

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 27/94; Case No. 11.084
Session:	Eighty-Seventh Regular Session (19 – 30 September 1994)
Title/Style of Cause:	Jaime Salinas Sedo, Jaime Salinas Lopez Torres and others v. Peru
Doc. Type:	Report
Decided by:	Chairman: Professor Michael Reisman; First Vice-Chairman: Dr. Alvaro Tirado Mejía; Second Vice-Chairman: Dr. Leo Valladares Lanza Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor Claudio Grossman; Ambassador John Donaldson
Dated:	30 September 1994
Citation:	Salinas Sedo v. Peru, Case 11.084, Inter-Am. C.H.R., Report No. 27/94, OEA/Ser.L/V.88, doc. 9 rev. 1 (1994)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. INTRODUCTION

On November 17, 1992, the Inter-American Commission on Human Rights received a petition from Mrs. Isabel Lopez Torres de Salinas in respect of the arbitrary detention and subsequent holding incommunicado of her husband, Major General (retd.) Jaime Salinas Sedo and their son Jaime Salinas Lopez Torres, on November 13, 1992. Later, on January 8, 1993, a more comprehensive petition was presented, signed by Mrs. Isabel Lopez Torres de Salinas, Mrs. Maria de Lourdes Antonieta Lazo Astete de Carmona, Mrs. Malva Dalila Ibarra Lombardi, Mrs. Rosa del Pilar Vives de Pastor, Mrs. Diana Yolanda Medina Braizat de Obando, Mrs. Grimanesa M. Vargas de Obando, Mrs. Maria Lucila Baca Alvarez de Martinez, Mrs. Delicia Saldaca Montenegro de Noblecilla, Mrs. Maria Hague de Aguilar, Mrs. Irma Bravo de Ormeco, Mrs. Frida Perez Motin de Zarate, Mrs. Maria del Carmen Cornejo Llerena de Moreno, and Mrs. Cecilia Isabel Cavassa Valdivia de Soriano, including, in addition to Major General Jaime Salinas Sedo and his son, Jaime Salinas Lopez Torres, the following plaintiffs:

- Major EP (retd.) Salvador Carmona Bernasconi
- Major EP Cesar Alberto Caceres Haro
- Major General (retd.) Jose Gabriel Pastor Vives
- Brigadier General EP Manuel Fernando Obando Salas
- Brigadier General EP Victor Ernesto Obando Salas
- Colonel EP Cesar Martinez Uribe
- Colonel EP Jorge Noblecilla
- Comandante EP Enrique Aguilar del Alcazar
- Major EP Hugo Ormeco Huapaya
- Comandante EP Marco Antonio Zarate Rotta
- Comandante EP Arturo Moreno Alcantara
- General EP (retd.) Luis Armando Soriano Morgan

The petition reported the arbitrary and unlawful detention of the victims, who were denied immediate communication with their close relatives and their lawyers, in violation of the right to personal liberty, presumption of innocence, and the right to defense; the torture and other cruel and degrading treatment causing injuries of varying degrees to some of the detainees; their transfer to a prison for extremely dangerous criminals, especially those accused of terrorist acts and illicit drug trafficking; and the unlawful and wrongful prosecution of the accused by a military tribunal, in violation of the principle of *nullum crimen sine lege*, of equality of the law, and of independence and impartiality of the court.

II. PROCEEDINGS OF THE COMMISSION

On November 18, 1992, the Commission began its proceedings in the case and dispatched a transcript of the pertinent parts of the petition to the Government of Peru, requesting it to provide additional information on the alleged events, particularly any other evidence that would enable it to decide whether all domestic remedies had been exhausted in the case.

The Government of Peru replied to the Commission's request on January 27, 1994, confirming that a suit had been brought against Major General (retd.) Jaime Salinas Sedo, Jose G. Pastor Vives and Luis Palomino Rodriguez before the Supreme Military Tribunal. It also declared that it had ordered that Generals Salinas Sedo and Pastor Vives be detained indefinitely, and the unconditional release of General Palomino Rodriguez.

