THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN Resolution No. 15/87 (OEA/Ser.1/V/II.70, doc.15), adopted at the 70th session (June 1987), whereby it resolved:

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.

CONSIDERING:

1. That the aforementioned Resolution No. 15/87 was published in the 1986-87 Annual Report to the OAS General Assembly (OEA/Ser.L/V/II.71, doc.9, rev.1, pp.34 to 66);

2. That the Government of the Argentine Republic addressed a note dated September 21, 1987 (Vs.25-7.2.17) to the Commission in regard to Resolution No. 15/87, the contents of which are summarized below:

a. It welcomed the IACHR offer to place 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, because that offer was tendered in the spirit of collaboration that had always characterized that body's relations with the Argentine Government and those of the Argentine Government with the Commission, but that "because this is a democratic country where a state of law prevails, the Executive Branch that is responsible for external relations can carry out the measures

cited in Article 48 of the American Convention only if they take place in conformity with national juridical procedures and to the extent that and within the limits of a republican government in which the separation of powers is fully valid";

b. In its judgment of September 14, 1987, the National Supreme Court of Justice, had vacated all action taken in the case against Osvaldo Antonio López, starting on folio 500, and transferred the matter to the San Martin Federal Court of Appeals so that it could issue a final verdict;

c. In this decision, the Court repeated that "compliance with the rules designed to ensure that the accused has access to proper legal counsel constitutes a valid requirement, the failure to comply with which leads to an annulment that the Tribunal must declare in exercise of its special jurisdiction (Judgments: 189; 34 and 237; 158 and quotations therefrom)"; and that "this conclusion is predicated both on the guarantee of the defense in court, expressly established in Article 18 of the National Constitution, and on the guarantee of due process complementing it and integrating it with those cited in Article 33 of the Constitution as being inherent to the republican system," not excluding military jurisdiction, since every individual subject to military jurisdiction "enjoys the fundamental rights to which all inhabitants of the Nation are entitled, of which they cannot be deprived (Judgments 54:777)";

3. That according to the aforementioned judgment of the Court, the decision handed down by the Supreme Council of the Armed Forces on November 23, 1978, sentencing Osvaldo Antonio López to 24 years of imprisonment plus additional penalties of absolute disqualification from service and reduction in rank, was not affirmed, and the legal possibility of a review of the proceedings was left open with regard to the substance of the matter. This is consistent with the statements made by the Commission in its Resolution No. 15/87[FN1] to the effect that the substance of petition 9635 was designed to redress "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";

[FN1] Resolution, pp. 33-34.

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4. That the judgement rendered by the National Supreme Court of Justice on September 14, 1987 nevertheless failed to order the immediate release of Osvaldo Antonio López, despite the order annulling part of the proceedings that led to his imprisonment;

5. That, in a note dated September 23, 1987, (Vs. 26), the Government of Argentina transmitted a copy of the resolution adopted by the San Martín Court on September 21, 1987, "concurring with the findings of the National Supreme Court of Justice" and using the means contemplated in Article 445 bis of the Code of Military Justice to open a new trial based on the principle of juris novis curiat, which obliges the judge to resolve the questions raised in accordance with the law that he deems to be reasonably applicable. This could--in the opinion of the Commission--be considered a judicial decision consonant with the causa petendi;

6. That, in the course of its 71st session (September 1987), when the Commission was apprised of the notes from the Argentine Government and the judicial decisions in question, it sent a note to that Government, on October 2, 1987, expressing its concern over the fact that Argentina's Supreme Court of Justice, when it declared null and void a large part of the proceedings that convicted López, failed to order his release, and stating its hope that the case would soon be resolved with the review of the proceedings and the release of Osvaldo Antonio López;

7. That, on February 8, 1988 (No. Vs. 7.2.17), the Argentine Government sent the Commission a copy of the findings of the San Martín Court of Appeals in the course of the review of the proceedings

against Osvaldo Antonio López, which resulted in the acquittal and release of the prisoner from the very courtroom, a right which he enjoys at present. Pertinent portions of the Court's decision are quoted below:

III The San Martín Federal Court of Appeals, having ordered the evidence to be taken and heard the parties, resolved on November 20, 1987:
I. TO REJECT the charge of unconstitutionality presented in respect to Articles 235 and 252 of the Code of Military Justice.
II. TO REJECT the proposal for application of the Statute of limitations to the crime of unlawful association.
III. TO UPHOLD the sentence handed down by the Supreme Council of the Armed Forces' appearing on pp. 486-490, insofar as it considers OSVALDO ANTONIO LOPEZ--whose particulars are given in the case files, to be guilty (Art. 45 of the Penal Code) of placing six (6) incendiary devices in the fuel tanks of six "MIRAGE III" aircraft located in the hangars of the VIII Brigade of Argentina's Air Force and of belonging to an unlawful association, reducing the charge for the first of the aforementioned acts, which is subject to the provisions of Arts. 827 and 828 of the Code of Military Justice to the level of an attempt (Arts. 42 and 44 of the Penal Code and Art. 510 of the Code of Military Justice) and maintaining the classification of the second of those acts based on the principle establish in Art. 2 of the Penal Code of applying the lighter punishment (Arts. 219 bis 210 quater of the Penal Code, as establish in law 2l,338); and, consequently, TO SENTENCE OSVALDO ANTONIO LOPEZ to SIXTEEN YEARS AND EIGHT MONTHS OF IMPRISONMENT, with the additional penalties of ABSOLUTE DISQUALIFICATION FROM SERVICE FOR THE SAME PERIOD and REDUCTION IN RANK (Code of Military Justice, Arts. 536, 539, and the last paragraph of 585).
IV. TO DECLARE that, according to the computation made by the actuary on f. 12 of the release order issued for OSVALDO ANTONIO LOPEZ, the term of his sentence expires on this date and he is to be set free forthwith from the very courtroom.
V. TO REVOKE in part the sentence that is the subject of the appeal and, consequently, TO ACQUIT the aforementioned OSVALDO ANTONIO LOPEZ of the crimes set forth in and prohibited by Arts. 162 and 222 of the Penal Code and Arts. 716 and 718 of the Code of Military Justice, under which he was convicted.

8. That, in the aforementioned note of February 8, 1988, the Argentine Government says "that having conducted a review of the case pursuant to the provisions of Article 445 bis of the Code of Military Justice, and since Mr. Osvaldo Antonio López was released on November 20, 1987 because he had served out his sentence...," the case before the Commission should be considered closed;

9. That, in a communication dated February 12, 1988, the Commission forwarded to counsel for the complainant the information supplied by the Argentine Government and ask for his comments thereon;

10. That counsel for the complainant sent his comments in communications dated February 12 and March 1, 1988, which are summarized below:

a.. Mr. Osvaldo López was released in November 1987, when the San Martín Federal Court handed down a new decision and computed the time he had served since his arrest more than 10 years earlier; but the Court refused to review the proceedings, despite the irregularities pointed out by the Supreme Court of Justice in its judgement of September 1987 when it annulled all proceedings since 1979 in the case before the military court;
b. López' lawyers in Argentina had therefore filed a special appeal charging that the sentence of the Court of Appeals was unconstitutional "since it continues to be founded on a confession extracted under duress, but the San Martín Court denied the appeal. As a result, a complaint of miscarriage of justice was brought before the National Supreme Court of Justice, the resolution of which was expected in the near future;

c. In the meantime, faced with the possibility of very protracted formalities, friendly settlement of the case having been to no avail, he requested that the IACHR submit the case to the Inter-American Court of Human Rights, with a statement that Argentina was in violation of Articles 8 and 25 of the American Convention on Human Rights.

1. That the Commission continued to study this case during its 72nd session (March 1988), in light of the information from the Argentine Government and the observations of counsel for the complainant and decided to send a further request for information to the Argentine Government. It did so in a note of April 7, 1988, the pertinent portions of which read as follows:

In communications of which copies are attached, counsel for the complainant alleges that the San Martín Federal Court failed to review the proceedings whereby Mr. Osvaldo Antonio López was sentenced to prison, in the course of which the judicial guarantees set forth in Article 8 of the American Convention on Human Rights were violated. Consequently, López, conditional release apparently occurred solely as a result of a computation of the punishment based on the years he had spent in prison, and not as a result of a review of the proceedings;

2. The decision of the San Martín Court apparently failed to take into account the relevant legal fact that, in September 1987, Argentina's Supreme Court of Justice vacated the proceedings as of 1979 that had led to Lopez' sentencing, transmitting the case records to the San Martín Court so that it could issue a "final" verdict, according to the terms of the Argentine Government's reply attached to its note of September 21, 1987 (Vs. 25-7.2.17).

The Commission is troubled by the fact that proceedings that have been declared null and void by the highest tribunal of the nation, i.e., the Supreme Court of Justice--starting on folio 500--have not resulted in a review of the case by means of a special procedure for acquittal or a similar procedure enabling Mr. Osvaldo Antonio López to prove his innocence and thus remain unconditionally at liberty.

