

REPORT N° 20/99
CASE 11.317
RODOLFO ROBLES ESPINOZA AND SONS
PERU
February 23, 1999

I. SUMMARY

1. On 2 May 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition filed against the Peruvian State (hereinafter "the Peruvian State," "the State," or "Peru") in which Rodolfo Robles Espinoza, a retired Major General [General de División] of the Peruvian army, reported that he had been victimized for publicly revealing, by means of an open letter of 6 May 1993, the existence of a "death squad," known as the "Colina Group," set up by Peru's National Intelligence Service (SIN)¹

2. At that time, General Robles, in his capacity as the head of the Army Instruction School (COINDE) and former commander of the Third Military Region based in Arequipa, was technically the third most senior officer in the Peruvian army. In retaliation, according to the complaint, a series of hostile acts were undertaken against him and his family, consisting of death threats and criminal prosecutions based on false accusations filed with the military courts. Also in retaliation, the Superior Council [Consejo Superior] of the Armed Forces arbitrarily ruled that he was to be retired on disciplinary grounds, thus depriving him of the benefits to which he was entitled after almost 30 years' active service in the Peruvian army. The petitioner claims that the Peruvian State has no real procedure for ending the constant harassment or for restoring the rights taken away from him.

II. BACKGROUND

The Events

3. The violations that General Robles alleges, according to the information appearing in the file, are the following:

On 5 May 1993, General Rodolfo Robles publicly revealed that Peru's National Intelligence Service (SIN) had set up a "death squad," called the Colina Group, which was charged with physically eliminating terrorists. According to his claim, the members of the Colina Group had been responsible for the illegal arrest and subsequent extrajudicial execution of one professor and nine students from La Cantuta University on 17 July 1992, and for the slaughter of 14 people in the Barrios Altos incident of November 1991. General Robles revealed the names of the soldiers who made up this "death squad" and stated that the Commander in Chief of the Army, General Nicolás de Bari Hermoza Ríos, and President Fujimori's advisor, Mr. Vladimiro Montesinos, were involved in covering up and masterminding those incidents.

4. The information supplied by General Robles allowed the Peruvian judicial authorities to prosecute and convict ranking officers in Peru's Armed Forces in the La Cantuta case and led to the identification and trial of the suspected perpetrators of the massacre of 14 people in Barrios Altos. The military officials convicted in the La Cantuta proceedings were subsequently freed under Amnesty Law No. 26.479.

5. On 5 May 1993,² General Robles Espinoza publicly stated that as a result of his revelations in connection with these incidents, he was receiving threats against his life and person, as were his two sons. In light of these threats, General Robles stated that he was forced to leave Peru with his family and take refuge in the United States Embassy. On 7 May 1993, following steps taken by the United States Embassy, General Rodolfo Robles Espinoza was able to leave for Argentina as an exile. Along with General Robles Espinoza, his sons José and Rodolfo Robles Montoya, both officers in the Peruvian army, were also forced to leave the country.

Reprisals through Disciplinary Measures

6. As a result of the allegations regarding the existence of a death squad made by General Rodolfo Robles, the officers of Peru's Army, Navy, and Air Force adopted Supreme Resolution No. 179 DE/EP of 10 May 1993, resolving, *inter alia*:

To retire, as of 10 May 1993, Major General Rodolfo ROBLES ESPINOZA, on DISCIPLINARY GROUNDS, for having committed serious disciplinary offenses against the military service, honor, decorum, and duty.

7. The document states that General Robles's allegations constitute "a crude attempt to attribute to the Peruvian army an alleged human rights violation, using falsified and forged documents to discredit the forces of order (. . .)." It also adds that General Robles "(. . .) had no qualms in maliciously undermining the army and his commanders, comrades in arms, and subordinates with false allegations (. . .); thus showing himself to be a major general disloyal to the institution, his superiors, and himself, and failing to meet the requirements of military honor and decorum behooving him as both a man and a soldier."

8. The legal basis for this resolution was Articles 55(F) and 61 of the Military Status Law. However, according to General Robles, the punishment of enforced retirement was imposed on him without following the rules governing disciplinary proceedings set forth in the Military Status Law, in that he was convicted without being summoned, heard, or involved at trial. Thus, the disciplinary measure is an arbitrary act, causing him to suffer a reduction in his retirement pension and the denial of his entitlement to medical treatment at the military hospital and other rights acquired after almost 30 years' service in the Armed Forces.

Reprisals through Criminal Prosecutions

9. On 7 May 1993, the Court-Martial Prosecutor of the Supreme Council of Military Justice filed criminal charges against Major General Rodolfo Robles Espinoza for the crimes of insubordination, insulting a superior, undermining the Armed Forces, abusing his authority, making false statements, and dereliction of duty to the detriment of the Peruvian State and Army.³ On 13 May, the Supreme Council's Court-Martial Prosecutor expanded the charges against General Rodolfo Robles to include the crimes against military honor, decorum, and duty described in Article 270 of the Code of Military Justice. The charges were admitted by the Investigating Magistrate of the Supreme Council of Military Justice's Court-Martial division, who, in an investigation expansion writ of 21 May 1993, added the crime of disobedience.

