Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Osvaldo Antonio Lopez v. Argentina
Doc. Type:	Resolution
Decided by:	President, Dr. Gilda M.C.M. Russomano; First Vice President, Dr. Marco Tulio Bruni Celli; Second Vice President, Mr. Oliver T. Jackman. Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Luis Adolfo Siles Salinas
Dated:	30 June 1987
Citation:	Lopez v. Arg., Case 9635, Inter-Am. C.H.R., Report No. 15/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987)

HAVING SEEN The background of the case, to wit:

A. In a communication of October 18, 1985, Mr. Osvaldo Antonio Lopez, an Argentine citizen, former airplane mechanic in the armed forces, currently in the Argentine Federal Prison Unit located in Bermudez, No. 2651, PCL Buenos Aires, presented to the Inter-American Commission on Human Rights a claim alleging the Argentine Government's violation of the provisions of Articles 7 (3); 8 (1) (2 g and h) and 8 (3); 9, 24, 25 (1) and 25 (26) and 1 and 2 of the American Convention on Human Rights, in view of the the facto and de jure reasons set forth in the denunciation itself, as follows:

The complainant, a political prisoner designated as special by the Federal Prison Service, who has been illegally and arbitrarily detained since August 1977, a situation that had the semblance of normality when the military dictatorship scourged the country, which remains unchangeable. The denial of all appeals filed since the Constitutional Government came to power and the decisions of the Supreme Court of Justice that confirm this situation (copies of which are attached) constitute new violations of human rights and amount to noncompliance with the international commitments assumed by the Argentine State.
The illegal and arbitrary nature of the denial of freedom stems clearly and obviously from the case filed against him before the standing Court Martial for enlisted personnel and students of the Air Force, decided upon by the Supreme Council of the Armed Forces in November 1978 and declared unappealable by the Supreme Court of Justice on April 23, 1985.

CASE RECORD

1. The proceedings began on April 29, 1976, when explosive devices were discovered in tanks of six aircraft. These devices, although they had acted, had not exploded, and therefore the aircraft were not harmed (fs. 3/4/22/42).
Thus the Government attorney proceeded to take a statement from all personnel who had acted as Technical Duty Officer and Watch Duty Officer, and all those who had been on duty the afternoon of the

previous day, and the troops who were on detail at the place (fs. 10 and 14, 17, 28 and V. 30, V. 31, 33 and V. 80, 84 and 85, 87, 102 V. 103, 106 and V. 108 and 119 to 120, 123, 125, 131, 133, 137 V. 144, 145 to 148, 150 V. to 151, 155 V. 157 V. 160 V. and 161, 163 165 V. to 166 and 170 V. They all explained the activities they had been engaged in and none had been any suspicious movements. Among those making statements was myself, who--as seen from this initial summary--was never alone during my time on duty.

2. Attached to the summary are sketches of the site showing the location of the aircraft, the expert's report and photos.

3. The aforementioned statements show that the night before the act was discovered, one of the hangar doors have been left open, and no one had been in the Technical Duty room, from which place any irregularity could have been seen, because it had been closed for several days.

Since all the statements were contested and since the explanations offered led to discovery of the act's perpetrator, the summary proceeding in reference was dismissed. Fifteen months after the act investigated, in July 1977, Lopez was abducted at the exit of his workplace, according to a denunciation by the individual accompanying him, and this appears in the record. Also attached is a photocopy of a preventive writ of habeas corpus before the Federal Court of Cordoba. Then, eight days after being kept hooded and abducted, the complainant succeeded in fleeing his place of confinement. His relatives homes were broken into by the security forces who, in every instance, tried to pinpoint his location. Those who "because of what could happen to them in the near future" asked why he was sought, were told that it was for desertion.

Attached is a proceeding for desertion, with the explanation that Lopez appeared voluntarily at the Cordoba Air Force Base to make a summary statement for assault with explosive devices. Then there was an unsworn statement in Moron, which was not the seat of the Court, nor was it the place of work, but rather Unit VIII. In that statement, Lopez said he had placed the explosives under investigation, had met with individuals belonging to the People's Revolutionary Party, and had delivered cartridges to members of the organization. He had done all this due to his love for a woman Gladis Aoad, who had told him she belonged to the PRP and had introduced him to a former fiance, Osvaldo Oscar Rosonn. When Lopez was confronted with Aoad, the latter denied having engaged in political conversations with the deponent, although she did say she had been his fiance and had introduced him to the person in reference.

It should be said that the aforementioned Rosonn has been on a long list of detained and missing persons in our country for more than a year. This is not based on any record but rather on the report of CANADEP, Appendices, list of missing persons, p. 399. The prosecutor called for a deposition by all of Gladis Aoad's girl friends, her mother, and her work supervisor; and all these said they were unaware that she might be interested in politics. There are also depositions by the persons who lived with Lopez, work-mates, persons with whom he went bowling in the area, and the bowling alley's owner, and all of them concur in stating their unawareness as to whether he might be engaged in political activities.

The statement by Lopez is not corroborated by any other evidence and it is not consistent with the circumstances of the case, since there is no agreement as to the events investigated. When the witnesses who had worked with Lopez the day of the event were called, they maintained their statement made a year before. In view of the contradictions existing between the confession, the statements of the witnesses, the date of the act, the impossibility that this could have been done in the manner confessed, a new statement was taken from him while he was held in strict preventive detention.

His new statements describing how he might have placed the explosive devices were also inconsistent.

Shown the sketch that had been prepared in due course, he said that "he did not agree with it," and he drew another that lent truth to the explanations given (pp. 345 to 347 vta). The drawing that had been made the day of the event shows clearly that Lopez could not have placed the explosive devices without having been seen, due to the distance between the place in which he performed his duties and the place in which three of the affected aircraft were located, since he would have had to go to another hangar and all afternoon he had been with other persons up to the time he left the unit.

Based on this evidence, he was convicted of the following crimes: attested illicit association, theft, attack on aircraft, and desertion from the armed forces.

This conviction was upheld by the Supreme Council of the Armed Forces.
When so notified, the complainant stated expressly for the record that he wished to appeal to the Supreme Court of Justice. His defense counsel, an untrained member of the military, whom he had been unable to choose freely, did not file an appeal to that Court.
Clarification: The page numbers of the record showing the facts are not indicated and the photocopies of such record are not attached because the Supreme Council of the Armed Forces again denied my current defense counsel access to that record by providing false information on its whereabouts.
This situation was pointed out in due course to the President of the country in his capacity as Commander in Chief of the Armed Forces, Dr. Raul Alfonsin.

APPEALS FILED:

After the Constitutional Government assumed office, and now having free access to trained counsel, the following appeals were filed:

a. Remedy of appeal: The Military Code of Justice in force in the country (Law 23.049) was amended by an act of Congress in February 1984. This amendment provides, in accordance with the Argentine Constitution, that there can be no civil jurisdictions by such courts only to try violations. Since this affected the existence of the military establishment only the military codes make provisions by establishing appeal of the judgments handed down by the Supreme Court of the Armed Forces (Art. 445 bis C.J.M.), with special reference to the fact that civilians convicted by military courts file such an appeal within 60 days from the effective date of that law (Art. 13, law 23.049).
The Supreme Council of the Armed Forces denied submission of the record. When filed, the Federal Court of La Plata did not approve the appeal, as it understood that such an appeal is valid only in the case of persons having future military status. After an exceptional writ alleging arbitrary action was filed before the Supreme Court, the latter did not consider the case, alleging that it was not sufficiently well-founded. This decision was announced on April 24, 1985.
The pertinent parts of the appeal in reference are attached (photocopy).
b. Habeas Corpus: Since appeal based on the invalidity of all proceedings has not been legislated in Argentina, a writ of habeas corpus was filed.