3. Mr. Lopez' lawyers have filed an appeal against the sentence of the San Martín Court, on the grounds of unconstitutionality "since it continues to be founded on a confession of the complainant in the attached letter." Since that appeal was denied by the Court of Appeals, a remedy is now being sought before the Supreme Court, for denial or miscarriage of justice, according to the aforementioned communication from counsel for the complainant.

For all those reasons, the Commission decided at its 72nd session (March 14-25, 1988) to continue to study this case.

4. That the Argentine Government replied to the Commission in a note dated July 6, 1988 (Vs. 38), stating the following:

The Government of the Argentine Republic has the honor to address the Executive Secretary of the Inter-American Commission on Human Rights with reference to the communication dated April 7, 1988, requesting information on certain aspects of case 9635 concerning Mr. Osvaldo Antonio López, and places at his disposal the following items, without prejudice to any further clarification the Commission might see fit to request.

Introduction

In his communication of April 7, 1988, addressed to the Government of Argentina on behalf of the Inter-American Commission on Human Rights, the Executive Secretary requests information on certain aspects of the case of Mr. Osvaldo Antonio López, which had led that Commission to decide at its 72nd session (March 14-24, 1988) to continue to study the case.

These aspects were pointed out to the Commission by counsel for the complainant in his communications of February 12 and March 1, 1988.

I. COMMUNICATIONS OF COUNSEL FOR THE COMPLAINANT

1.

a. In his communication of February 12, 1988, counsel for he complainant states that López was released in November 1987, when the San Martín Federal Court rendered a new decision and computed the time he had served since his arrest more than 10 years earlier.

b. That statement is true. The complainant is now completely free, having served the time required by the San Martín Federal Court's new sentence.

2.

a But it goes on to say that "the Court refused (to review) the proceedings, despite the irregularities cited by the Supreme Court in its judgment of September 1987, which vacated all proceedings before the Military Court since 1979."

b. This statement is false.

First: The new decision rendered by the San Martín Federal Court was specifically the conclusion of a thorough review of the López case, which included a public hearing at which numerous pieces of evidence were produced by the parties and taken into account by that Court in its new decision. Accordingly, it is not true: the San Martín Federal Court did indeed review the case, and did so publicly.

The Argentine Government wishes to point out that the honorable Commission was invited to attend the aforementioned public hearings, which took place on October 28 and November 18, 1987.

Secondly: The Supreme Court judgment of September 1987 annulled all the proceedings as for 1979 in López' trial before a military court, more specifically, everything from folio 500 onward, where the record shows that López expressed his wish to file an appeal with the Supreme Court of Justice regarding the sentence handed down by the military court, but his military counsel had not laid the proper ground for that special appeal.

The guilty verdict rendered by the Supreme Council of the Armed Forces was therefore not affirmed and the case was submitted to the compulsory appeal procedure before the civil courts, established by law 23,049 for all causes that, after the reform introduced therein, remained within the competence of military justice.

It was the Federal Court's guilty verdict that put an end to the review process which, as stated earlier, did indeed take place.

3.

a In the remaining paragraphs of his communication of last February 12, counsel indicates the measures adopted by López' defenders to impugn the new sentence issued by the San Martín Federal Court in his case, noting that "past experience suggests that it will be a long time before the Supreme Court issues a final judgment on the substance of the question, since now that López is no longer in prison the case will not be given priority attention."

b. This "prediction" of representative counsel for the complainant did not prove to be accurate.

Last April 14, the National Supreme Court of Justice dismissed the complaint lodged because of its denial of the special appeal against the judgment of the Federal Court, which had again found López guilty. Copies are attached of both this judgment--which by dismissing the complaint upheld the verdict against Osvaldo Antonio López'--and the decision of the Federal Court denying the special appeal.

4.

a Finally, it is stated in the communication of February 12 and repeated in the one dated March 1 that the Commission's efforts to arrive at an friendly settlement through negotiations with the Argentine Government came to naught since "unlike the attitude on our part, the Argentine Government has not responded to the Commission's proposal to place itself at the disposal of the parties to reach a friendly settlement."

b. The Government of Argentina wishes to remind the honorable Commission that it duly responded to that offer and expressed its appreciation of it because it "was tendered in the spirit of collaboration that has always characterized that body's relations with the Argentine Government and those of the Argentine Government with the Commission." Its reply to that offer in September 1987 stated that the Executive Branch, which in our institutional system is responsible for foreign relations, can carry out only such measures as are permitted by national juridical procedures, within the limits of a republican government in a country where the separation of powers is fully valid.