10. In addition, the Supreme Council of Military Justice's Court-Martial Prosecutor also began criminal proceedings against General Robles's sons, Captain José Robles Montoya and Lieutenant Rodolfo Robles Montoya, for the crimes of disobedience and

dereliction of duty.⁴ On 21 May 1993, acting on an ex officio basis, the Investigating Magistrate issued an investigation expansion writ for the crime of disobedience. The Investigating Magistrate subsequently issued a warrant for the arrest of the accused.

11. On 1 June 1993, this military court declared General Robles and his sons to be prisoners *in absentia* and designated the Supreme Court of Military Justice's court-appointed attorney to serve as their defense counsel.⁵ In the absence of the accused, on 19 July 1993 the Supreme Council of Military Justice's Court-Martial began proceedings "for the crimes of insubordination, making false statements, undermining the nation and the Armed Forces, dereliction of duty to the detriment of the Peruvian State and army, insulting superiors in the person of the Commander in Chief of the Army and Chairman of the Armed Forces Joint Chiefs of Staff, abusing authority to the detriment of former captain and lawyer Vladimiro Montesinos Torres and other generals, superiors, officers, rank and file, and auxiliary personnel of the Peruvian army, crimes against military honor, decorum, and duty, and disobedience; and against Capt. José Robles Montoya (retired) and Lieutenant Rodolfo Robles Montoya (retired) for the crimes of disobedience and dereliction of duty."⁶

12. The punishment applicable to these crimes included a 15-year prison term. In addition, the Prosecutor requested that General Robles be required to pay the amount of USD \$4,500,000 for "civil reparations"; consequently, a preventive embargo was placed on General Rodolfo Robles Espinoza's property, savings, and retirement pension.

Campaign against his Good Name

13. According to the complaint, the top echelons of Peru's Armed Forces began a campaign to discredit General Robles. In documents circulated among the Peruvian army he was accused of being "a traitor to the fatherland and the Peruvian army," "a collaborator with the enemy," and a "cheap and cowardly mercenary."⁷ The Peruvian army also released these reports to the mass media, and letters of support for Commander in Chief Nicolás de Bari Hermoza Ríos insulting General Robles were also published.

Amnesty and Return from Exile in Argentina

14. On 5 September 1995, the Peruvian State informed General Rodolfo Robles Espinoza that he could return to the country because, under Amnesty Law No. 29.479, the criminal proceedings against him had been dropped.⁸

15. While General Robles was in exile, unidentified persons had made threats against his wife and his son, Jaime Robles, who had remained in Peru. Although these threats were duly reported, the Department of Public Prosecutions [*Ministerio Público*] conducted no investigation to identify the persons behind them.

16. The death threats against General Robles and his family continued after their return to Peru in September 1995. One individual threatened the General over the telephone in the following terms:

We're going to kill you, traitor, you and your family; we're going to kill your wife. So stop being a pain in the ass or you'll be sorry.

Other similar calls were made on later occasions.

17. On 27 September 1995, a group from the Magistrates' Security Division of the state security forces arrived at General Robles Espinoza's home with instructions to protect his life and person. That same day, General Robles received anonymous death threats in telephone calls placed shortly after the security forces had withdrawn.

18. The telephone threats and surveillance of General Rodolfo Robles increased in October 1995 after the filing of an *amparo* constitutional protection action requesting the annulment of Supreme Resolution No. 179 DE/EP of 10 May 1993, which had arbitrarily ordered his retirement. According to General Robles, these threats were intended to intimidate him into withdrawing this action brought before the Peruvian courts of justice.

Detention of General Robles

19. In a communication received by the Commission on 28 November 1996, General Robles reported that on 26 November 1996 he left his home to go to the offices of Banco Santander located on block 32 of Avenida Arenales, Lima, and, as he was returning home at around 10:00 a.m., he was intercepted by two cars—a Hyundai, registration JQ-7256, and a Toyota, registration HQ-8299. Several tall, heavy men wearing suits emerged from these vehicles and, without saying a word, beat General Rodolfo Robles to the ground and forced him into one of the cars. From the vehicle General Robles was able to inform residents and street traders from the area that he was being arrested by members of the National Intelligence Service (SIN). His assailants then sprayed him with a paralyzing gas to keep him from saying anything else. The cars sped off and were joined some blocks later by other vehicles; they all went to the Real Felipe Military Barracks, a military prison, where General Robles was detained.

20. General Robles's arrest, according to the complaint, was in response to his statements to the media following the attack on the installations of Global de Televisión and Radio Audio Samoa in the city of Puno on 17 October 1996. Police investigations identified members of the army attached to the National Intelligence Service (SIN) as the possible perpetrators of these incidents, including Angel Felipe Sauni Pomaya. General Robles claimed in his statements that this officer belonged to the Colina paramilitary group and had been directly involved in carrying out the La Cantuta and Barrios Altos crimes.

21. The military authorities first denied that General Robles had been captured and only acknowledged the fact several hours after the media and several international and local human rights organizations reported that the identities of the individuals who had detained him, the reasons for his arrest, and where he was being held were all unknown.

22. Upon learning of the arrest, Mrs. Nelly Montoya Robles, General Robles's wife, went to the headquarters of the Supreme Council of Military Justice, accompanied by her lawyers. There they met with Colonel Roger Araujo, who told them that General Robles was being charged with "insulting the Armed Forces and general mendacity." General Robles Espinoza's family and lawyers then went to the Real Felipe Barracks, where one General Pita informed them that he was only authorized to allow the

detainee to meet with his attorney, not with his family. After an exchange of words, he was also allowed to speak to his family.