The institution of habeas corpus has already been legally admitted as a valid action against judgements the courts martial had handed down against civilians. This jurisprudence was adopted by our legislators who, in order quickly to restore the rule of law in our country, approved law 23042, which so established it.
This appeal was rejected by the Supreme Court, after a year of processing, which alleged that it was submitted in untimely fashion, that it was based on inadequate evidence, and that at the appropriate time, in early 1979, it had not been possible to file a special appeal based on illegal action.

COMPLIANCE WITH THE REQUIREMENTS OF THE CONVENTION TO ADMIT THIS COMPLAINT:

a. The notification documents indicate that the Supreme Court's resolutions were announced on April 24, 1985. Moreover, by arbitrarily denying freedom, each moment I continue to be held means continued violation of Art. 7.3 of the American Convention on Human Rights.
b. Exhaustion of domestic remedies: Upon consideration by the Supreme Court that the judgement convicting Antonio Lopez has the authority of res judicata and that objection thereto was filed in an untimely manner, it can be stated that domestic remedies have been exhausted, because this judgement upholds the decision on the domestic level.
An appeal for review has not been filed, since it would be based on the assumption of a valid proceeding, which was lacking in the case we denounce.

c. Reservation by the Argentine Government: The arbitrary denial of freedom the complainant suffers and the Argentine court's decision upholding an irregular proceeding constitute a violation of human rights after ratification of the American Convention on Human Rights, for which reason the irregularities of that proceeding and their consequences are not protected by the reservations made by Argentina.

HUMAN RIGHTS VIOLATIONS DENOUNCED:

Art. 7, paragraph 3. NO ONE SHALL BE SUBJECT TO ARBITRARY ARREST OR IMPRISONMENT.
Since denial of his freedom stems from an irregular proceeding by unqualified judges who acted with prejudice and were not independent, where the defendant did not freely choose his defense counsel (the latter was untrained, and since they also failed to fulfill their obligations, the proceeding is absolutely void. Moreover, the judgement is arbitrary because it did not analyze the evidence, the facts were wrongly depicted, and he was subjected to a law that had been repealed. Further, he was convicted of crimes whose existence was also unproved. All of this renders the arrest and imprisonment arbitrary. The verdict of the Argentine court, citing problems of form, avoids analysis of the matters of substance and is a violation of this standard through the denial of justice, because the procedural forms have been established to guarantee rights.

Article 8. RIGHT TO A FAIR TRIAL:
1. EVERY PERSON HAS THE RIGHT TO BE HEARD, WITH DUE PROCESS GUARANTEES...BY A COMPETENT, INDEPENDENT, AND IMPARTIAL JUDGE OR TRIBUNAL...
Osvaldo Lopez was not tried by a competent court, because the military authority can only try military violations. The contrary would be to establish courts as a matter of privilege (which is prohibited by Arts. 16 and 95 of the National Constitution prohibiting the Executive Branch from assuming judicial duties). Moreover, at the time of the deponent's arrest and trial, the Armed Forces were operating jointly throughout the country, with their commanding officers having assumed all public authority, systematically violating human rights.
It should be pointed out that so-called area of Triple M, or Sub area 16, which corresponded to the districts of Moreno, Merlo and Moron, were under the operational control of the Air Force, according to newspaper articles and testimony and statements on the trial to the Military Juntas. This is the area in which Lopez was abducted and in which this case was later pursued. The Palomar Air Brigade, the Court's seat, and the III Air Brigade, based in Moron, where the complainant made a statement and later, for security reasons, was imprisoned, are places that have been denounced by various individuals as clandestine detention centers.
These statements are supported by the unsworn statement that we have invalidated in 8.2.g) as in violation of Art. 18 of the Constitution and the Convention on Human Rights. It should be indicated that other events mentioned are not in keeping with the truth of the matter.

Article 9. NO ONE SHALL BE CONVICTED FOR ANY ACT OR OMISSION THAT DID NOT CONSTITUTE A CRIMINAL OFFENSE, UNDER THE APPLICABLE LAW, AT THE TIME IT WAS COMMITTED. NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME THE CRIMINAL OFFENSE WAS COMMITTED. IF SUBSEQUENT TO THE COMMISSION OF THE OFFENSE THE LAW PROVIDES FOR THE IMPOSITION OF A LIGHTER PUNISHMENT, THE GUILTY PERSONAL SHALL BENEFIT THEREFROM.
This right was violated because, upon conviction, he was subjected to a law that had been repealed (law 21.272). In the event of there having been a valid trial, and the perpetration of the crime having been proved, the punishment established for such act (damage to aircraft) in Article 794 of the Military Code of Justice should have been applied: a shorter prison term, a month to two years, through application of the

most favorable law.
It remains to be pointed out that, after his conviction, there were also changes in the prison terms under Art. 210 bis, attested illegal association, and Art. 222, disclosure of military secrets, without the penalty having been revised.

Article 24. ALL PERSONS ARE EQUAL BEFORE THE LAW. CONSEQUENTLY, THEY ARE ENTITLED, WITHOUT DISCRIMINATION, TO EQUAL PROTECTION OF THE LAW.
The Argentine court violated this right when it based its denial of justice on his status as a member of the armed forces at the time he was tried, even denying the possibility of filing a writ of habeas corpus.

Article 25. JUDICIAL PROTECTION: EVERYONE HAS THE RIGHT TO A SIMPLE AND PROMPT RECOURSE, OR ANY OTHER EFFECTIVE RECOURSE, BEFORE A COMPETENT COURT, OR TRIBUNAL FOR PROTECTION AGAINST ACTS THAT VIOLATE ONE'S FUNDAMENTAL RIGHTS RECOGNIZED BY THE CONSTITUTION OR LAWS OF THE STATE CONCERNED OR BY THIS CONVENTION, EVEN THOUGH SUCH VIOLATION MAY HAVE BEEN COMMITTED BY PERSONS ACTING IN THE COURSE OF THEIR OFFICIAL DUTIES.
The outcome of the appeals filed and the time taken to decide them is evidence of such violation.

Article 25.2.B. TO DEVELOP THE POSSIBILITIES OF JUDICIAL REMEDY

The complaint filed also reports the Argentine State's failure to comply with the rights mentioned in Art. 1 and 2 of the aforementioned Convention.

PETITION

DUE TO THE FOREGOING, I REQUEST:

1. That this denunciation be admitted and that its admissibility be declared.
2. That the presentation to the Argentine State be examined.
3. If the violations denounced persist, that this denunciation be brought before the Inter-American Court of Human Rights in due course.

B. In a note dated October 28, 1985, the Commission asked the Government of the Argentine Republic for the corresponding information, enclosing the pertinent parts of the claim. A copy of this note was transmitted to the Ambassador, Permanent Representative of the Argentine Republic to the OAS, on that same date.

C. The complainant was informed of the steps taken regarding his denunciation in a letter dated October 28, 1985.

D. In a note dated January 24, 1986, the Government of the Argentine Republic requested, in keeping with Article 34 of the Commission's Regulations, an extension of the deadline for sending the information requested.

E. In a note dated January 27, 1986, the Commission granted the Argentine Government 60 days for submission of the information requested in the aforementioned note dated October 28.