Moreover, and in light of the concrete results obtained, the statement made by counsel for the complainant to the effect that the Argentine Government had never cooperated in this case is inaccurate and unjust. This Government is confident that the honorable Commission will, in its wisdom, be able to appraise the efforts made to arrive at a just solution predicated on the law and the principles underlying the American Convention on Human Rights.

II. INFORMATION REQUESTED BY THE COMMISSION

1.
a Point 1 of the communication from the Commission's Executive Secretary includes an inaccurately points out that Osvaldo Antonio López is now out on parole.
b. Today López is a free man who has served out the sentence that a court, made up of judges appointed pursuant to constitutional mechanism in Argentina for this purpose, had imposed on him after hearing his testimony, considering the evidence presented in his defense, which it found inadequate to substantiate the acts he denied, and further after thoroughly reviewing the evidence against him.
The violation of his right to defense in court as a result of this special appeal's not being filed on time, was rectified when the Supreme Court of Justice ordered application of the broad review process established by Law 23.049, as requested by Osvaldo Antonio López' defense.
The final sentence imposed on López was deemed to have been served out in accordance with a privileged computation of the time he had spent in prison.
Today López is not out on parole, he is a free man. He has paid the debt that the San Martín Federal Court considered he owed to society, after a thorough review of the proceedings in the case against him.
2.
a According to point 2 of the communication of the Commission's Executive Secretary, the decision of the San Martín Federal Court did not take into account the fact that the Supreme Court had annulled the court proceedings in which López had been sentenced as of 1979.
b. In fact, exactly the opposite occurred. The decision handed down by the San Martín Federal Court was the consequence of the annulment decision of the Supreme Court. And although the annulment applied only to proceedings following the sentence the Supreme Council of the Armed Forces imposed on López, from a procedural point of view it weakened all the proceedings that took place in the military jurisdiction.
In reviewing the López trial, the San Martín Federal Court considered the objections made and, after taking and examining the evidence offered by the defense, rendered a definitive decision.
At present, Mr. Osvaldo Antonio López is completely, unconditionally free.
Similarly, at a public hearing to which the Commission was invited, he had the opportunity to prove both his innocence--which neither he nor his counsel had argued in his defense--and any flaws in the evidence the prosecution had introduced against him.
3. Point 3) of the Executive Secretary's communication refers to the final phase of Osvaldo Antonio López' trial. With a view to clarifying matters for the Commission, an account of what occurred during that phase of the trial follows.

III. ACCOUNT OF THE PROCEDURAL STAGES FROM SEPTEMBER 14, 1987, WHEN THE NATIONAL SUPREME COURT OF JUSTICE RENDERED ITS JUDGMENT

1. On that date the National Supreme Court of Justice vacated all proceedings beginning with folio 500 in the case "LOPEZ Osvaldo Antonio for unlawful association, etc." and ordered that the case files be returned to the San Martín Federal Court of Appeals so that the sentence handed down by the Supreme Council of the Armed Forces might come under review pursuant to article 445 bis of the Code of Military Justice.
2. On September 21, 1987, the Federal Court notified the defense so that it might voice its complaints and formulate petitions. This was done on October 2, 1987. Subsequently, the prosecution was

notified.

3. On October 27, 1987, having examined the positions of the parties, the Court ruled the appeal filed by the defense admissible.

4. The Court allowed almost all the taking of evidence requested by the defense and even provided for other means of taking evidence considered necessary to clarify the facts. Having received the evidence and heard the arguments, the Federal Court returned a decision on November 20, 1987.

5. On that date, the San Martín Federal Court unanimously decided:

a. To reject the charge of unconstitutionality brought by the defense.

b. To reject the proposal made by the defense for application of the statute of limitations to the crime of unlawful association.

c. To uphold the judgment of the Supreme Council of the Armed Forces that had been appealed, insofar as it considers Osvaldo Antonio López to be guilty of placing six incendiary devices in the fuel tanks of six "MIRAGE III" aircraft of the Argentine Air Force and of belonging to an unlawful association, reducing the charge for the first of the aforementioned acts, which is subject to the provisions of articles 827 and 828 of the Code of Military Justice, to the level of an attempt (Arts. 42 and 44 of the Argentine Penal Code) and maintaining the classification of the second of those acts based on the principle of applying the lighter punishment (Arts. 2, 210 bis and 210 quater of the Argentine Penal Code, as established in Law 21.338).

d. To alter the sentence to sixteen years and eight months of imprisonment plus the additional penalties of absolute disqualification from service for the same period and reduction in rank.

e. To rule that the sentence imposed ended on the same day as the decision (thus López regained his freedom inside the Courtroom.

f. To revoke the decision of the Supreme Council of the Armed Forces in respect to the crimes set forth in and prohibited by Articles 162 (theft), 222 (breach of secrecy) of the Argentine Penal Code, and 716 and 718 (simple desertion) of the Code of Military Justice, and consequently to acquit López of those crimes.