23. After meeting with this officer, General Robles's defense attorney once again went to the headquarters of the Supreme Council of Military Justice to read the file and hear the charges made against the General. Colonel Roger Araujo replied that the file was not available and that General Robles's case was not recorded in the register of cases. The defense attorney then asked for a hearing with the Investigating Magistrate, but this was refused.

24. The only information the defense attorney could obtain was a copy of General Robles's arrest warrant, which accused him of "the crime of undermining the Armed Forces." The crime of undermining the Armed Forces, according to the scant information provided, supposedly arose from General Robles Espinoza's statements to the media.

25. That same day, individuals identifying themselves as members of the Colina Group death squad made death threats over the telephone to members of General Rodolfo Robles Espinoza's family.

26. On 27 November 1996, the Investigating Magistrate issued a resolution barring Dr. Heriberto Benítez, General Rodolfo Robles Espinoza's defense attorney, from practicing law before the military courts for a period of three months. This punishment was for statements he made to the "La Clave" radio program, saying that there was a risk of military criminal rules being applied inappropriately since not all the Supreme Council of Military Justice's magistrates were lawyers. The Investigating Magistrate called these claims false, offensive, and harmful to the honor and majesty of the military courts. Heriberto Benítez appealed this disciplinary measure before the Military Court (*Consejo de Guerra*), which increased the punishment to five months and also ordered certified copies of the incident to be sent to the Duty Provincial Prosecutor. According to the complaint, this disciplinary measure had the effect of removing the defense lawyer from the criminal proceedings brought against General Robles.

Habeas Corpus Remedy

27. On 28 November 1996, General Robles Espinoza's family filed a writ of *habeas corpus* with the 33rd Criminal Court in Lima, presided over by Dr. Elba Greta Minaya Calle. This legal recourse was intended to determine the reasons behind General Robles's arrest and to protect his person. When Judge Greta Elba Minaya Calle arrived at the Real Felipe Barracks for the purposes of the habeas corpus action, the military authorities refused her access, stating they had orders from their superiors.

28. Consequently, on 29 November 1996, Judge Elba Greta Minaya Calle ruled the habeas corpus action to be grounded, in that there was no order from a competent authority for the arrest of General Robles. According to this ruling, the military courts did not have authority to arrest a retired military officer, since under the terms of Articles 12 and 70 of Legislative Decree 752, the Military Status Law, military justice did not apply to them. Dr. Minaya Calle found that the arrest constituted a violation of General Robles's right to personal freedom, and to due process, in this case by means of kidnapping, and she ordered his immediate release. She also sent copies of

the proceedings to the Duty Provincial Prosecutor for the appropriate criminal action to be brought against the military authorities responsible for General Robles's arrest.

29. On 30 November 1996, Court Secretary Carmen del Castillo Ruíz Caro went to the Real Felipe Barracks to give notice of the judicial resolution. The individuals in charge of the barracks refused to receive the notification and to carry out the Court's order. Colonel Jorge Carcovich Cortelezzi was then called, who reported that he had orders from the Supreme Council of Military Justice not to receive the notification. After an exchange of words, this officer told the Court Secretary that the Investigating Magistrate would report to the barracks to explain the situation. However, at 6:00 p.m., Col. Carcovich invited the Secretary to leave, stating that he had orders from above and that the Investigating Magistrate was not going to come to the barracks. The Secretary then prepared an aide memoire recording the military authorities' refusal to abide by the Court order.

30. On 30 November 1996, at 7:00 p.m., the Investigating Magistrate informed General Robles of the resolution ordering his definitive arrest. The definitive arrest order was dated 29 November that is, the day before notification of the habeas corpus ruling.

31. On 13 December 1996, the Specialized Chamber of Public Law of the Superior Court of Justice of Lima handed down a ruling upholding the resolution of 29 November 1996, which declared the admissibility of General Robles's habeas corpus remedy on the grounds that there had been a violation of his right to personal freedom, and his right to due process, by means of kidnapping, and resolved to refer the proceedings to the Public Prosecutor for an investigation into those crimes to begin.

Special Amnesty for General Robles

32. On Friday, 6 December 1996, a special amnesty decree, Law No. 26.669, was issued, which granted "amnesty to retired officers of the Armed Forces being tried under military jurisdiction for sundry crimes," in particular, military officers being tried for the crime of undermining the Armed Forces. General Rodolfo Robles was released under this law that very day.

Special Amnesty for the Persons who Ordered and Carried-out the Arrest General Robles

33. Along with the special amnesty law for General Robles, another amnesty law, No. 26.700, was enacted, which granted "amnesty to military and civilian personnel being investigated, denounced, or tried under civilian or military jurisdiction for carrying out actions related to or associated with sundry crimes." This annulled the resolution of the Permanent Duty Judge, as upheld on appeal, which had ordered the individuals responsible for General Robles's capture to be investigated for the crime of kidnapping and crimes against due process.