F. In a note dated March 26 (SG No. 48 (7-2-17/86), the Argentine Government answered the Commission's request. This note was supplemented by several appendices under the corresponding headings it cites. The answer reads as follows:

The Government of the Argentine Republic has the honor to address the Executive Secretary of the Inter-American Commission on Human Rights and, with regard to the communication dated October 28, 1985 on case No. 9635 dealing with the status of the Argentine citizen, Mr. Osvaldo Antonio Lopez, makes available to you the following reply, without prejudice to any other explanations the Commission may deem advisable to request:

I. On the date the crimes Mr. Osvaldo Antonio Lopez was accused of occurred (April 22, 1976), he was a Corporal in the Argentine Air Force.

Taking heed of the facts and the provisions of paragraph 2, Article 108 of the Military Code of Justice in effect at that time, he was tried by the Military Tribunals in accordance with that jurisdiction's judicial procedure.

In a proceeding carried out through file "C" No. 248.558 (F.A.A.), he was tried, found guilty and finally sentenced on November 23, 1978 by the Supreme Council of the Armed Forces to 24 (twenty-four) years in prison, plus absolute disqualification for the same period, and demotion, as he was considered the perpetrator of the crimes of "damage to items" assigned to the service of the Armed Forces" (armed attack against aircraft), "illicit association," "disclosure of national defense secrets," and "theft," with the aggravating circumstances of falling on munitions, while on duty and to the detriment of the public treasury and with extenuating circumstances for all of the acts if their perpetrator had come forward spontaneously before the authorities became aware of the circumstances, and of the crime of "simple desertion" (Arts. 2 and 5 of law 21.272; 871 paragraphs 1 and 2 and 10, 536, 539, 515 paragraph 8 and 716 paragraph 1, 3; 718 of the Military Code of Justice, 210 bis, 210 quater, 222, 162, 12, 24, 40 and 41 of the Criminal Code).

Copies are included of all these provisions, which were in effect at the time of the sentence.

This judgement was confirmation, with relation to the punishment with few legal differences, of the decision of the first instance handed down on September 21, 1978 by the Standing Court Martial for enlisted personnel, troops and students of the Air Force.

II. After the Constitutional Government headed by Dr. Raъl Ricardo Alfonsнn assumed authority, the complainant files three new appeals, as follows:

a. Appeal to the Supreme Council of the Armed Forces. This appeal was denied through a resolution of April 12, 1984. On the basis of Article 13 of law 23.049, the complainant addressed a complaint to the Federal Court of La Plata, which also rejected it on August 23, 1984. Finally, the Supreme Court, which is the final instance in our legal system, declared the special appeal filed to be inadmissible in view of the resolution of April 23, 1985, endorsing the opinion of the Attorney General, who argued that this appeal was not based on Article 15 of Law 48, which provides the legal requirements for appealing to the Supreme Court by way of special appeal.

b. Writ of habeas corpus, based on Article 1 of law 23.042, filed with the Fourth National Federal Court in Criminal and Correctional Matters.

This appeal was rejected in the first instance and also by the National Federal Court of Appeals in Criminal and Correctional Matters of the Federal Capital through a resolution of May 31, 1984.

The special appeal was also rejected by the Supreme Court on April 23, 1985. There were basically two reasons for the Court's decision: First, the accused status as a member of the armed forces on the date of the events is not covered by the provisions of Article 1 of Law 23.042, which deals exclusively with civilians. Secondly, the Court felt that the appeal based on the possible unconstitutionality of the military jurisdiction and the arbitrary nature of the Supreme Council's judgement was not filed at the proper time as required by such special appeal.

c. Finally, on August 21, 1985 and after his sentence had been reduced through Law 23.070, the complainant filed a complaint with the Supreme Council of the Armed Forces based on that law, asking that his prior time in prison be calculated in a more favorable manner, thus to obtain a further reduction in

sentence. This proceeding has not yet been settled.
It should be pointed out that the original sentence of former Corporal Osvaldo Antonio Lopez would have had him imprisoned until July 1, 2002; but, by virtue of law 23.070, approved by the current constitutional government, his term expires on February 26, 1997.

III. CONCLUSIONS OF THE LEGAL PROCEEDINGS THUS FAR

The Argentine Government understands that, in the light of the legal proceedings that have taken place in the case of former Argentine Air Force Corporal Osvaldo Antonio Lopez, there is no evidence of noncompliance by the Argentine constitutional justice, and, therefore, by our government with any of the standards of the American Convention on Human Rights to which the petitioner makes reference in communication No. 9635.

IV. INADMISSIBILITY OF THE PETITION

As stipulated in Article 46, paragraph a) of the American Convention on Human Rights, and in keeping with the Commission's Regulations, the Government of Argentina asks that the petition filed be declared inadmissible for the following reasons:
A. General: As is known, immediately after assuming its duties on December 10, 1983, the Argentine Constitutional Government adopted several provisions aimed at full restoration of the rule of law and unrestricted enjoyment of basic human rights and freedoms.
Among the many measures taken by that government, the following should be indicated, because they are directly related to the petition in question:
a. Law 23.040, which repeals law 22.924 enacted by the previous de facto government. It will be remembered that the latter law sought to extend amnesty to those responsible for past human rights violations.
b. Law 23.042, which makes it possible to claim personal freedom by filing a writ of habeas corpus for all civilians sentenced by military courts.
c. Law 23.070, which substantially reduced the sentences of prisoners between March 24, 1976 and December 19, 1983.
d. Law 23.077, which expressly repealed repressive standards established by the previous government and substantially reduced the sentences of others. Copies of the aforementioned laws are included as an appendix.
Specific: The Argentine Government understands that communication No. 9635 does not meet the conditions required by Article 46, paragraph a) of the American Convention on Human Rights for admission, since the petitioner has not exhausted the remedies the Argentine system provides for under domestic law.
Proof of this is that the petitioner has not yet filed an appeal for review of sentence provided for in Articles 439, paragraph 4) of the Military Code of Justice and 551, paragraph 4) of the Code of Procedure in Criminal Matters of the federal jurisdiction and regular courts of the Federal Capital and the national territories, copies of which are included herewith.
This remedy made available by both governing bodies, provides for review of the sentence in case of a less severe criminal law, under the first assumption, or one that has reduced the sentence or declared that the act is not punishable, under the second assumption. It should be pointed out that, in addition to the provision set forth in Article 439, paragraph 4 of the Military Code of Justice, the Procedural Code of the federal jurisdiction and regular courts of the Federal Capital is applied supplementally. Moreover, both standards of procedure are correlated through the principle of application of the most favorable criminal law contained in Article 2 of the Penal Code.
The standards upon which the conviction of former Corporal Osvaldo Lopez was based have undergone substantial changes. Thus, for example, Law 21.272, in addition to having been partially repealed (see Laws 21.463 and 22.928), was fully repealed on August 9, 1984 by Law 23.077, which in turn repealed

the two other laws in reference.
In turn, Articles 162, 210 bis and 222 of the Penal Code were also amended by Law 23.077, calling for lighter punishment.
Moreover, the appeal for review of sentence filed by the petitioner under Law 23.070 is still in process, as already explained above. By virtue of the foregoing, the Argentine Government requests that communication 9635 be declared inadmissible because it does not meet the conditions of Article 46, paragraph a) of the American Convention on Human Rights and of the Regulations of the Honorable Commission, since the petitioner has not exhausted the domestic remedies provided for in the Argentine legal system.

G. In a letter dated March 31, 1986, the Commission sent the complainant the information provided by the Argentine Government, with a 45-day deadline for making his observations or comments.

H. In a cablegram dated May 10, 1986, the complainant requested an extension of the deadline. He was given a 30-day extension, which he was informed of in a letter dated May 14, 1986.