6. On November 30, 1987, the Court announced the grounds for its decision.

7. On December 14, 1987, López' defense brought a special appeal against the Federal Court's decision before the Supreme Court of Justice, which was rejected by the Supreme Court on February 1, 1988, because the defense had limited itself to challenging questions of fact and of evidence. The defense then filed a complaint with the Supreme Court of Justice against denial of the special appeal. That complaint was rejected by the Supreme Court on April 14, 1988.

IV. MR. LOPEZ' SITUATION AT PRESENT

As a result of the foregoing, Mr. Osvaldo Antonio López--we repeat--is free (since November 20, 1987) and not subject to any condition whatsoever under the sentence handed down by the San Martín Federal Court of Appeals--which now has the authority of res judicata--pursuant to the procedure ordered by the National Supreme Court of Justice.

V. REVIEW PROCESS OF THE CASE

1. Based on the incontrovertible fact that Mr. Osvaldo Antonio López is completely (unconditionally) free, the Argentine Government wishes once again to underscore that that freedom is the result of the process of review of his case.

2. The San Martín Federal Court of Appeals did review the proceeding whereby Mr. Osvaldo Antonio López was found guilty. The zeal with which the Court conducted its review of the case--the review process that the honorable Commission was invited to attend--is confirmed in the statement of grounds issued on November 30, 1987 by that Court. That statement was forwarded to the Honorable Commission in January.

3. The Argentine Government expresses its surprise at the type of information requested by the

Commission after a copy of the decision and its grounds were sent, since those documents answer the questions posed by the Executive Secretariat on April 7.

4. The Argentine Government regrets that the Honorable Commission was not present at the public hearings in which the Federal Court produced the evidence introduced during the process of review of the case. The fact that the Commission was not present at those hearings, to which it had been specially invited by this Government in November 1987, and the circumstance mentioned in paragraph 3 of this chapter are, in the view of this Government, the obstacles that have prevented the Honorable Commission from closing the case.

VI. CONCLUSION

Lastly, the Government of the Argentine Republic reiterates what it expressed in its communication of last February, in which it said:

"That, having conducted the review pursuant to article 445 bis of the Code of Military Justice and inasmuch as Mr. Osvaldo Antonio López has been free since November 20, 1987 since he has served his term, this Government deems it appropriate, and it so requests, that Case 9635 be considered closed." (This Government should point out that the sentence handed down in the trial of Osvaldo Antonio López was definitive as of April 14, 1988).

"That in view of the well-known impact of this case both nationally and internationally and recognizing that the case is a clear example of the cooperation of a Government with the Inter-American Commission on Human Rights and vice-versa, this Government considers that it would be appropriate for the honorable Commission to complete publication of the proceedings of this case."

"Indeed, during the 17th regular session of the General Assembly of the Organization of American States, the Report of the Commission containing Resolution No. 15/87 was approved, without its having been possible obviously, to include the most recent events, which were without a doubt decisive and indicative of the aforementioned cooperation."

On the basis of these considerations, the Argentine Government again requests the Inter-American Commission on Human Rights to consider Case 9635 definitively closed.

11. That the Commission, in order to give the complainant the opportunity to present final considerations on the case, transmitted to him, by a letter dated July 21, 1988, the note from the Argentine Government;

12. That, in a communication dated August 16, 1988, counsel for the complainant made observations and comments, the pertinent parts of which follow:

1. Inadequacy of the judicial review: The case was reopened only in part as a result of the earlier decision of the Supreme Court of Justice. The San Martín Federal Court did not throw out the confession extracted from Osvaldo López under torture during the military dictatorship nor did it rule it null and void. Neither did it challenge nor dismiss the evidence obtained by the prosecution as a result of such duress. Modern procedural law strikes down as absolutely null and void not only a confession obtained under torture but also any evidence for the prosecution thus as "fruit of the poisonous tree" [Weeks v. United States, 232 U.S. 383 (1914), and Mapp v. Ohio, 367 U.S. 643 (1961) of the Supreme Court of the United States]. In recent decisions the Argentine courts have adopted this modern view, based on the need to discourage police practices that violates the rights of the person detained. For example, in the case Rayford, Reginald R. [May 13, 1986, Law (LL), 7-7-86] the National Supreme Court of Justice emphasized the link between the exclusionary rule and due process: "The law stipulates that any evidence obtained illegally is excluded; otherwise the right to due process enjoyed by every inhabitant pursuant to the guarantees accorded under our National Constitution would be violated." In the same case, the Argentine Court also rejected all evidence that stemmed from the originally vitiated evidence; in other words, it not only invalidated the "tree" but also the "poisonous fruit."

The Court affirmed the doctrine established in Rayford in the case Francomano, Alberto (November 19, 1987, LL, April 28, 1988), this time by a vote of four to one. The case had to do with a violation of the now repealed Law 20.840 on suppression of subversive activities. Referring to the U.S. case of Miranda v. Arizona, the Court said that "the principles established herein respond to the imperative need for the mandate of Article 18 of the National Constitution...to be actually applied and not become a mere 'verbal formula.'" Other recent cases of the Argentine Supreme Court along the same lines are: Montenegro, Luciano B., 12-10-81, Jurisprudencia Argentina (JA) No. 5277, 10-20-82; Fiorentino, Diego E., 11-17-84, LL 12-24-85, also in 306 Fallos 1752 (1984); D'Acosta, Miguel A., 1-9-87, LL, 4-8-87; Ruíz Roque A., 9-17-87, LL, 4-28-88.

It should be noted that the principle of Article 18 of the Argentine Constitution, cited in the preceding paragraph, is that no one is compelled to testify against himself. This principle, which is central to any definition of due process and to defense of the physical integrity of the person detained, is essentially the same one protected and guaranteed by articles 5 and 7 of the American Convention on Human Rights. Consequently, a judgment based, even in part, on evidence obtained in violation of those safeguards under national law, constitutes a violation of international standards for protection of the physical integrity of persons and due process of law. As said by the Inter-American Court of Human Rights on July 29, 1988, (Case 7920, Manfredo Velázquez v. Honduras), these standards must be read in conjunction with Article 1.1 of the Convention, which establishes the twofold obligation of states to respect human rights and to ensure to all inhabitants exercise of those rights. The Court interpreted that provision as an imperative obligation to organize any state system in such a way as to provide such guarantees. As a result, to the extent that the Argentine system of justice has withheld its protection, in this case against torture, the Argentine State has failed to meet its obligation with respect to that guarantee.

The judgment, based on a confession extracted under duress, also violates Article 15 of the Convention against Torture, which recently entered into force. That provision specifically stipulates that the States parties must ensure that no statement shown to have been obtained under torture may be invoked as evidence in any proceeding. Argentina has signed and ratified that new instrument for the international protection of human rights.

2. The Facts: In this case, the San Martín Federal Court admitted a confession made by Osvaldo López before the military court that tried him in 1977. The Court affirmed that it had not been proved that that confession had been obtained under duress or through any other type of coercion. However, in the same proceeding, the Court refused to accept the taking of evidence that might have demonstrated the existence of such coercion. At the same time, for reasons of form, it rejected evidence introduced by the defense aimed specifically at proving the existence of such coercion and thus the nullity of the confession as evidence. In that way, López' confession, without any other supporting evidence, was the only piece of evidence that incriminated him and enabled the Court to uphold the verdict and simply reduce the length of the sentence.

As may be seen in proceedings before this Commission, López had been interrogated, along with other noncommissioned officers of the Air Force, in April 1976, about acts of sabotage against Mirage aircraft, which in any event could not have caused damage but simply adulterated the fuel. At that time nothing pointed to his involvement. In 1977, accused by third parties, he was abducted and held as a missing person in clandestine Air Force installations, where he was seen by Miriam Levin, a survivor of the Argentine concentration camps who has testified before the National Commission on the Disappearance of Persons [Comisison Nacional de Desaparición de Personas (CONADEP)] and in the case against the commanders-in-chief. López escaped from one of these installations located on Virrey Cevallos street in Buenos Aires. His family was then subjected to severe persecution and threats, including the search of three family homes, until López once again turned himself in to Air Force authorities at the urging of relatives and family friends. Although he turned himself in in Córdoba, he was taken by helicopter to the Morón VII Air Brigade Base near Buenos Aires. It was under those circumstances that López "confessed" to a military court that he had perpetrated an act of which there was no corroborating evidence.