In a note of January 8, 1993, the initial petition was expanded to include other officers who, like General Salinas Sedo and his son, Jaime Salinas Lopez Torres, had been detained in connection with the events of November 13, 1992. The following officers were included as petitioners: Generals Luis Soriano Morgan, Ernesto Obando Salas, and Manuel Obando Salas; Colonels Jorge Noblecilla and Cesar Martinez; Comandantes Enrique Aguilar del Alcazar, Arturo Moreno Alcantara and Mario Zarate Rotta, and Majors Cesar Caceres Haro, Hugo Ormeco and Salvador Carmona. The petitioners requested the Commission to pronounce on the admissibility of the case, in the light of the claims made.

Since these claims were connected in regard to the time and the events, on February 11, 1993, the Commission added the complaint lodged by General Jose Pastor Vives to the present case.

On April 15, 1993, the Government of Peru dispatched to the Commission reports from the National Police claiming that General Salinas Sedo had not been detained at any police station. It also declared that Mr. Jaime Salinas Lopez Torres had been handed over to the DINCOTE on November 14, 1992 on presumption of a terrorist offense and crimes against the authorities of the State and against the Constitution. Mr. Jaime Salinas Lopez Torres appeared before Criminal Prosecution Office 34 of the Province of Lima, and the case against him was eventually dismissed for lack of evidence to incriminate him in terrorist activity.

On May 20 and September 24, 1993, the petitioners presented the Commission with additional information supporting the admissibility of the case and the existence of violations of human rights protected by the American Convention.

By note of December 3, 1993, the Government of Peru submitted its observations on the petitioners' arguments, in which it refuted any violation of due legal process in the handling of the cases against them.

On February 2, 1994, the Government of Peru sent the Commission supplementary information on the status of the case against Mr. Jaime Salinas Lopez Torres, confirming that the Peruvian criminal justice system had found that there was no evidence that he had committed a terrorist act.

On February 24, 1994, the Commission dispatched a letter to the Government of Peru expressing its concern about the situation of Mr. Jaime Salinas Lopez Torres. In the same letter, it pointed out that although it had been decided that Mr. Salinas was not responsible for acts of terrorism, judicial proceedings against him had not ended.

On February 10, 1994, at a hearing before the Commission, the petitioners furnished additional information on the case, at the Commission's request.

III. THE ACTS IN QUESTION

From information supplied by the petitioners to the Inter-American Commission on Human Rights, the acts that allegedly violated rights protected by Articles 7, 5, 8, 35 and 9 of the American Convention were those described below:

1. Acts pertaining to personal liberty and humane treatment of the officers

On November 12, 1992, a group of Peruvian army officers, some on active duty and some retired, held a coordination meeting at a private venue, at which they discussed the feasibility of "bringing down the de facto regime installed in the country since April 5, 1992, for the sole and altruistic purpose of restoring the democratic system," thereby fulfilling the constitutional duty set forth in Articles 74, 82 and 307 of the Political Constitution of 1979. On November 13, 1992, at the end of the meeting started the previous day, these officers decided, *motu proprio*, to cancel their plans, which thus remained at the preparatory stage without escalating to the level of an assault punishable under Peruvian criminal law.

At 1:00 a.m. when the meeting had ended and most of the participants had returned home, special forces of the Army surrounded the building, which at that time contained only Generals (ret'd.) Jaime Salinas Sedo, Ernesto Obando and Luis Soriano Morgan, Majors Salvador Carmona and Cesar Caceres Haro, and two civilians, Mr. Jaime Eduardo Salinas Lopez Torres, son of General (ret'd.) Jaime Salinas Sedo, and Mr. Jorge Pollack.

At approximately 3:15 a.m. on November 13, as the above were leaving, special forces of the army, led by Brigadier General Luis Perez Documet, opened fire without warning and without the arrest of the surrounded officers.