I. In a communication dated June 5, 1986, the complainant made the following observations:
I have the pleasure of sending you my observations to the Argentine Government and of attaching complementary information:

As already indicated, it is true that Osvaldo Antonio Lopez, at the time of the events of which he was accused (April 22, 1976), was a Corporal in the Argentine Air Force.
The Argentine Government says that, in keeping with the nature of the facts and the provisions of paragraph 2 of Article 108 of the Military Code of Justice in effect at that time, he was tried by the military courts in accordance with the judicial proceedings of that jurisdiction.
In message 166, in which a bill was submitted to Parliament to amend the Military Code of Justice, the President of the Nation, accompanied by the Council of Ministers, stated the following: "The current system of competence of the military court established by Articles 108 and 109 of the Military Code of Justice, which includes the trial of common crimes committed at military sites or in the performance of duty constitutes TRUE CIVIL JURISDICTION CONTRARY TO ART. 16 OF THE CONSTITUTION. In the future, military jurisdiction must be restricted to the trial of military crimes, that is, those not included in the Penal Code, and disciplinary infractions." He adds later that "to be judged for the commission of common crimes by an administrative court consisting of peers involves both a privilege and a lack of protection, both constitutionally inadmissible, and, therefore, it is necessary to add an appeal that can be supported by both the prosecutor and the defendant. This makes it "the last analysis the judges, common to all Argentines, who judge these events in the last instance".
In addition to the unconstitutional nature of Articles 108 and 109 of the Military Code of Justice in reference, the aforementioned legislation contains several provisions that are seriously detrimental to the right of defense--legally declared several times--among which the following should be indicated:

a) Article 197, which establish that the defense counsel must always be an active or retired official;
b) Article 98, which defines defense as an act of service;
c) Article 366, which provides that in no case shall it be permitted to advance in favor of the defendant any consideration detrimental to the respect due to a superior or to lodge against them any accusation related to facts that are not related to the case; nor shall it be allowed to criticize or unfavorably assess the activities or political or administrative acts of the government;
d) Article 367, which, in accordance with Article 664, punishes a defense counsel who lacks due respect for a superior or who makes assessments of government acts, with punishment of up to four years in prison or detention;
e) Article 364, which says that no brief other than those expressly allowed shall be admitted;
f) Article 264, which establishes that no one may attend the presentation of testimony;

g) Article 237, which authorizes that an individual giving unsworn testimony may be urged to tell the truth, etc.

But not even with these restrictions was Lopez tried in accordance with the legal procedure of that jurisdiction, as the Argentine Government says, because the following provisions of the Military Code of Justice were also violated: Article 2, which provides that military courts may not apply punishments other than those established under law; Article 226, which provides that the government attorney shall take steps to confirm the crime and its circumstances even if the defendant confesses from the very beginning to being the perpetrator; Article 240, which provides that he may not use coercion or threats or promises of any kind against the witness; Article 252, which indicates that, after giving an unsworn statement, he will be allowed to appoint a defense counsel, all subsequent procedures being void if such appointment is hindered;

Article 290), which provides that two or more experts shall be appointed to assess the facts;

Article 300), which indicates the contents of the expert report; Art. 575), which says that no tribunal or military authority may increase or decrease punishment beyond the maximum or minimum,...nor increase it by replacing it with others;

Article 576, which provides that no offense may be suppressed with punishment nor established by the law before being committed; and if the criminal law at the time of the offense and subsequent offenses is different, the one most favorable to the accused shall be applied, and if the punishment has already been imposed by an executory judgement, it will be replaced by the least severe one, etc.
These irregularities, together with those that were denounced in the initial brief, were the reasons for drafting a denunciation against those who took part in his trial, so that his trial would be ordered for breach of duty in accordance with the standards of Arts. 832, 833 and 179 of the Military Code of Justice (cf. document, a copy of which we attach).
The judgement handed down against members of the First Military Junta for violation of basic human rights clearly held that retired Brigadier General Orlando Ramon Agosti, as Commander and Chief of the Air Force, gave his subordinates orders "that called for abductions, torture, the physical elimination of a vast number of individuals vaguely categorized as 'subversive,' and that such orders involved acceptance of the idea that in their area of operations other crimes were to be committed, such as robbery, abortions, rape and suppression of the civil status of minors"; and it is also confirmed that he gave the order for operations--Provincia--for the participation of Air Force personnel in the struggle against subversion. This operational order was the outcome of A DELEGATION TO THE ARMY TO ACT IN THE DISTRICTS OF MORON, MERLO, MORENO (Buenos Aires Province) FOR THE AIR FORCE, which had the main responsibility throughout the Republic for how to implement and carry out the struggle against subversion (Judgement of the Court of Appeals on Federal Criminal and Correctional Matters of the Federal Capital), December 9, 1985.

Article 468 of the Military Code of Justice provides that execution of final judgements by military tribunals must be ordered by the President in all instances in which the judgement imposes the death penalty or affects senior personnel, and by the corresponding commanders in chief in other instances.
Dr. Raul Zaffaroni holds that the order to carry out the military judgement is a legal control and that official approval by the President or the branch commander is not of discretional compliance but rather a legal control, a very restricted assessment of the principle of suitability limited to exceptional cases and transitory situations, only for the time necessary. The competent authority may in no case change the judgement for a military crime nor arbitrarily delay the official approval, thus safeguarding the constitutional authority of the Executive Branch to pardon or commute punishment (Arts. 469, paragraphs 1 and 2 of the Military Code of Justice) (Zaffaroni-Cavallero, Derecho Penal Militar, Editorial Aries, 1980, p. 523).

For the purposes of this case, the official approval was given by Brigadier Agosti through resolution 203 of May 10, 1979 (p. 503). It is obvious that the legal control applied by Brigadier General Agosti's official approval must be totally disqualified, it being left to the President of the Nation to exercise certain authority provided for in Article 469 of the Military Code of Justice.

The report on the human rights situation in Argentina by the IACHR (OEA/Ser.L/V/II.49 doc. 2011 of April 1980), on pages 223 and 224, analyzes the action taken by the military tribunals beginning March 24, 1976, which is fully applicable to the case.

In this regard, it points out that "the alleged criminals were not allowed to choose their own defense attorneys but were assigned official military defenders who are not licensed lawyers. These circumstances... constituted serious infringements of the right to defense inherent in due process." It mentions Art. 95, which provides that in no case may the President exercise judicial functions..." With regard to the right to an impartial trial, it points out that "the Military Courts composed of officers involved in the repression of the same crimes they are judging, do not offer sufficient guarantees of impartiality. This is aggravated by the fact that in a military court, the defense is in the hands of a military officer, meaning that the defense is taken over by a person who is also part of, and has strong disciplinary ties to, the same force responsible for investigating and repressing the acts with which the accused is charged. With regard to this parody of a trial to which Lopez was submitted, and against which all remedies allowed under domestic law have been exhausted, the Argentine Government reports that "he was tried in accordance with the judicial proceedings of this jurisdiction."