It is important to note that at that time the Morón VII Air Brigade was one of the many clandestine detention centers used by the military dictatorship to hold the "desaparecidos" during their interrogation

and prior to their elimination. The detention conditions in those places, which the military called "prisoners' meeting places (Lugares de Reunión de Detenidos - LRD)" were solitary confinement and prolonged periods of incommunication. In this connection see Nunca Más, the report of the National Commission on the Disappearance of Persons, Eudeba, Buenos Aires, 1984, pp. 89 and 146-148. Cited therein is the testimony of several survivors of the LRD in the VII Air Brigade, including that of Luis Pereyra, who--like Osvaldo López--turned himself in and was then tortured for two days at that brigade's headquarters (p.148).

In the same decision in the aforementioned Velázquez case, the Inter-American Court of Human Rights has just affirmed that "protracted periods of solitary confinement and compulsory incommunication...represent, in and of themselves, forms of cruel and inhuman treatment, damaging to the psychological and moral freedom of persons and the right of every prisoner to due respect for inherent inhuman dignity, which constitute for its part a violation of the provisions of Article 5 of the Convention..."

In the same military proceedings, the witness Gladys Vilma Auad, denied knowledge of the acts that López had attributed to himself . The third person named in that "confession," Osvaldo Oscar Rosson, who allegedly incited López to the acts of sabotage, could not be found because he had disappeared after his abduction by security forces in May 1977, as shown by the inclusion of his name on the CONADEP lists (APPENDIXES to the CONADEP report, Eudeba, Buenos Aires, 1984, p. 399). Miriam Lewin and several of López' relatives, corroborate not only López' abduction and escape on the first occasion, but also the threats to the family and searches of their homes, which created the coercive environment in which López made his statement. Lopéz' first abduction, it should be mentioned, took place in the company of his girlfriend María Jiménez, a customary practice under the dictatorship, which surely had an influence on his morale when he was subsequently obliged to make a statement.

However, the Federal Court rejected that evidence. In Miriam Lewin's case, it accepted her testimony with regard to the concentration camp of the Escuela de Mecánica de la Armada but considered it insufficient to prove the existence of a similar center on a property on Virrey Cevallos street. At the same time, it rejected the means of taking evidence offered by the defense (summons of the owner to ascertain who occupied the property on those dates and an on-site visit to compare it with the sketch provided by Miriam Lewin and López), which would have helped to prove the coercion surrounding López' "confession." It also rejected the testimony of López' relatives concerning the searches by arguing that a single witness was involved, an argument also used to reject Miriam Lewin's testimony on the Virrey Cevallos property.

On this point it is important to point out that the use of the rule "testis unus testis nullius" inherent to the system in which the value and admissibility of evidence are predetermined (sistema de pruebas tasadas) contradicts the express decision of the Court in this case the system whereby the judge is given the leeway to admit evidence (sistema de libres convicciones). In Argentina, the National Code of Criminal Procedure, which is regularly applied in federal cases, provides for the former system (pruebas tasadas); the Code of Military Justice, applicable to this case since it was originally a case within that jurisdiction, provides for the latter (libres convicciones). Curiously, however, the Federal Court applied the system giving the judge leeway for the prosecution then reverted to the more restrictive system (for example, "testis unus testis nullius") to invalidate the evidence presented by the defense, which would have been able to prove coercion and resulted in the annulment of the "confession."

It is exceptional for the San Martín Federal Court to apply such stringent criteria in evaluating the evidence of duress and the nullity of the confession. In the aforementioned Francomano case, the Argentine Supreme Court said that "there are serious presumptions in the records that indicate" that the incriminating statement "was not a product of the free expression" of the deponent's will, and the statement is therefore ruled invalid. The confession the defendant made to the police was also ruled invalid because his attorney was not present. In other words, under current Argentine Law, presumptions of the existence of these flaws invalidate the evidence thus produced, without its being necessary to prove torture beyond any doubt.

In addition, the Court rejected the arguments and evidence on the widespread practice of duress under the

military dictatorship, especially in cases heard by military courts and in cases of persons accused of subversive activities. Such defense arguments were based not only on the judgment of the Argentine courts in the cases known as Case 13, against the commanders-in-chief, but also on the Sabato Report (cited above), and in the very Report on the Human Rights Situation in Argentina, produced by this Honorable Commission in 1980 (OEA/Ser.L/V/II. 49, doc.20, April 11, 1980; see in particular pp. 217-234 and 242-244).