34. According to the complaint, the public officials to be investigated included agents of the Army Intelligence Service and General Nicolás de Bari Hermoza Ríos, Commander in Chief of the Peruvian Army, who ordered the arrest. These persons acted with the complicity of Major General Juan Yanque Cervantes (Director of Army Intelligence), Major General Guido Guevara Guerra (President of the Supreme

Council of Military Justice), Major General Hugo Pow Sang (Investigating Magistrate of the Supreme Council) and soldier Raúl Talledo V. (Prosecutor of the Supreme Council). Consequently, the special amnesty directly benefited these officers.

III. PROCESSING BY THE COMMISSION

35. On 2 May 1994, General Rodolfo Robles Espinoza presented a complaint to the Inter-American Commission on Human Rights, which opened file No. 11.317. On 28 June 1994, the relevant parts of that communication were transmitted to the Peruvian State.

36. On 8 July and 7 September 1994, the petitioners submitted additional information, which was in due course transmitted to the Peruvian State.

37. On 22 August 1994, the Peruvian State replied by sending a Justice Ministry report on the status of the judicial proceedings brought against General Rodolfo Robles by the military courts.⁹ In this report's conclusions, the State argued that the domestic remedies had not yet been exhausted and therefore requested that the case be filed, in accordance with the terms of Articles 46 and 47 of the American Convention on Human Rights.

38. In a communication of 4 November 1994, the petitioner submitted his comments on the Peruvian State's reply. In this he claimed that the State's reply offered no relevant information other than a simple summary of the prosecution of General Robles and its then state of reserved judgment given that the accused was a prisoner *in absentia*. The petitioner also noted that in its reply, the State did not argue that domestic remedies had not been exhausted and it provided no information to refute the petitioner's allegations regarding the events described in his submissions.

39. He also stated that the proceedings before military justice were totally lacking in impartiality, in that the military court was not independent, thus constituting a violation of Article 8(1) of the Convention. All the military court did was to endorse the charges against General Robles. These charges were based on the falsehood of the incidents he reported and the innocence of the named individuals. Later judicial investigations have confirmed the truth of General Robles's allegations, such as the discovery of bodies in graves at Cieneguilla and Huachipa (July and November 1993), the arrest of the perpetrators of those executions in November 1993, and their subsequent trial and conviction by the Supreme Council of Military Justice's Court-Martial in February and March 1993. At the close of his communication of 4 November 1994, the petitioner expressed "his interest in reaching a friendly settlement in this case."

40. On 14 December 1994, the Commission acknowledged receipt of the petitioner's comments on the State's reply and sent the relevant parts of them to the State, granting it a period of 45 days to return its comments.

41. On 21 August 1995, the petitioner submitted additional information to the Commission, reporting that General Robles and his two sons had been granted amnesty under Law N° 26.479. Amnesty Law N° 29.479 benefited 52 members of the Police and the Armed Forces who had been "convicted and tried for the crimes of insubordination, making false statements, undermining the nation, breach of trust,

undermining the Armed Forces , and others." The petitioner stated, however, that the practical effects of the amnesty law were restricted to judicial proceedings, since the administrative measures taken against General Robles under Supreme Resolution 175 DE/EP remained in force.

42. In a note dated 5 September 1995, the State submitted a list of the Police and Armed Forces personnel who benefited from Amnesty Law No. 29.479, including General Robles. The Peruvian State's response made no reference to the possibility of a friendly settlement as suggested by the petitioner.

43. In 8 September 1995, a hearing in connection with this case was held at the Commission's headquarters.

44. On 11 October 1995, the petitioner submitted additional information about the threats to his life and person.

45. On 28 November and 3 December 1996, the petitioner submitted additional details on the circumstances of his arrest by the Peruvian army and provided information on his trial by the military courts. He also reported that his family had filed a writ for habeas corpus protection, which could not be carried out due to the opposition of the military authorities; he stated that this recourse had ordered the immediate release of General Robles but, after due notification, had not been complied with by the military authorities.

46. According to the petitioner, the military courts refused to provide General Robles's attorney with concrete information on the reasons for his arrest. The petitioner also reported that his attorney was punished with a five-month suspension from practicing law for failure to respect the judges and magistrates of the military courts. This measure, according to the petitioner, was intended to deprive General Robles of his right to counsel of his choice and to leave him defenseless in the judicial proceedings brought against him.

47. On 4 March 1997, a second hearing on this case was held at the Commission's headquarters. On this occasion, the petitioner gave a succinct account of the facts, starting with his denouncing the existence of the Colina paramilitary group, after which the military authorities threatened his life and began criminal proceedings before the military courts in retaliation for his revelations. These events, he said, forced him into exile in Argentina. He also described the events of his arrest on 26 November 1996, pursuant to an arbitrary arrest warrant issued under military law, a jurisdiction which lacks independence and impartiality. He noted the ineffectiveness of the writ of habeas corpus, in that the military officers guarding him disobeyed the court's instructions to release him, and he reported that it was impossible to take criminal action against the individuals who ordered and carried out his arbitrary arrest because a special amnesty law had been enacted in their favor.

48. General Robles also stated that the administrative sanctions ordered by Supreme Resolution 179-DE/EP of 10 May 1993, which had taken away his rights as a retired officer, remained in force; that in order to annul that resolution, he had filed a writ of *amparo* protection with the 18th Court in Lima in October 1995. In November 1995 this request was admitted for processing. However, this judicial decision was overturned on appeal on 1 March 1996, under a ruling handed down by the Fourth Civil Circuit of the Lima Superior Court. General Robles filed an extraordinary appeal

against this latter ruling with the Constitutional Tribunal on 8 April 1996; since that time, his appeal has been awaiting resolution.