The Argentine Government recognizes that, after the Constitutional Government took office, Lopez filed several appeals. He endeavored to be included too, in the legal order that began to be restored in our country. Let us see:

a) Law 23.049 was approved. He filed appeals based on Art. 13 against the judgement handed to him by the military tribunals. This is the appeal referred in the afore-mentioned presidential message No. 166. This appeal was denied by both the Supreme Council of the Armed Forces and by the Federal Court of Appeals of La Plata. The Supreme Court of Justice which, as the Argentine Government well points out, is the final instance of our judicial system, declared the special filing to be inadmissible, arguing that it was not based on Art. 15 of Law 48. In view of the denial of freedom Lopez was suffering due to the unfair trial to which he had been submitted, this decision was included among those which in similar instances that high court had disqualified because "the pronouncements that hide the objective truth due to an obvious ritual excess injure the requirement that justice be suitably served as guaranteed by Art. 18 of the National Constitution," because trial formalities have been established to guarantee the basic right, never to legitimize lack of proper defense, never to confirm the arbitrary denial of freedom.

b) An appeal of habeas corpus was filed with the Fourth National Federal Court for Criminal and Correctional Matters. This appeal, which, like the previous one, would have assisted review of the arbitrary nature of the Supreme Council's judgement, was rejected in the first instance. The resolution was confirmed by the Federal Court on May 31, 1984, and the appeal was also rejected by the Supreme Court of Justice on April 23, 1985. There were basically two grounds for the decision:

1) The military status of the accused on the date of the events which would not include him under the provisions of Law 23.042 which refers exclusively to civilians. This restrictive interpretation of habeas corpus denies the purpose of that procedure: the immediate release of anyone who may be illegally denied his freedom.

2) The opinion--with excessively strict formality--that the possible unconstitutionality of the military jurisdiction and the arbitrary nature of the judgement should have been expressed at the appropriate time, the impossibility of timely filing not having been shown. The Supreme Court omits the records in the file, since the record of notification of the judgement (fs. 448) includes the request made by Lopez to appeal the decision, which was not done because of his lack of proper defense without access to a trained civilian lawyer and because his military "defense" counsel was not an attorney and/or did not perform his duties.

Upon the rejection of both appeals by the National Supreme Court, the domestic appeals that might have

enabled reexamination of the trial were exhausted.
c) On the basis of Law 23.070, the Argentine Government reported that the sentence handed down by the Supreme Court of the Armed Forces for Osvaldo Lopez had been reduced from July 1, 2002 to February 26, 1997. This reduction was figured at three days for every two days of prison served. Instead of this, since this was a prisoner who had been placed in "maximum security," it should have been computed at two for one, which would have taken his sentence to 1995 under the provisions of that law. In view of the violation of current legislation, on August 21, 1985, Osvaldo Lopez filed an appeal to the Supreme Council of the Armed Forces asking that his imprisonment be calculated in accordance with the law. This is being processed and since it deals with a consequence of the proceeding, it does not affect the petition filed by Osvaldo Lopez with the Inter-American Commission on Human Rights.

III. ADMISSIBILITY OF THE PETITION:

None of the Argentine Government's opinions are adequate for declaring the petition to be inadmissible. they are:
General: The fact that the Argentine Government has enacted a series of legal standards aimed at restoring the rule of law and the unrestricted enjoyment of human rights does not mean that they apply to the situation of Lopez.

a) Law 23.040 repeals Law 22.924 enacted by the de facto government as a consequence of popular demand and the political prisoners themselves, which include Osvaldo Lopez, because this law sought to extend amnesty to those responsible for the genocide that occurred in the country.
b) Law 23.042 was expressly declared by the National Supreme Court of Justice as not applicable to the case of Osvaldo Lopez.
c) Law 23.070 reducing the sentence does not permit reexamination of the proceeding.
d) Law 23.007, which repealed Law 21.272 and amended the penalties in Articles 162, 210 bis and 222, allows for filing an appeal for review as provided for in Article 439 of the Military Code of Justice. It reads as follows: "This remedy is provided against final judgements by the Military Tribunals and its effect is to suspend execution or to interrupt fulfillment thereof; and it is appropriate, in the proper instances, to apply the most favorable penal law retroactively." Article 551 of the Code of Penal Procedures is in agreement with this provision.
Specific: By virtue of the latter standard, the only one of those cited by the Argentine Government that applies to the case of Osvaldo Antonio Lopez, it is sought to have the Inter-American Commission on Human Rights declare the petition inadmissible because the petitioner would not have exhausted all domestic remedies under the Argentine legal system.

This opinion should be rejected, and the petition of Osvaldo Lopez should be admitted because the appeal for review to which the Argentine Government refers deals exclusively with the consequences of the proceeding in terms of the reduction of penalties or elimination of criminal figures, but it does not deal with the invalidity of the process itself through which the sentence was reached.
It should be pointed out that at the sessions convoked by the Buenos Aires Bar Association as a contribution to the parliamentary debate on the "current legal status of political prisoners" the opinion as expressed on this topic was as follows:

"4) Standing unchanged as of this date is the appeal for review of judgements handed down under the authority of previous adjudication, even though they have been handed down by the National Supreme Court of Justice for the assumptions governed by Article 551 of the Code of Penal Procedures applicable to the federal jurisdiction.
5) None of the assumptions of Article 551 of the afore-mentioned Code provides for the possibility of filing an appeal for review in cases of violation or nonobservance of the legal guarantees established in Article 8 of Law 23.054.

6) The individual study of each case of the aforementioned political prisoners thus highlights the violation of all the cases and, to different degrees of seriousness, that of each and every legal guarantee recognized in Article 8 of the American Convention on Human Rights, or Pact of San Jose, Costa Rica, and this situation has been aggravated thus far by the circumstance indicated in item 5."

The Argentine Government's argument that the petition should be rejected because an appeal for review under Law 23.070 on how to calculate the sentence is still pending is not worthy of serious consideration. A state cannot claim confusion between due process, a decision as to guilt or innocence, and how to figure a sentence depriving freedom.

CONCLUSION:

I. As inferred by the Argentine Government's answer, the judicial branch has systematically refused to study the procedure whereby Lopez is imprisoned, always raising up problems of form. Thus it confirms the illegal denial of freedom to which Lopez is subjected, giving the authority of prior adjudication to a spurious proceeding which ended with an arbitrary decision, in this instance deviating from its own jurisprudence, which establishes that "no judicial proceeding shall be maintained if its inferences wound the community's legal and moral conscience set forth in the Constitution's standards and principles" (decisions T. 248 - 291).
II. Faced with the precise violations of the Pact of San Jose, Costa Rica, which were denounced, the Argentine Government is silent. This in itself must be understood as an implicit acceptance of each and every one of the irregularities, in accordance with the principle of law that establishes the consequences of silence when there is a legal obligation to answer.
III. The Government claims that the remedies under domestic jurisdiction are exhausted as though it were unaware of the differences between the proceeding and its consequences.

It conspicuously points to the existence of an appeal to reduce the sentence, but it does not apply this officially in accordance with the procedures established in articles 439 and 576 of the Military Code of Justice and 552 of the Code of Penal Procedures.

NEW FACTS: By way of supplementary information, you are informed of the following events that have occurred since the filing of this denunciation:
- Lopez continues to be denied his freedom.
- The communication the distinguished Commission sent Osvaldo Lopez in December 1985 never reached his attorneys because it was taken by the prison personnel.
- For six months the defense lacked access to the file prepared against Lopez (cf. attached documentation).
- Faced with the denunciation made against those who judged Lopez and against the person who had been appointed as his defense counsel at the time, it was decided that the military defense counsel was not an attorney and therefore could not file appeals to the Supreme Court, and that consequently they could not be approved.
- With regard to the denunciation made against those who were falsely informing his current defense counsel of the file's whereabouts, thus denying access thereto, it was decided that this was due to excusable errors.
- The petition filed by Lopez asking that his sentence be computed in accordance with the law, notwithstanding the time that had elapsed, has not yet been decided upon.