At the time the shots were fired, General (ret'd.) Jaime Salinas Sedo, wearing civilian clothes and unarmed, was about to get into his vehicle when, without any order for his arrest, he was fired upon. The armored vehicle was hit more than eighty times, and the driver wounded.

To save his life and prevent those still inside the building from being massacred, General (ret'd.) Jaime Salinas Sedo proceeded to Army Headquarters and gave himself up without resisting.

Later, the squad surrounding the building where the officers were was ordered to storm the premises in which "a meeting of senior MRTA officers was being held", as the soldiers who had surrounded it were falsely informed.

A group of officers and civilians were then arrested, without a warrant, by the police and members of the armed forces. They were: Major General (ret'd.) Luis Palomino Rodriguez, Major General (ret'd.) Jose Pastor Vives, Brigadier General Manuel Obando Salas, Colonel Jorge Noblecilla, Colonel Cesar Martinez, Comandante Enrique Aguilar de Alcazar, Comandante Arturo Moreno Alcantara, Comandante Marco Zarate Rotta, and Major Hugo Ormeco.

The complaint claims that four of the officers were tortured and subjected to other unlawful judicial constraints by the authorities in whose charge they were placed.

Comandante Zarate Rotta has complained that, in addition to other physical abuse, he was struck on the back by Comandante Huaman Ascurra, and that he was cuffed and slapped by Vladimiro Montesinos Torres, that he was bound by the feet, hands, waist and neck to a metal chair and given electric shocks in both his hands.

Similar treatment was reported by Comandante Aguilar de Alcazar and Majors Salvador B. Carmona and Cesar Caceres Haro.

2. Acts pertaining to the violation of the right to a fair trial and the protection of the law

The plaintiffs maintain that during the period they were held incommunicado, they were interrogated without their lawyers being present and subjected to psychological pressure to force them to sign their statements without first reading them. Also, once detained, they were held incommunicado for longer than provided for under domestic legislation and were not brought before a competent court within the 24 hours established in Article 2, subparagraphs 20 (g), (h) and (i) of Peru's Political Constitution in force at the time, and of Article 7, subparagraphs 5 and 6, of the American Convention.

Regarding the proceedings brought against them, the plaintiffs contend that their right to a fair trial was not respected. They claim that the trial in the "Sala de Guerra" of the Supreme Court of Military Justice was held in secret, that their right to defense was restricted by the fact that the factual and legal arguments put forward by the defendants' lawyers, and by the fact that the judgment was based solely on the findings of the police investigation. On appeal of the tribunal's decision, the appellate court upheld the judgment on the very day that the defense lawyers presented their case. The petitioners consider that the acts they report violate Article 2, subparagraph 20 f), and Article 233, paragraphs 3 and 9, of the Constitution, and Article 8, subparagraphs 2 b), c), f) and h), and Article 5 of the American Convention.

Moreover, the plaintiffs state that some of the officers detained were retired and as such were not subject to the jurisdiction of military courts. Accordingly, they should have been tried by regular courts not military courts, that is, they should have been under civil jurisdiction. For that reason, they allege that article 2 subparagraph 20 of the Constitution and article 8 subparagraph 1 of the American Convention were violated.

3. Harassment of the defense lawyer

The officers bringing the claim have reported several acts that constitute limitations on their right of defense, owing mainly to the harassment to which the defense lawyers were subjected, as explained later on in this report.

IV. OBSERVATIONS OF THE PARTIES

1. Position of the plaintiffs

The plaintiffs declare that the Peruvian army officers implicated in the events of November 13, 1992, assembled peacefully, without arms, to discuss possible alternatives for the return of the constitutional and lawful regime. The plaintiffs allege that their arrest was arbitrary and unlawful, having been made without a warrant, in violation of Article 2, subparagraph 20 g), of the Constitution, and Article 7, paragraphs 2 and 3, of the American Convention.

They maintain that their meetings were legally protected by Articles 74, 82 and 307 of Peru's 1979 Political Constitution [FN1], which established respectively: the duty to respect, implement and defend the Constitution and the laws of the Nation; the right to rise up in defense of constitutional order and against a usurping government; and the duty of any citizen to collaborate in order to restore constitutional rule in the event of failure to respect it through acts of force.