49. According to the petitioner, in Peru judicial remedies are ineffective in that judicial decisions are not obeyed or their processing is unwarrantedly delayed; such is the case with *amparo* remedies which, by law, must be resolved swiftly. For this reason, he maintains that in Peru there are no judicial remedies for protecting his rights that can be exhausted.

50. In turn, at the hearing the State repeated that General Robles's complaint was inadmissible because the domestic remedies had not been exhausted. It noted that the Constitution of the Republic of Peru stipulates that a Peruvian citizen who believes that his rights have been affected must exhaust the constitutional protection mechanisms, such as *amparo* and habeas corpus, before taking his case to a supranational human rights body. The State maintained that in the case at hand, the *amparo* action brought by General Robles was still pending resolution in that the Constitutional Tribunal had not yet issued a final ruling. The State also claimed that the arrest of 26 November 1996 and subsequent events were unrelated to the original complaint and should not be considered by the Commission as a part of the case at hand.

51. On 9 October 1997, at 11:30 a.m., a third hearing on this case was convened, at the request of the Peruvian State. Peru's representative categorically rejected all the charges leveled by the petitioner. The Peruvian State, he said, was accused of violating the right to life, the right to personal integrity, etc. All those rights were protected under Peruvian law through habeas corpus and *amparo* actions. According to the State, the petitioner refused to comply with his new posting (the Inter-American Defense Board in Washington, D.C.) and began attacking the Armed Forces. Even though he was retired, he was considered a soldier, and his status as such had not ended; he was enjoying, for example, all the benefits of his pension. In light of these facts, the State requested that the Commission declare the case inadmissible, since proceedings under Peruvian law had not been completed.

52. The petitioner's representatives criticized the disrespectful tone used by the State representative and the way in which he referred to the petitioner. According to the petitioners, General Robles reported the existence of a death squad within the Armed Forces and, as a result, he was subjected to an intense campaign of defamation and he was deprived of his personal freedom for revealing atrocious crimes perpetrated by the institutions set up to preserve public order. The campaign against him began when he made certain statements against members of the Armed Forces and was forced to resign in violation of the regulations covering such disciplinary measures. In spite of the regulations, he was never called or allowed to be heard by the Investigating Council, and it was while he was in exile in Argentina that he was forced into retirement. These violations of due process deprived him of about one half of his military retirement entitlements.

53. The Commission, in accordance with the procedure set forth in the American Convention, invited the parties to begin negotiations toward a friendly settlement of the case. The parties agreed to consider the proposal and to submit their replies immediately.

Friendly Settlement

54. Article 48(1)(f) of the American Convention states that the Commission shall make itself available to the parties in order to reach friendly settlements in pending cases. In the case at hand, the petitioner's communication of 4 November 1994 indicated his interest in settling the matter on a friendly basis. That communication was transmitted to the State for comments. Since no response was made regarding this point, the Commission assumed that the State had no interest in a friendly settlement of this case. The offer of a possible friendly settlement was again made during the hearing held at the Commission's headquarters on 9 October 1997. This offer was formally made by the Commission to the Peruvian State and the petitioners in a letter dated 10 October 1997, which requested a reply by 14 October 1997. By means of a letter dated 13 October 1997, the petitioners agreed to begin negotiations toward a friendly settlement of the case and appointed two representatives in Washington D.C.,--Mr. José Miguel Vivanco of Human Rights Watch and Ms. Viviana Krsticevic of CEJIL--for the purpose. In a note dated 14 October 1997 the Peruvian State requested an extension of the reply period. The Commission granted the extension but received no reply from Peru. The Commission has interpreted the State's silence as a rejection of its offer to begin proceedings for a friendly settlement.

IV. POSITIONS OF THE PARTIES

Position of the Petitioner

55. General Rodolfo Robles Espinoza alleges that in exercise of his right of freedom of expression and in compliance with the obligation to defend human rights incumbent upon him as a public official, he named the perpetrators of serious criminal acts, who were later brought to trial and, in the La Cantuta University case, convicted. As a result of those revelations, he claims, he was subjected to an intense campaign of intimidation by the military authorities, which has made use of both military justice and direct means.

56. Proceedings under military justice have been brought against him for actions that cannot, in a democratic society, be considered criminal acts. General Rodolfo Robles claims that he faced charges on each occasion on which he publicized the involvement of the military in criminal actions. On both occasions, the terms of amnesty laws were applied to him. But, in his mind, this does not contradict his conclusion, but rather shows that the military justice proceedings were clearly in retaliation for his revelations, aimed at preventing the existence of a paramilitary apparatus in Peru--the so-called Colina Group,-- which, according to his allegations, involves officers from the highest echelons of the Peruvian military, from becoming public knowledge.

57. General Robles has stated that with the same aim, threats have also been made through direct means consisting of surveillance, harassment, and threats. In addition, through arbitrary administrative sanctions, he and his family have been deprived of the rights and benefits to which all retired generals are entitled. The guarantee contained in Article 5(3) of the American Convention, stating that punishments shall not be extended to any person other than the criminal, has been doubly violated, in that an innocent person has been subjected to a punishment that goes beyond his person and is affecting his family.