PETITION: In view of all the foregoing, I ask the IACHR:

1. That it deems the observations called for by the Argentine Government's answer as having been made.
2. That prior to deciding upon it, an advisory opinion be requested of the Inter-American Court of

Human Rights concerning the following matter: whether the appeal for review provided for in Art. 439, paragraph 4) of the Military Code of Justice against the final judgements of the Military Tribunals, whose effect is to suspend execution or to interrupt its compliance, deals exclusively with the consequences of the proceeding and therefore precludes examination of the proceeding itself, as held by the petitioner, or whether, to the contrary, it constitutes the exception of inadmissibility of the petition sought by the Argentine Government.

3. That the Argentine Government be requested to send a certified copy of the judgement handed down by the National Federal Court of Appeals in Criminal and Correctional Matters of December 9, 1985, in the case against Jorge Rafael Videla and others, and the evidence existing against Brigadier General Agosti and/or the Argentine Air Force.

4. That the Argentine Government be asked to submit certified copies of the minutes for the second meeting of the National Chamber of Deputies held on 16/12/83.

5. That the Argentine Government be asked to submit certified photocopies of cases pursued by the Standing Court Martial for enlisted personnel, troops and students, which as of 18 December, 1985, consisted of 547 pages in three volumes (files "L" 1362/78 "C" and files 1361/78 "C" 12C of 79 pages and Letter "L" 1361/78 Cd 8 "c" with 19 pages), and in particular photocopies of decisions 8593 and 8636 of the Office of the Attorney General of the Armed Forces, of November 5, 1985 and December 26, 1985 and Number 15.761 of the Office of the Judge Advocate of the Armed Forces, of March 6, 1986, which were removed by resolution of the Supreme Council of the Armed Forces.

6. That the Argentine Government be requested to submit certified photocopies of the following files: Lopez, Osvaldo Antonio/habeas corpus, case 4541, filed with the Fourth National Federal Court of the First Instance in Criminal and Correctional Matters, Secretariat No. 11, Moreno on complaint in file of Osvaldo Lopez on appeal of case No. 4596 filed with the Federal Court of La Plata.

7. That the Commission employ its good offices with the Argentine Government so that the violations denounced will cease and, in the event they continue, that it employ its good offices with the Inter-American Court of Justice.

8. Since the communication that had been sent me reached my attorneys very late, that I be considered to be legally domiciled in their office at Calle Tacuarн 119 4 Piso "P" (1071) Buenos Aires, Argentina.

9. That Dr. Juan Mendez, domiciled at 739 8th Street, S.E., Washington, D.C. USA 20003, is expressly authorized to consult the file and to request copies thereof.

J. In a note dated June 17, 1986, the Commission transmitted the complainant's observations to the Government of the Argentine Republic, to present within 30 days any information or answer it might deem appropriate. A copy of this communication was conveyed to the Ambassador, Permanent Representative to the OAS on that same day. Also, in a letter dated June 17, 1986, the complainant was informed of the steps taken concerning his observations.

K. In a note dated July 17, 1986 (SG 157 (7.2.17), the Argentine Government requested an extension of the deadline set for sending its remarks and information. That note explains the reason for the request, indicating that "it is due to the fact that remedies under domestic jurisdiction described in my note DG 48 (7.2.17)/86, whose substantiation has been requested recently by the petitioner's defense attorneys, are in process."

L. In a note dated July 25, 1986, the Commission informed the Argentine Government of a thirty-day extension.

M. In a note dated September 11, 1986, (SG 210 - 7.2.17), the Argentine Government provided the following additional information:

Without prejudice to the additional explanations the Commission may deem advisable to request, I am

pleased to make the following information available to you:

I. As stated in item B. (Specific) of paragraph IV (Inadmissibility of the petition), in the note dated March 26, 1986 concerning the case of Mr. Osvaldo A. Lopez, the Argentine Government reconfirms its opinion that such communication does not meet the requirements of Article 46, paragraph a) of the American Convention on Human Rights. Proof of this is as follows:

a) At the present time there is before the Supreme Council of the Armed Forces an appeal for review filed by the petitioner on August 8, 1986, as provided for in Article 439, paragraph 4) of the Military Code of Justice, in accordance with Article 551, paragraph 4) of the Code of Procedures in Criminal Matters.

b) In view of presentation of the afore-mentioned appeal for review and pursuant to Article 441 of the Military Code of Justice, the Minister of Defense requested an opinion from the Judge Advocate General of the Armed Forces, who decided as follows on August 28, 1986:

Bearing in mind that Law 21272 has been repealed by Article 1 of Law 23077, which prima facie would call for application of Article 827 of the Military Code of Justice (L. A6), which establishes a lighter sentence, I believe that, in accordance with the provisions of Article 439, paragraph 4) of the latter legal body, it would be appropriate to consider the appeal in reference.

c) Subsequently, the Minister of Defense referred the files in reference to the Chairman of the Supreme Council of the Armed Forces with the following provision:

In accordance with the opinion handed down by the Judge Advocate General of the Armed Forces, I refer these records related to the appeal for review filed by former Air Force Corporal Osvaldo Antonio Lopez concerning the judgement of the Supreme Council of the Armed Forces on November 23, 1978, requesting that it be processed on a preferential basis.

d) It must be stressed that the decision of the Supreme Council of the Armed Forces may also be appealed before the competent Federal Court and, when appropriate, before the National Supreme Court. Finally, it is pointed out that the proceedings under way allow the assumption that this situation will be cleared up shortly.

II. The Argentine Government understands and so explains in Section I that the communication on case No. 9635 concerning the status of Mr. Osvaldo Antonio Lopez must be declared inadmissible because it does not meet the requirements of Article 46, paragraph a) of the American Convention on Human Rights and those of the Commission's Regulations.

For the preceding reasons, the Argentine Government does not go into an analysis of other aspects of the communication related to the case of Mr. Osvaldo Antonio Lopez, as it stated already in Item III of the reply of March 26, 1986.

Moreover, the complainant, in a communication dated August 21, 1986, reported on the progress of the new developments related to his case before the civilian as well as military legal authorities. These reports are as follows:

Since it can be inferred from the Argentine Government's reply to the distinguished Commission that the remedy of review under the most favorable penal law could be a suitable mechanism for recovering my freedom, I filed such an appeal before the Federal Court of La Plata, without thereby waiving my right to review of the entire proceeding. As I had stated in my previous presentations, the mechanisms under domestic jurisdiction for this latter right have been exhausted.

According to a certified judgement, a copy of which I attach, the Federal Court of La Plata rejected this presentation, declaring itself incompetent. For this purpose, it claims that the appeal for review under the most favorable law must be filed before the Supreme Council of the Armed Forces.

Therefore the Federal Court declined its jurisdiction in favor of an administrative tribunal, which, as such, is subordinate to the Executive Branch. This resolution is in conflict with the provisions of the National Constitution that establish the representative republican form of government, prohibiting the Executive Branch from usurping judicial functions (Arts. C. N.). It is at the same time a new violation of the provisions of Art. 8. 1) of the American Convention on Human Rights.

This resolution is one further demonstration that the judges not only avoid taking up review of the erroneous proceedings conducted when a genocidal military junta usurped power in our country but that,

moreover, in the case of political prisoners, such as my case, they refuse to apply current legislation that establishes the remedy of review of penalties under the most favorable law or different ways to compute penalties.
Included with this communication was a copy of the decision denying the appeal for review by the Federal Court of La Plata filed by the complainant under the terms of Art. 551, paragraph 4 of the Code of Military Procedures (C.P.M.) against the judgement of the Supreme Council of the Armed Forces dated November 23, 1978, which sentenced Mr. Osvaldo Antonio Lopez to 24 years in prison with the additional penalties of absolute disqualification for the same length of time and demotion.