[FN1] Hereinafter referred to as "the Constitution". Article 82 states: "No one owes obedience to a usurping government, nor to those who assume public functions or positions in violation of the procedures established by the Constitution and the laws, the acts of any usurping authority are null and void, the people have the right to rise up in defense of constitutional order."

The plaintiffs also state that the Peruvian government's actions violated the principle of *nullum crimen sine lege* enshrined in Article 2, subparagraph 20 d), of the Constitution and Article 9 of the American Convention.

The plaintiffs declare that although they had held a number of meetings, they had decided *motu proprio* to cancel their plans, which thus remained at the preparatory stage without escalating to the level of a punishable assault. The right to hold such meetings and to express their opposition to the events of April 5, 1992, were protected by Article 3, paragraphs 4 and 10, of the Constitution, and Articles 13 and 15 of the American Convention.

The Peruvian government, through Decree Law 25861 of November 24, 1992, declared that, in the court's opinion, military personnel convicted of a crime, could serve their sentence in an ordinary prison. On those grounds, the court that tried the plaintiffs decided that they would serve their sentence in the "Miguel Castro Castro" penitentiary for extremely dangerous criminals.

After one month of imprisonment, the officers were moved to the Castillo Real Felipe. The plaintiffs claim that this fort is not a suitable place of detention, having no windows or skylights, unserviceable hygiene facilities, and a shortage of water, added to which there is no medical service, visits are restricted and the Intelligence Service uses devices to listen in on their conversations. They claim that these acts indicate a serious deterioration of their prison conditions, and violate Article 234 of the Constitution and Article 5, paragraphs 1, 2 and 6, of the American Convention.

In the last resort, the petition reports the alleged violation of the human rights of Mr. Jaime Salinas Lopez Torres, who was detained along with his father, Major General (retd.) Jaime Salinas Sedo, on November 13, 1992. He was then handed over to the DINCOTE on November 14, 1992, accused of an act of terrorism and a crime against the authorities of the State and constitutional order. The accused appeared before Criminal Prosecution Office 34 of the Province of Lima, and the case had been eventually dismissed for lack of evidence to incriminate him in terrorist activity. The petitioners point out that although it had been decided that he was not criminally responsible, the judicial proceedings against him had not been closed, in violation of the principles of innocence and legality. Likewise, Mr. Salinas Lopez Torres's arbitrary and unlawful detention, and the fact that he was later held *incommunicado*, violated his right to personal liberty, protected by the Peruvian Constitution and the American Convention.

B. The Government's position

In its many presentations to the Inter-American Commission on Human Rights, the Government of Peru has confirmed the existence of judicial proceedings against the officers implicated in the events of November 13, 1992.

It has, however, denied that it failed to respect the right to due process in the handling of those proceedings. The Government has indicated that the military rank of the perpetrators and the juridical nature of the crimes determined that the cases proceedings should be tried under military law, in accordance with Articles 318, 319 and 329 of the Code of Military Justice, and Article 23 of the Constitution.

Also, the Government declared that the petitioners' right to defense were fully respected during the proceedings; one example being that their defense lawyers were allowed to plead before the Court of Review of the Supreme Military Tribunal.

In regard to Mr. Jaime Salinas Lopez Torres, the Government of Peru declared on two occasions that, once detained, he was placed in the custody of the DINCOTE on November 14, 1992, on presumption of an act of terrorism and crimes against the authorities of the State and against the Constitution. Later, Criminal Prosecution Office 34 of the Province of Lima had dismissed the charges against him for lack of evidence of his responsibility for those crimes.