58. The combined use of these techniques has kept General Rodolfo Robles Espinoza and his family in a state of anxiety and apprehension. The threats against his life and his family and other acts of harassment have been constant, and they pose a serious threat to the free enjoyment of his basic rights.

59. Ultimately, these threats are intended to persuade him to desist from the legal action he has taken in order to restore his good name, revoke his enforced retirement, and recuperate the benefits he enjoyed as a soldier on active duty that he has lost, and, above all, they are intended to prevent him from continuing to make statements regarding the involvement of top-ranking Peruvian army officers in the Barrios Altos and La Cantuta incidents.

Position of Peru

60. The Peruvian State, on the other hand, alleges that the petition is inadmissible because its domestic law offers specific remedies that General Robles should have first exhausted. In this regard, Peru notes Article 205 of its Constitution, which states that "once domestic jurisdiction has been exhausted, persons believing their constitutional rights to have been affected may make recourse to the international courts or agencies established under treaties or pacts to which Peru is a party."

61. General Robles's claim that international jurisdiction is the last recourse given the absence of guarantees within domestic law is, according to the State, false, because Peru's domestic legislation provides suitable remedies for correcting the situation. Since these remedies exist, it is incorrect to maintain that the State has failed to provide mechanisms for protecting the rights allegedly violated. The State points out that General Robles must previously exhaust the remedies set forth in Article 200 of the Constitution, to wit:

1. *Habeas corpus* action
2. *Amparo* proceedings
3. *Habeas data* action
4. Unconstitutionality suit
5. Class action [*acción popular*]
6. Enforcement action [*acción de cumplimiento*]

62. The Peruvian State notes that in the case at hand, General Rodolfo Robles claims that his rights have been violated for allegations he made in connection with the La Cantuta and Barrios Altos incidents and that the aim is to prevent those crimes from being investigated. However, those cases have already been duly investigated by the competent internal judicial agencies and their perpetrators have been convicted.

63. According to the State, the criminal proceedings against General Robles and his sons were not begun in retaliation for his allegations against the Peruvian army. On the contrary: according to the Government, the case began with a complaint filed against General Robles with the Court-Martial Prosecutor, alleging he had committed a series of crimes against the Armed Forces. Fear of criminal punishment was the real reason why General Robles fled Peru. According to the Government, the death threats reported by General Robles are false and are simply intended to discredit the Armed Forces. Hence, the criminal proceedings did not simply begin because of these allegations, but instead are related to criminal acts committed by General Robles.

64. On 7 May 1993 the proceedings began with the start of a criminal trial, under Article 153, section 2, of the Code of Military Justice, for the crimes of insulting a superior, making false statements, dereliction of duty, and other charges. The trial was prepared normally and proceeded in accordance with the provisions of military law. The Court-Martial expanded the charges to cover additional crimes. In his final report on the investigation of the case, the Military Prosecutor concluded that there was enough evidence to take the case to trial and to prosecute General Robles for the aforesaid crimes against the Armed Forces and for insulting superiors in the persons of General Nicolás de Bari Hermoza and Vladimiro Montesinos. The advisor recommended referring the case to the Prosecutor General, who drew up the corresponding charges. General Robles was given a court-appointed attorney; thus, according to the Government, he was ensured due process.

65. This was the state of the proceedings when the complaint with the Commission was opened. Consequently, the State maintains that domestic remedies were not exhausted.

66. Peru's Constitution guarantees human rights. When events such as those General Robles was involved in occur, it provides the necessary guarantees for their protection. Since returning from Argentina, General Robles has been fully participating in Peru's public life and has even participated in its political life from within an opposition political party. It can be stated that none of his rights have been denied, restricted, or limited. General Robles's involvement in politics bears witness to the freedom that exists in Peru.

67. In the case at hand, General Robles filed an *amparo* action against Supreme Resolution 174, the administrative ruling that ordered his retirement. This recourse has not yet been decided on. Although the Superior Court of Lima declared the action inadmissible because it was brought more than 60 days after the ruling was made (the Resolution was issued on 10 May 1993 and was not challenged until October 1995), the final ruling to decide whether or not General Robles's rights were violated is still pending. In its reasoning the court explained that the fact that a person was outside the country did not prevent him from bringing an *amparo* action. Under Peruvian law, *amparo* proceedings can be begun by third parties without the need for an express power of attorney. In any event, all General Robles had to do was to enact a simple power of proxy before the Peruvian Consul in Argentina. Peruvian law allows for a series of possibilities in this regard. The Court thus decided that General Robles was in a position to file the action and, therefore, accepted the State representatives' defense that the allotted period of time had expired.

68. That resolution did not exhaust the remedies of domestic law. General Robles himself has admitted that he filed the extraordinary remedy allowed for by Article 202, paragraph 2, of the Constitution, which empowers the Constitutional Tribunal to hear appeals against *amparo* rulings. Article 45 of the Constitutional Tribunal Law establishes the procedures for handling such remedies. Internal jurisdiction will expire with a ruling from the Constitutional Tribunal, but no such ruling has yet been given.

69. The petitioner resorted to supranational jurisdiction before exhausting the remedies offered by domestic law. The request has been processed simultaneously under both domestic and supranational jurisdictions, thus contravening the principle that supranational jurisdiction is supplementary to the domestic arena. In

consideration of all this, the Peruvian State requests that the Commission declare the complaint to be inadmissible.