N. In a note dated September 16, the Commission transmitted this information to the complainant, requesting his observations.

O. In a communication dated October 7, 1986, the complainant set forth further observations to the Argentine Government's comments. The text reads as follows:

With reference to your letter of September 16, last, in which you informed us of the contents of the note dated September 11, 1986 from the Argentine Government, we wish to convey to you the following observations:

a) The contents of the appeals for review of the consequences of the spurious trial to which Lopez has been submitted reaffirm the opinion that domestic channels for obtaining annulment of the decision have been exhausted. The answer itself from the Argentine Government shows that the civilian tribunals have refused to review the case as a whole, citing reasons of form.
b) The appeal filed before the Supreme Council of the Armed Forces for review of the sentence in accordance with Art. 439 of the Military Code of Justice is subsequent to the appeal filed for the same purpose before the Federal Court of La Plata, which the latter rejected.
c) The opinion handed down by the Judge Advocate General means that this requirement only allows review of the sentence through application of a more favorable law. In the contrary sense, it does not allow review of the merits on which the sentence is based. Despite this, if the Judge Advocate's opinion were heeded, the sentence could be reduced from 24 years to 15 years, and if the system of computing two days for each day spent in prison during the military dictatorship were applied, Lopez would recover his freedom immediately.
d) We include herewith a photocopy of the opinion of the Prosecutor of the Supreme Council of the Armed Forces, which asks that the 24-year sentence be reduced to 22 years. It also follows from this opinion that it is still believed that "it is appropriate to take, subject to the facts declared proven, a new approach in keeping with current legislation." It is obvious, as we held, that "the facts declared proven" are not going to be reviewed, and this is true to the extent that the Prosecutor is not at all engaged in the questioning the grounds for that declaration.
e) The rebuttal of the Judge Advocate General and the Prosecutor of the Supreme Council of the Armed Forces appears in a document presented by Captain (Army Retired) Jose Luis D'Andrea Mohr, Military Counsel, with the cooperation of Drs. Moreno and Carsen, on 30/9/86, a photocopy of which we include and ask to be included as part of this document.
f) Although the decision is subject to review, this is to be done by the Federal Court of La Plata, whose slight willingness to intervene has already been made clear to your Commission. If it were necessary to appeal to the National Supreme Court of Justice, we should now merely remark that the case of another person held for committing political crimes, Hector Geronimo Lopez, for more than a year and a half has been pending decision.
g) We include for the Commission's study the article published in "El Periodista" on this case.
h) We repeat, in view of the positions taken by both parties, our request for an advisory opinion by the Inter-American Court of Human Rights as to whether the appeal pending for review of the sentence fulfills the requirement for admissibility in Art. 46, paragraph a) of the American Convention on Human

Rights and concordant provisions of that Commission's Regulations.
Included with the communication in reference was a copy of the appeal for review filed by the complainant with the Supreme Council of the Armed Forces in view of the refusal of the Federal Court of La Plata, for substantive reasons, to admit this appeal. This new appeal for review also requested the designation of a military co-defense counsel, and the prisoner's immediate release was requested.

P. In a note dated March 19, 1987 (Vs.11 (7.2.17), the Government of the Argentine Republic supplied the following information concerning the case: that on March 5, 1987, the Federal Court of La Plata had allowed a special appeal to the National Supreme Court of Justice.

Q. The Commission considered Case 9635 at its 69th session on the basis of the Argentine Government's information mentioned above and decided to postpone its decision thereon until a clarification had been obtained from that Government concerning the note of March 19 on the scope of the appeal for review, because there was a doubt as to whether that appeal would enable the Supreme Court of Justice to review Mr. Lopez' trial (with regard to the substance of the matter) whereby he was sentenced, or whether the issue would be an appeal for review of the sentence through application of the most favorable law.

R. At its 69th session (March 1987), the Commission decided to address a note to the Argentine Government asking it for clarification of the matters in reference.

S In keeping with that decision, the Commission addressed a note to the Government of the Argentine Republic on March 31, 1987.

T. In a note dated April 30, 1987 (SG No. 137 (7.2.17)/87), the Argentine Government enclosed a copy of the judicial order issued in the Lopez case whereby the "special appeals filed" by the defense were allowed. Included with this judicial order was a copy of the order handed down by the Appellate Court of La Plata, which provides as follows:

i) to declare the appeal filed by the party inadmissible and
ii) to confirm the declaration of incompetence to deal with rectification of the sentence's computation as requested by the complainant.

2. In a communication of May 4, 1987, the complainant again addressed the IACHR on occasion of the aforementioned appeal for review and stated the following:

Upon appeal by my defense counsel, it is now up to the National Supreme Court of Justice, which has had the case before it for two months, to decide. I am afraid that once again my right to freedom will be postponed. I continue in the same situation that I was in two years ago when I turned to the IACHR. On the two previous occasions, in which my proceeding reached the National Supreme Court of Justice, that Court refused to review it for various reasons. Currently, in view of the latest events in the country, I have the well-founded fear that the Court will postpone sine die decision on my case, or that, claiming the same reasons as the Federal Court of La Plata, it will refuse to intervene in the appeal before it for consideration or, at best, it will reduce my sentence as requested by the Prosecutor and order my immediate release without going into review of the proceeding itself, leaving as proven events that never occurred and that served to uphold my unjust sentence.
With regard to the Inter-American Commission on Human Rights, I formally and expressly petition that it make itself available to the parties in order to reach a friendly solution based on respect for the human rights established in the Pact of San Jose, specifically: the right to personal liberty (Art. 7); the right to a fair trial (Art. 8); the right to judicial protection (Art. 25) which, using the terms of this latter provision, allows me through a simple, prompt and effective recourse to protect my basic right to immediate

freedom and to a fair trial, which rights are recognized by the National Constitution, the law and the American Convention and which are being violated day by day as long as I am not released and as long as the trial that led to my unjust sentence is not reviewed.

CONSIDERING:

1. That in the current stage of steps taken in the case before the Commission, both the petitioner and the Government of the Argentine Republic have had ample opportunity to express their views in order for the Commission to reach a decision on the complaint's admissibility, bearing in mind that the complainant has been deprived of his freedom for nine (9) years.

2. That, prima facie, the basic matter of importance now is to determine whether the remedies under domestic jurisdiction of the Argentine Republic have been exhausted, in order to decide on the admissibility of the denunciation, since the impediment provided for in Article 46, paragraph 1, a) of the American Convention on Human Rights, and in Article 37, paragraph 1 of the Commission's Regulations has been overcome.

3. That, actually, the arguments and terms of reference presented to the Commission by the complainant and the individuals and entities contributing to the denunciations, as well as those presented by the Argentine Government, have focused on the problem of the exhaustion of domestic remedies.

4. That, as the terms of reference presented indicated, the complainant has filed, although with unfavorable results, the remedies of appeal, complaint, special appeal for illegal action, habeas corpus and special appeal to the National Supreme Court of Justice, whereby the domestic measures that could be available to the complainant would have been exhausted.

5. That the Argentine Government disagrees, pointing out that in this case there has still been no filing of the "Appeal for Review of the penalty provided for in Articles 439, Paragraph 4, of the Military Code of Justice and 55l, Paragraph 4, of the Code of Procedures in Penal Matters for the Federal Jurisdiction and the Ordinary Tribunals of the Federal Capital and of the National Territories" (Note SG-48, cit. supra, p.4), for which reason it believes that the complaint is inadmissible because it does not meet the "conditions required by Article 46, paragraph a) of the American Convention on Human Rights" (Note SG-48, p.5, cit.)