V. GENERAL CONSIDERATIONS

1. Questions relating to the proceedings

a) Presentation within the established deadline

The complaint was lodged within the deadline established in Article 46.b. of the American Convention on Human Rights and Article 38.1. of the Regulations of the Commission.

b) Formal requirements

The complaint meets all the formal requirements of admissibility laid down in the American Convention on Human Rights and the Regulations of the Commission.

c) Exhaustion of domestic remedies

At the time the complaint was lodged with the Inter-American Commission on Human Rights, Peru had no constitutional guarantees that could be effectively invoked by the officers in question. Notwithstanding, the petitioners exhausted all the domestic legal remedies at their disposal, despite the constraints that have existed since April 5, 1992.

d) Absence of other legal proceedings and of *res judicata*

The present case is not pending in any other international jurisdiction, nor is it a reproduction of a petition pending or already heard and settled by the Commission or another intergovernmental body.

2. Questions of substance

a) Right to personal liberty and safety

The 1979 Political Constitution, in force at the time of the events reported, established that a person could be detained only with a warrant, or on the orders of a competent court, or by the police in the case of flagrante delicto, and that person must, in any event, be brought before a competent court within 24 hours. [FN2]

[FN2] Article 2, subparagraph 20, G.

The same Constitution also prohibited not only holding detainees incommunicado except in cases established under the law, with the corresponding limitations and by judicial order, [FN3] but also any violence against detainees with a view to obtaining statements from them. [FN4]

[FN3] Article 2, subparagraph 20, I.

[FN4] Article 2, subparagraph 20, J.

From the moment they were detained, the officers were kept incommunicado for more than fifteen days, in violation of Article 8 of the American Convention, Article 2, subparagraph 20 i), of the 1979 Political Constitution, and Article 526 of the Code of Military Justice, which states that:

Detention implies holding the defendant incommunicado, which may in no circumstances exceed five days.

The detainees below the rank of lieutenant colonel were placed in cells belonging to the National Intelligence Service (SIN) and the Army Intelligence Service. The detainees' statements were taken by police officers in the absence of their lawyers or any legal counsel who could ensure that the investigation was properly conducted, all of which violated Article 8 of the American Convention. They were questioned at totally abnormal times and for over 12 hours in a single day, usually at night or very early in the morning.

Several of the officers complained that they were subjected to physical and psychological torture to force them to make false self-incriminating statements, which they were made to sign without first reading them.

Four of the officers complained that they were physically tortured. They are: Lieutenant Colonel EP Marco Zarate Rotta, Lieutenant Colonel EP Enrique Aguilar Del Alcazar, Major EP (retd.) Salvador Carmona, and Major Cesar Caceres Haro. As a result, they suffered physical ill effects such as numbness in their arms, and pains in their spine and limbs, as a result of being tortured.

b) Due legal process

On December 16, 1992, in the midst of the proceedings to decide whether the defendants were criminally responsible, the Army High Command convened the Officers' Investigation Council and called the plaintiffs' case, without giving them the time or means for the preparation of their defense, infringing Article 8, paragraph 2, of the American Convention, and the constitutional principle that declares that "all persons must be considered innocent until proven guilty".

Under Article 8, paragraph 2, of the American Convention, before establishing a defendant's criminal responsibility, the Peruvian State must prove that defendant's guilt beyond reasonable doubt, in accordance with the principle of *in dubio pro reo*. The officers of the Special Military Tribunal who tried the plaintiffs in the present case were required to approach the case without any prejudice and were in no circumstances supposed to make an *a priori* guilty judgment, as they did.

Other irregularities occurred during questioning: for instance, the expert evidence was ordered by the SIN and not by the trial judge as established under the Code of Military Justice. This expert (graphological) evidence was collected before the preliminary hearing and without their lawyers being present. Moreover, the "Sala de Guerra" denied the defendants' request for a visual inspection, and for the oral testimony essential to their proper defense, considering it "unnecessary", as they stated in their communication of January 26, 1993 (document 1901-OF-92).

On December 18, 1992, the accused officers were discharged from the Peruvian armed forces for alleged crimes against military honor, morale and decorum.

Also, on November 24, 1992, the government issued Decree Law No. 25861, whereby members of the armed forces appearing before military tribunals could serve their sentences in military prisons or in ordinary jails.