V. ANALYSIS

A. ADMISSIBILITY

70. In accordance with the background described above, the Commission is competent to hear this petition, since the complaint concerns facts that constitute possible violations of the human rights of General Robles as set forth in the American Convention on Human Rights. Peru has been a State Party to the Convention since 28 July 1978.

71. The Commission holds the arguments regarding inadmissibility proffered by the Peruvian State to be inadmissible and believes that the petition meets the requirements set forth in Article 46 of the American Convention. The Commission also believes that none of the exceptions contained in Article 47 are applicable in this case.

Exhaustion of Domestic Remedies

72. With regard to the exhaustion of domestic remedies, the Peruvian State has said that General Robles has not exhausted the remedies of domestic law set forth in the Constitution and other laws. In this regard, in its communication of 22 August 1994, the Peruvian State simply offered a summary of the trial before the military criminal courts, without expressly identifying the appropriate and effective domestic remedies available to General Robles for protecting his rights. Irrespective of the foregoing, the State later said that General Robles had to exhaust the remedies set forth in Article 200 of the Peruvian Constitution.

73. At two different times, the Peruvian State has taken legal action of different kinds. Initially, the State reported, criminal action was taken against General Robles for crimes including insubordination, insulting a superior, and undermining the Armed Forces; the corresponding proceedings were begun by the Prosecutor of the Supreme Council of Military Justice's Court-Martial on 7 May 1993.

74. These proceedings began a few days after General Robles obtained political asylum in Argentina and arose from his statements regarding the army's involvement in a death squad known as the "Colina Group." The trial before the military courts was intended to punish him with a 15-year prison term and the payment of USD \$4,500,000 as reparations for alleging the involvement of the Armed Forces in setting up a death squad known as the Colina Group. The Commission believes that General Robles did not have effective remedies for refuting the military charges brought against him.

75. In addition, the Commission must bear in mind two issues regarding the action brought by the Peruvian State:

a. First, this criminal trial was dismissed by applying an amnesty law. This prevented a final ruling on General Robles's guilt or innocence and, above all, on the possible use of criminal proceedings to punish public allegations of human rights

violations committed by the army. Regardless of the legitimacy or illegitimacy of the charges made against General Robles, the amnesty law prevented him from seeing the trial through to its conclusion and from fully asserting his right of defense. Under these circumstances, the dismissal of the proceedings prevented General Robles and his sons from refuting the criminal accusations made against them and, in so doing, clearing their names and reputations.

b. Second, the Commission notes that criminal proceedings do not serve to rectify other rights that General Robles alleges were violated. Indeed, in addition to his arbitrary subjection to a trial before the military courts, General Robles reported other attacks on his rights, such as the arbitrary emission of a resolution ordering his retirement and depriving him of the pension and other entitlements earned over long years of service in the army, and the existence of a campaign waged by the Armed Forces to discredit him within both the army and society at large. In this regard, the action initially taken by the Peruvian State (the criminal trial before the military courts) was not designed to protect him from these other rights violations.

76. The Peruvian State also noted that General Robles was obliged to exhaust the remedies set forth in Article 200 of the Constitution before filing his complaint with the Commission. Article 200 provides for the following remedies: habeas corpus actions, *amparo* proceedings, habeas data actions, unconstitutionality suits, popular actions, and actions of compliance.

77. Some of these remedies, such as class actions or challenge to the constitutionality, can be disregarded immediately, since private citizens are not empowered to initiate them. Thus, Article 200, paragraph 4, states that:

A challenge to the constitutionality may be brought against provisions at the level of laws: Laws, legislative decrees, emergency decrees, treaties, congressional regulations, regional rules of a general nature, and municipal ordinances that contravene the form or substance of the Constitution.

78. Article 203 of the Peruvian Constitution clearly states that only the following persons are empowered to file challenge to the constitutionality action:

1. The President of the Republic.
2. The Attorney General.
3. The People's Defender (Ombudsman).
4. Twenty-five percent of the total number of members of Congress.
5. Five thousand citizens with signatures checked by the National Elections. Municipal ordinances may be challenged by one percent of the citizens of the corresponding district, provided that this percentage does not exceed the number of signatures indicated above.
6. The regional presidents with the agreement of the Regional Coordination Council, or the provincial mayors with the agreement of their Council, with regard to matters of their competence.
7. Professional associations.

79. General Rodolfo Robles lacks the authority to bring action challenging the constitutionality of laws and legal provisions that affected his rights, since Peru allows such class action suits. It is therefore a remedy not available to individuals, nor one which they can individually exhaust.

80. *Habeas data* actions are another remedy which, in the case at hand, General Robles is not obliged to exhaust, because it is not suitable for rectifying the alleged violations. Habeas data actions have been incorporated into Peru's Constitution as a mechanism "admissible against an action or failure to act by any authority, officer, or person that violates or threatens the rights referred to in Article 2, paragraphs 5,[10](#)[6](#),[11](#) and [712](#) of the Constitution"—namely, the right to obtain information from the State, and the right to privacy and honor.

81. Consequently, the only remedies that can be considered suitable and available to the petitioner are *amparo* and habeas corpus.