The judgment in Case 13, the Sabato Report, and the IACHR report itself make it possible to affirm that--at the time the acts were committed--in almost all similar cases in which the activities of clandestine organizations were being investigated, torture was commonly resorted to by the security forces. This being the case, it is absolutely illogical for the Court to presume otherwise and consider legitimate a confession extracted in a clandestine military installation.

3. International Law: Our party considers that the Commission should in this case decide in favor of the principle that the obligation of states to provide guarantees with respect to the provisions of articles 5 and 7 of the Convention extends to refusing to admit juridical-procedural acts that violate these provisions, especially since that obligation comprises a real commitment to investigating the facts making it possible to establish that there was indeed a violation of the norms of due process and the physical integrity of persons.

Furthermore, we request the Commission to resolve that, in connection with the facts of this case, the Argentine Government has failed to meet that obligation.

It may be concluded from the foregoing that what is at issue is not simply a case of appraising the evidence, in which the judge would have to be given broad autonomy. On the contrary, our client is affected by a stance of the Argentine court that prevents him from demonstrating the nullity of the only piece of incriminating evidence. That stance constitutes a violation of the obligation to uphold Article 1.1 of the Convention. In addition, since the result was a prison sentence based on a confession extracted under duress, that stance is a violation of the aforementioned article 15 of the Convention against Torture.

4. Friendly settlement: The Argentine Government has repeatedly come forth in these proceedings to request that the case be closed, which proves that it is not interested in the Commission's proposal to place itself at the disposal of the parties with a view to reaching a friendly settlement. Consequently, our party is also of the view that a friendly settlement is not possible under the circumstances, and that a resolution is therefore in order.

13. That, as shown in the case files, in point V of the judgment of the San Martín Court, the complainant was acquitted of the crimes of which he had been found guilty by the Supreme Council of Military Justice and was released because he had "served out the sentence that a court, made up of judges appointed pursuant to the constitutional mechanism in Argentina for this purpose, had imposed on him after hearing his testimony, considering the evidence presented in his defense, which it found inadequate to substantiate the acts he denied, and further after thoroughly reviewing the evidence against him";

14. That, similarly, as shown in the case files, violations of judicial guarantees committed to the detriment of the complainant in the course of the trial that ended with a guilty verdict on November 23, 1978, were righted or rectified by the judgment of the National Supreme Court of Justice of September 14, 1987, which provided for a process of review of the case as established in Law 23.049, exactly as requested by the counsel for the complainant in his original petition to the IACHR;

15. That, furthermore, the review process before the San Martín Court took place, as may be seen in the case files, affording the defense every opportunity to voice its complaints and formulate its petitions, with the prosecution receiving notification of the proceedings, allowing almost all the taking of evidence requested by the defense and arranging, at the government's initiative, for other procedures with a view to clarifying the facts, which indicates that in the review of the case the judicial guarantees provided for in Article 8 of the American Convention on Human Rights were respected;

16. That finally, as indicated above and in the case files, the complainant has been free since November 20, 1987, without any conditions whatsoever, on the basis of the aforementioned decision of the San Martín Court, which has the authority of res judicata, wherefore the Commission considers that it has responded to the points of the petition, based on respect for the human rights of the party concerned;

17. That, at this point in the case, the objections of counsel for the complainant with regard to alleged flaws in the proceedings reviewed by the San Martín Court of Appeals are not admissible, since that those proceedings were annulled in part by the National Supreme Court of Justice.
It was therefore possible for the Court of Appeals to review the proceedings and for that reason--the causa petendi having been achieved-- the Commission refrains from assessing or beginning to assess an act or proceeding that took place in proceedings that are now null and void and no longer have any legal validity, without prejudice to the fact that the act or situation occurred prior to the ratification of the American Convention on Human Rights by the Argentine Republic. The statement made by the Argentine Government in the instrument of ratification to the Convention that "obligations undertaken under the Convention shall apply only to events occurring subsequent to the ratification of the aforementioned instrument" therefore applies;

18. That, in the opinion of the Commission, Case 9635 may be deemed concluded in light of the foregoing and because the alleged violation has disappeared or ceased to exist.

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,
RESOLVES:

1. To declare this case concluded and order the filing thereof with no further proceedings.

2. To thank the Government of the Argentine Republic for its cooperation in resolving this case;

3. To publish the present resolution in the Annual Report of the Commission for 1987-88, and

4. To notify the Government of the Argentine Republic and the complainant of this resolution.