Under this law, on December 12, 1992, thirteen of the officers, most of them on active duty, were transferred to the "Castro Castro" maximum security prison with common criminals.

In a note of February 16, 1993, the Commission requested the Government to authorize an IACHR representative to be present at the trial of the thirteen officers. The Government refused to allow a representative of the Commission to attend.

There were other irregularities during the trial:

1. The Military Tribunal refused to accept the defense witnesses. The only witness called by the Military Prosecutor during the trial was a Peruvian army major, who gave a distorted version of the real intentions of the officers involved.
2. The record of the case state that the defense lawyers raised several objections that were systematically refused on the grounds that they were unsustainable.
3. The record also states that the contestation of the document relating to the seizure made on November 13, 1992, was overruled. This record, unlawfully signed by the interventor, mentioned the seizure of cash and credit cards belonging to General Salinas, although a receipt had been produced, signed by a senior DIFE officer, on which it was clearly stated that the General had surrendered the articles in question of his own free will on November 19. This shows that the document had been tampered with and additions made at a later stage in order to justify the conviction.
4. The sentences did not take into account the varying degrees of involvement in the acts in question, that the Peruvian government had itself had attributed to the defendants.
5. After the trial, the convicted officers were taken to the Castillo Real Felipe in Callao, where an area had been fitted out as a prison for them.
6. Unlike the situation in other prisons, visits were restricted to a mere six hours a week, three on Wednesdays and three on Sundays.
7. The Supreme Court of Military Justice has ordered the seizure all the assets of the imprisoned officers to be used for reparation to the State. Under Peruvian law, the Council is authorized to withhold only 50% of such assets, not all of them.
8. The officers claim that a number of previously acquired benefits, such as hospital care and access to the army's leisure and recreation facilities, have been curtailed. Moreover, threatening statements degrading to the personal dignity and prestige of the imprisoned officers are being constantly circulated.
9. For its part, the criminal suit against Mr. Jaime Salinas Lopez Torres at the time of his arrest at the DINCOTE still continues, although the charges against him have been dismissed. This lawsuit is a permanent threat not only to Mr. Salinas, but to his father, General Jaime Salinas Sedo as well.

c) Violation of the right to a fair trial

As shown, the main constraint suffered by the plaintiffs was the restriction of their right to a fair trial, especially the harassment of the defense lawyers. In this regard, mention should be made of the case of Dr. Alberto Borea Odria. After he had been constantly harried by the authorities of the government that took office on April 5, 1992, Special Prosecutor Flor de Maria Maita Luna, appointed to investigate the events of November 13, named him as one of the perpetrators, leading Dr. Borea to seek asylum in the Republic of Costa Rica.

The Commission has sustained that "the defense of the accused ... can in no way constitute grounds for the malicious and unfounded linking of a defense lawyer [as in the case of Dr. Alberto Borea Odria] to unlawful activities of which his client is falsely accused." Prosecutor Flor de Maria Maita's false accusation of Dr. Alberto Borea constitutes a threat to the free exercise of the legal profession, and infringes one of the fundamental guarantees of the administration of justice and of due process, i.e. the right to defense enshrined in Article 8, subparagraph 2 (d) of the American Convention. In addition to the above, the accusation is yet another indication of the disregard, facetiousness and opportunism with which some governmental authorities of the Peruvian State bring false charges against innocent persons.

In July 1993, a new action was instituted against General Jaime Salinas Sedo and General Jose Pastor Vives for alleged abuse of the armed forces and insulting their superiors, because of their public statements concerning the political situation in the country. Both officers' defense lawyers were denied access to the files, once more infringing the defendants' right to defense.

3. Report 18/94 on the present case

Pursuant to Article 50 of the American Convention, the IACHR, at its 85th regular session, approved

Report 18/94 concerning the present case and dispatched it to the Peruvian government by communication of May 4, 1994. In that report the Commission agreed, inter alia, to recommend to the Peruvian State that it take all necessary steps to overturn the Supreme Military Court's decision of March 31, 1993, which upheld the decision of the "Sala de Guerra", and to order the immediate release of Generals Jaime Salinas Sedo; Luis Soriano Morgan and Manuel Obando Salas, Lieutenant Colonel Marco Zarate Rotta; and Majors Hugo Ormeco Huapaya, Salvador Carmona and Cesar Caceres Haro.

