissible the impugnation of jurisdiction that results from the decision of the Inter-American Commission on Human Rights."

The situation that has arisen is this: The Commission has considered that the "inquest" conducted by order of the Government of Brazil as a result of the first transmission of the denunciation is not sufficient, and it has recommended to that government that it provide whatever is necessary so that an exhaustive investigation will be carried out, direct at determining the points indicated in the operative paragraph 2.a and 2.b of the resolution of May 3, 1972, clarified in that of last April 26. The Government of Brazil, for its part, understands that that "inquest" is sufficient and states, therefore, that it will not carry out the investigation that has been requested of it.

From the foregoing, it results that the Government of Brazil, on the basis of the considerations summarized, has expressed its intention not to adopt the measures recommended by the Commission.

In view of this situation, and pursuant to the provisions of Article 57 of the Regulations, it is appropriate for the Commission, in exercise of the power conferred upon it by that precept, to make the observations it considers appropriate in the annual report it is to present to the General Assembly of the Organization.

That report having been approved by a majority vote, with Dr. Carlos A. Dunshee de Abranches opposed, the Commission requested the rapporteur to prepare a draft resolution containing appropriate observations on the case for submission to the General Assembly of the OAS, in compliance with Article 57 of the Regulations.

At that session, and on the basis of the draft presented by the rapporteur, the Commission, by a majority vote, with Dr. Carlos A. Dunshee de Abranches opposed, approved the following resolution (OEA/Ser.L/V/II.31, doc.46 rev.1):

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN:

1. The resolution adopted by the Commission on May 3, 1972, in relation to case 1684, on denunciations regarding the application of torture to persons deprived of their liberty in Brazil;
2. The resolution of the Commission of April 26, 1973, issued on account of a request for review

made by the Government of Brazil; and

3. The note presented by that government on October 12, 1973; and
CONSIDERING:

1. That in the aforementioned resolution of May 3, 1972, it was resolved to approve the fourth report prepared by the rapporteur, Prof. Durward V. Sandifer, and the Chairman, Dr. Justino Jiménez de Aréchaga, and

a. "To declare that, because of the difficulties that have hindered the carrying out of the examination of this case, it has not been possible to obtain absolutely conclusive proof of the truth or untruth of the acts reported in the denunciations. However, the evidence collected in this case leads to the persuasive presumption that in Brazil serious cases of torture, abuse, and maltreatment have occurred to persons of both sexes while they were deprived of their liberty."

b. To recommend to the Government of Brazil "that it carry out a thorough investigation, in charge of independent judges, not subject to military or police influence, with a view to determining, with all the guarantees of due process,

i. Whether acts of torture, abuse, and maltreatment have been carried out against persons detained in the places of incarceration indicated or in any of them.

ii. Whether acts of torture, abuse, and maltreatment of prisoners have been carried out by any of the military or police authorities whose names are included..."

c. "To request the Government of Brazil that, once the investigation is completed:

i. It inform the Commission of the results...and forward to it a copy of the basic parts of the report, and

ii. It punish, to the full extent of the law, those persons whom the evidence proves to have been responsible for violations of human rights";

2. That before issuing that resolution the Commission requested reports from the Government of Brazil, which had alleged, among other things, that the internal legal remedies had not been exhausted, an argument that was not accepted by the Commission since the denunciations received amounted to a "general case" in which event it was not possible to require compliance with that requirement without making illusory the tutelage of the human rights the violation of which had been denounced;

3. That on April 3, 1973, the Government of Brazil requested a review of the case and to that end presented a brief that was supplemented on April 24, 1973. In the request for review, the Government of Brazil pointed out that since it considered the decision defective, it would not take, for having done so opportunely, the measures that the resolution of May 3, 1972, had recommended be put into practice. The Government added, in this connection, that when it received the first communication in the case it had appointed a high-level commission, under the supervision of the Minister of Justice, to carry out a rigorous investigation of the alleged violations and that that commission had reached the conclusion that such acts had not occurred. It added that the results of this investigation had been sent to the Commission;

4. That the Inter-American Commission on Human Rights, on April 26, 1973, decided to confirm in all of its parts the resolution of May 3, 1972, with the clarification that what had been requested of the Government of Brazil was an investigation by an administrative authority independent of police and military influence. At the same time, the Commission requested the Government of Brazil to kindly inform it about the measures that the Government had decided to adopt in conformity with the text of the confirmed resolution, so that the Commission could take due note of them at the present session. The latter resolution was communicated to the Government of Brazil on June 15, 1973;

5. That, by a note dated October 12, 1973, the Government of Brazil informed the Commission that "the competent investigation of the facts was carried out in detail by means of an 'inquest' held within the Brazilian juridical order and under the direct supervision of the Minister of Justice, which means that, in that way, all the applicable measures have been taken, to which no other could be added." The note concluded stating that for those reasons "the Brazilian Government considers inadmissible the impugnation of jurisdiction that results from the decision of the Inter-American Commission on Human Rights";

6. That the Commission has considered that the "inquest" carried out by order of the Government of Brazil as a result of the first communication of the denunciation is not sufficient and it has recommended to that government that it provide whatever is deemed necessary to carry out an exhaustive investigation directed toward determining the points indicated in the operative part, paragraph 2.a and 2.b, of the resolution of May 3, 1972, clarified in that of last April 26. The Government of Brazil has stated its intention not to adopt the measures recommended by the Commission, since it understands that the aforementioned "inquest" makes them unnecessary;

7. That Article 9 (bis) of the Statute of the Commission provides that it shall examine the communications submitted to it and make recommendations to the governments, when it deems this appropriate, with the objective of bringing about more effective observance of fundamental human rights (paragraph b) and that it shall submit a report annually to the General Assembly, which should include such observations as the Commission may deem appropriate on the matters covered in the communications submitted to it (paragraph c.iii);

8. That in conformity therewith, Article 57 of the Regulations provides that if the government does not, within a reasonable time, adopt the measures recommended by the Commissions the latter may make the observations it considers appropriate in the annual report it is to present to the General Assembly of the Organization of American States, provided for in paragraph c of Article 9 (bis) of its Statute; and

9. That the attitude of the Government of Brazil, in unjustifiably refusing to adopt the recommendations of the Commission, makes appropriate the application of the aforementioned provisions of the Statute and Regulations,

RESOLVES:

1. To include in the annual report the following observations directed to the Government of Brazil:

a. That the evidence gathered in case 1684 leads to the persuasive presumption that in Brazil serious cases of torture, abuse, and mistreatment have occurred to persons of both sexes while they were deprived of their liberty;

b. That the Government of Brazil has refused to adopt the measures recommended the Commission, directed toward determining whether acts of torture, abuse, or maltreatment have been carried out against persons detained in the establishments indicated; toward verifying whether the military and police authorities whose names are indicated have or have not participated in these acts and, if so, toward making possible the punishment of those responsible.

Dr. Carlos A. Dunshee de Abranches presented an explanation of his vote.

The above-cited resolution was communicated to the Government of Brazil with a note dated January 8, 1974.