6. That with regard to presentation of the appeal for review the Argentine Government indicates, the complainant explains in his petition why such appeal would not apply, stating the following:

b. Exhaustion of domestic remedies: Upon consideration by the Supreme Court of Justice that the judgement convicting Antonio Lopez has the authority of prior adjudication and that objection thereto was filed in untimely manner, domestic remedies have been exhausted, because this judgement firms up the decision from the domestic standpoint of the proceeding in which the verdict was handed down.

An appeal for review, has not been filed, since it would be based on the assumption of a valid proceeding, which was lacking in the case we denounce.

7. The appeal for review to which the Argentine Government refers would deal "exclusively with the consequences of the proceeding in terms of the reduction of penalties or elimination of criminal figures, but it does not deal with the invalidity of the process in itself through which the sentence is reached," as the complainant indicates in his observations (cit. supra, p.6).

8. That, despite the foregoing, the complainant filed with the Federal Court of La Plata an appeal for

review of the sentence, without thereby waiving his right to review of the entire proceeding, and the Federal Court of that city, in Resolution l0 of July l986 (File 306), rejected the appeal, declaring itself incompetent based on the fact that the appeal for review through the most favorable law "must be filed with the Supreme Council of the Armed Forces," whereby, the issue would be a denial of jurisdiction in favor of an administrative tribunal which, as such, is subordinate to the Executive Branch.

9. That, in this regard, it is obvious to point out the statement by the Buenos Aires Bar Association (September l985) on the "Current Juridical Status of Political Prisoners," to the effect that:

...
4. Standing unchanged as of this date is the appeal for review of judgements handed down under the authority of former adjudication, even though they have been handed down by the National Supreme Court of Justice for the assumptions governed by Article 551 of the Code of Penal Procedures applicable to the Federal Jurisdiction.

10. That, moreover, due to the context of the denunciation and observations presented by the complainant, assumed violations of the right to judicial guarantees which are the bases of due process are inferred. Among such assumed violations, the following are indicated:

a. The same events had been the subject of investigation by the competent military authorities themselves, and the persons involved, among them Mr. Osvaldo Lopez, had been declared not responsible;
b. The accused was sentenced without sufficient evidence and only on the basis of a "confession" made under irregular conditions and without the presence of a defense attorney, which happened more than 15 months after the investigation mentioned in item a), after Mr. Lopez had been abducted in July 1977 and detained in a non prison center, as was Unit VIII (Moron), a place denounced as a clandestine detention center;
c. The judgement did not analyze the evidence. It applied a law that had been repealed (Law 21.272), and finally, the accused was given a heavier sentence for acts that were not proven beyond a reasonable doubt.
d. The accused did not have the appropriate assistance by trained counsel, and when he was notified of the judgement and put expressly on the record that he would appeal that judgement to the National Supreme Court of Justice, the untrained official attorney did not file the afore-mentioned appeal in a timely manner or at any other time, leaving the individual convicted without proper defense.

11. That the proceeding under which Mr. Osvaldo Lopez was sentenced was conducted with complete lack of constitutional guarantees, as is tacitly recognized by the Government of the Argentine Republic itself, in Note SG-48, cit. p.3, upon indicating that "as is known, immediately after assuming its duties on December 10, 1983, the Argentine Constitutional Government adopted several provisions aimed at full restoration of the rule of law and unrestricted enjoyment of basic human rights and freedoms."

12. That as part of the work of institutional renewal by the current Government of the Argentine Republic, measures have been proposed that are directly involved with the military legislation under which the trial of Mr. Osvaldo Lopez was carried out. In this sense, it is necessary to emphasize what appears in the case record;

a. Law 23.040, which repeals Law 22.924 enacted by the previous de facto Government. It is brought to mind that the latter law sought to give amnesty to those responsible for the human rights violations that had occurred in the past.
b. Law 23.042, which establishes the possibility of claiming personal freedom by filing a writ of habeas corpus for all civilians sentenced by military tribunals.

c. Law 23.070, which substantially reduced the sentences of the prisoners between March 24, 1976 and December 10, 1983.
d. Law 23.977, which expressly repealed repressive standards established by the previous Government and substantially reduced the sentences of others. Included as an appendix are copies of the afore-mentioned laws.

13. That the Federal Court of La Plata, upon allowing the complainant a special appeal before the National Supreme Court of Justice, expressed to the IACHR the doubt as to whether such appeal would enable the Court to review the proceeding as regards the substance of the matter or whether the issue would be only an appeal to review the sentence, applying a more favorable law but upholding the judgement of the military tribunals whereby Mr. Osvaldo A. Lopez was sentenced to a longer deprivation of freedom.

14. That, in the Commission's opinion, the Argentine Government's answer dated April 30, 1987, does not explain the scope of the appeal pending before the Supreme Court, as the Commission asked that Government to do in the note dated March 31, 1987.

15. That if the appeal were to review only the sentence, it would not result in redressing the juridical and moral injury stemming from a proceeding presumedly invalidated by serious irregularities which, for that reason, should be reopened so that the convicted individual would have a procedural opportunity to show his innocence or, otherwise, for his guilt to be established beyond any doubt.

16. That more than a reasonable period has elapsed for the domestic remedies the Argentine Republic established for the defense of human rights to have been exhausted and, in this instance, for the rescission of decisions or judgements involving violation of the legal guarantees provided for under the Constitution and protected by the American Convention (Art. 8) together with the right to personal liberty (Art. 7) and, moreover, every individual's right to a "simple and prompt trial, or any other effective recourse, before a competent court or tribunal for protection against acts that violate one's fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

17. That, therefore, the provisions of Article 46, paragraph 2.c) of the American Convention on Human Rights and Article 37, paragraph 2.c) of the Commission's Regulations do apply.

18. Bearing in mind the provisions of Articles 46, paragraph 1, a) of the Convention and Article 37.1) of the Commission's Regulations, despite the fact that a special appeal on the case is pending before the Supreme Court of the Argentine Republic.

19. That the Commission, in its Report on the Situation of Human Rights in Argentina (OEA/Ser.L/V/II.49, doc.19, of 11 April, 1980, pages 223 and 224), upon analyzing the performance of the military tribunals beginning March 1976, stated that "...the alleged criminals were not allowed to choose their own defense attorneys but were assigned official military defenders who were not licensed lawyers. These circumstances ...were serious infringements of the right to defense inherent in due process. These situations violate basic provisions of the Constitution. One of these is Article 18 dealing with due process... and Article 95 ... which provides the following: 'In no case may the President exercise judicial functions...'" And with regard to the right to an impartial trial, it pointed out the following: "...the Military Courts composed of officers involved in the repression of the same crimes they are judging, do not offer guarantees of sufficient impartiality. This is aggravated by the fact that in a military court, the defense is in the hands of a military officer, meaning, that the defense is taken over by a person who is also part of, and has strong disciplinary ties to, the same force responsible for investigation and repressing the acts with which the accused is charged."

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare admissible the communication dealing with Case 9635 presented by Mr. Osvaldo Antonio Lopez.

2. To declare that, in application of the provisions of Articles 48, paragraph 1.f) of the Convention and 45 of the Regulations, it places itself at the disposal of the parties in this case with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights, in view of the fact that the positions and intentions of the parties have been sufficiently clarified and, in the Commission's opinion, the matter, due to its nature, lends itself to settlement through this procedure.

3. To convey this resolution to the Government of the Argentine Republic and to the complainant.