By note No. 7-3-D/02 of July 15, 1994, to the Chairman of the Commission, the Government informed the Commission that "to acquiesce to the request of the Honorable Inter-American Commission on Human Rights would signify inadmissible interference on the part of the Executive Branch in the affairs of the Judiciary, which would be incompatible with the independence and autonomy vested in it by the Constitution", adding that "it is not possible, in the case in question, to implement the recommendations made in Report 18/94 of the Commission, for the reasons stated above."

The Commission considers the reasoning of the illustrious Government of Peru unacceptable for, inter alia, the following reasons:

Article 24 of the American Convention declares: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." The Universal Declaration, for its part, establishes that all persons have the right, in conditions of full equality, to a fair public hearing by an independent and impartial tribunal. In the present case, the plaintiffs have repeatedly sustained that the competent tribunal for retired officers is the Customary Court and not the Special Military Court, since, under the Military Legal Code [Articles 318 to 327], military jurisdiction does not extend to retired personnel of the armed forces.

The Peruvian government informed the Commission, in a previous communication, that the officers' military rank and the nature of the offenses had been behind the decision to try them in the military court, in accordance with Articles 318, 319 and 328 of the Military Legal Code. The Commission considers, however, that it is extremely difficult to infer from a reading of those articles that the Special Military Court is competent to try retired officers. [FN5]

[FN5] In fact, under Article 318, "the jurisdiction of the military courts is not neither extendible nor renounceable, and it cannot therefore be extended beyond the established by the Code itself, nor can it be failed to be exercised in the cases determined by the Code; and Article 319 states that: "The jurisdiction of the military courts is exercised:

- a) By virtue of the crime;
- b) By virtue of the place, and
- c) By virtue of a state of war.

In addition, Article 328 provides in the pertinent section that "offenses committed within the jurisdiction shall be tried by judges and courts of the armed forces and the police, to which the accused belong."

Secondly, the Commission considers that in the present case, as established in Article 10 of the Universal Declaration and Article 8, paragraph 1, of the American Convention, the Special Military Court is not "a competent, independent, and impartial tribunal" since, under Peru's Laws of Military Justice [Decree Law No. 23201], it comes under the Ministry of Defense, making it a special court subordinated to an organ of the Executive Branch. Consequently, since it is a court subordinated to the Ministry of Defense, there can be no "inadmissible interference on the part of the Executive Branch in the affairs of the Judiciary", as claimed in the note from the Minister of External Relations to the Chairman of the IACHR.

Moreover, there are a number of precedents in which the Executive Branch has pronounced in favor of persons prosecuted and sentenced not only by the Special Military Court, but also in the civil courts. One example is that of Engineer Miguel Ruiz Conejo, unjustly sentenced by the Supreme Military Court to 30 years in prison for high treason. However, as a result of national and international efforts, including those of the IACHR and, in particular, the declarations by the President of the Republic that Ruiz Conejo was innocent, the Supreme Military Court, after a judgment without appeal, acquitted Engineer Ruiz Conejo. The situation, like that of the thirteen officers who are plaintiffs in the present case, was one of manifest injustice in which the intervention of the Chief Executive himself was not considered to be "interference" in the affairs of the Judiciary.

VI. CONCLUSIONS

In the light of the arguments contained in this report, the Commission arrives at the following conclusions:

That the present case is admissible and the Commission is competent to hear it since it concerns violations by the Peruvian State of the following rights recognized in the American Convention on Human Rights:

— The right to personal liberty and right to humane treatment guaranteed, respectively, by Articles 7 and 5 of the American Convention.

— The right of the plaintiffs to enjoy all essential legal guarantees, which is set forth in Article 8 of the Convention.

— The right of assembly, the right to equal protection of the law, and the right to judicial protection, guaranteed respectively in Articles 15, 24, and 25 of the Convention.

That the response given by the Government of Peru in Note No. 7-3-D/02 is unfounded and is therefore unsatisfactory for the reasons adduced in point 3 of the preceding section.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To request the Peruvian State once more to take the necessary steps to overturn the Supreme Military Court's decision of March 31, 1993, which upheld the sentence of eight years' imprisonment passed by the "Sala de Guerra" on Major General (ret'd.) Jaime Salinas Sedo for alleged commission of the crimes of rebellion, attempted homicide, and unlawful possession of firearms; Major General (ret'd.) Jose Pastor Vives to three years' imprisonment for the crime of military rebellion; Brigadier General (ret'd.) Luis Soriano Morgan to six years' imprisonment for the crimes of military rebellion and attempted homicide; Brigadier General (ret'd.) Victor Obando Salas to five years' imprisonment for the crime of military rebellion; Brigadier General (ret'd.) Manuel Obando Salas to eight years' imprisonment for the crimes of military rebellion, insulting his superior, and attempted homicide; Colonel (ret'd.) Jorge Noblecilla Merino to seven years' imprisonment for the crimes of military rebellion and insulting his superior; Colonel Cesar Martinez Uribe to four years' imprisonment for the crimes of military rebellion and insulting his superior; Colonel (ret'd.) Victor Granda Guzman to three years' imprisonment for the crimes of military rebellion and insulting his superior; Colonel Jose Montero Mendez to fourteen months' imprisonment for the crimes of military rebellion and insulting his superior; Colonel Wilder Sanchez Gambini to one year's imprisonment for the crimes of negligence; Lieutenant Colonel Enrique Aguilar del Alcazar to seven years' imprisonment for the crimes of military rebellion and insulting his superior; Lieutenant Colonel Hugo Moreno Alcantara to six years' imprisonment for the crimes of military

rebellion and insulting his superior; Lieutenant Colonel Marco Zarate Rotta to six years' imprisonment for the crimes of military rebellion and insulting his superiors; Lieutenant Colonel Eduardo Solano Pimentel to eight months' imprisonment for the crimes of military rebellion and insulting his superior; Lieutenant Colonel Pedro Tello Delgado to eight months' imprisonment for crimes of military rebellion and insulting his superior; Major (retd.) Cesar Caceres Haro to seven years' imprisonment for crimes of military rebellion, insulting his superior, attempted homicide and unlawful possession of firearms; Major (retd.) Salvador Carmona to five years' imprisonment for the crime of military rebellion; Major (retd.) Hugo Ormeco Huapaya to seven years' imprisonment for the crimes of military rebellion, insulting his superiors, attempted homicide, and unlawful possession of firearms; Captain Federico Malaga Rubira to two years' imprisonment for the crimes of insubordination and negligence; Lieutenant Colonel Luis Ruiz y Urquiza to six months' conditional imprisonment for the crime of negligence; Lieutenant Colonel Cesar Rosado Cisneros to three months' conditional imprisonment for the crime of negligence; Lieutenant Colonel Carlos Galdos Chacon to three months' conditional imprisonment for the crime of negligence, and Major Felix Castro Gomez de la Torre to three months' conditional imprisonment for the crime of negligence.

2. Further, to request the Peruvian State to immediately institute a new trial of Generals Jaime Salinas Sedo, Luis Soriano Morgan, and Manuel Obando Salas, and Lieutenant Colonel Marco Zarate Rotta, Major Hugo Ormeco Huapaya, Major Salvador Carmona, and Major Cesar Caceres Haro pursuant to the guarantees set forth in the American Convention, or if no new trial is instituted, to order the immediate release of all of them.

3. To request the Government of Peru to inform the Inter-American Commission on Human Rights, within sixty days, of any steps taken in the present case to give effect to the recommendations made in paragraphs 1 and 2 above.

4. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Peru did not adopt measures to correct the situation denounced within the time period.