82. With regard to *amparo* proceedings, General Robles filed a request for Supreme Resolution 179, which ordered his retirement, to be declared unconstitutional. These proceedings began in November 1995. The request has not yet been finally ruled upon, however, although it is currently on appeal under an extraordinary remedy filed with the Constitutional Tribunal and has been since April 1996. Article 46(2)(c) of the American Convention states that domestic remedies need not be exhausted when unwarranted delays such as this have taken place.

83. An *amparo* suit is a constitutional guarantee that protects individuals from serious human rights violations. It is, therefore, a remedy that must be processed swiftly, to protect the affected rights as promptly and as effectively as possible. When an *amparo* suit or proceeding drags on without reaching a final conclusion, it ceases to be an effective remedy. Article 25 states that: "Everyone has the right to simple and prompt recourse." *Amparo* proceedings cannot be prolonged unreasonably without a prompt final resolution. Thus, the Commission has to conclude that General Robles is not required to await the Tribunal's ruling on this remedy before requesting the protection of the inter-American human rights system. Since in this case final judgment on the *amparo* suit has not been "prompt," the Commission holds that there has been an "unwarranted delay" in the exhaustion of the domestic remedies, in violation of Article 46(2)(c).

84. As the Inter-American Court of Human Rights has stated, "The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective." (Godínez Cruz Case, Preliminary Objections, Judgment of 26 June 1987, paragraph 95.)

85. Finally, the State has named habeas corpus as a remedy available to General Robles for rectifying some of the alleged violations, specifically his arrest on 26 November 1996. This remedy, the Commission believes, proved ineffective in protecting General Robles's right to freedom.

86. General Robles's family did in fact initiate such a remedy when he was arrested by the Armed Forces. The judge in charge of the case reported to the Real Felipe Barracks, where General Robles was being held. The Armed Forces then prevented the judge from entering that military prison, and so she was unable to verify General Robles's situation.

87. The judge then issued a final ruling, granting the habeas corpus and ordering the immediate release of General Robles. The Armed Forces refused to receive the notification of this ruling or to comply with the Court order. The above leads to the conclusion that habeas corpus remedies are ineffective in Peru. Members of the

Armed Forces refuse to obey judicial orders, and they suffer no negative legal repercussions or punishments for failing to comply with them. Given these circumstances, the remedies are completely ineffective in protecting General Robles's rights, since the official authorities do not abide by the decisions of the judiciary. The Commission believes that the Peruvian State has violated Article 25(2) by means of the military court's failure to comply with the habeas corpus ruling.

88. From the above facts, the Commission concludes that in the case at hand, in accordance with Article 46(2), General Robles is not required to exhaust the domestic remedies since the Peruvian State's domestic legislation lacks a procedure for protecting violated rights. In addition, with regard to the only two remedies apparently applicable to the case and available to the petitioner, the *amparo* proceedings were delayed for an unreasonably long period of time while the habeas corpus action was not effective in that the Armed Forces refused to comply with the order to release General Robles.

B. ANALYSIS OF THE MERITS

The Proven Facts

89. In the case at hand, the Commission has to determine whether acts of harassment and intimidation were carried out by authorities of the Peruvian State against General Robles and his family. According to the complaint, this harassment began in May 1994, when the Armed Forces threatened his life, and started of criminal proceedings against him for the crimes of undermining the Armed Forces, insubordination, insulting a superior, and others, that finally led to his arrest on 26 November 1996, ordered by the Military Prosecutor for those same crimes.

90. The Commission notes that the military courts began proceedings against General Robles on two occasions as a result of his revelations regarding the crimes committed by the military in the Barrios Altos and La Cantuta incidents. In the Commission's view, it is unreasonable to take criminal action against someone for denouncing the participation of high-ranking military officers in a series of crimes and massacres perpetrated against civilians or for making public declarations naming the persons involved. Moreover, the Peruvian State arbitrarily deprived him of his right to a pension and other benefits to which he was entitled as a general in active service.

91. The Commission therefore believes that the State has displayed an attitude of arbitrariness, "which constitutes an abuse of power"¹³ reflected in the unquestionable persecution and harassment of General Robles. The Peruvian military authorities, instead of thoroughly and objectively investigating General Robles's allegations, simply dismissed them and launched a campaign of harassment in order to silence him.

92. The Commission believes that public officials are obliged to report on crimes of which they become aware as they perform their duties. Compliance with a legal obligation can make no such revelation illegal.

93. In light of the foregoing, the petitioner has requested the Commission to rule that Peru has violated, in respect of General Rodolfo Robles, the rights enshrined in

Articles 5, 7, 8, 9, 11, 13, 25, and 1(1) of the American Convention on Human Rights.

The Right to a Fair Trial and Judicial Protection

94. Articles 8 and 25 of the American Convention on Human Rights grant all persons the right of access to remedies, to be tried and heard in judicial proceedings, and to receive a ruling handed down by a competent authority.

Article 8 of the American Convention on Human Rights states that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

95. In the case at hand, the officers of the Peruvian Armed Forces issued Supreme Resolution No. 179 DE/EP on 10 May 1993, ordering the "retirement on disciplinary grounds" of General Rodolfo Robles.

96. The actions for which this administrative sanction was imposed on General Robles occurred on 5 May 1993, and the resolution was issued on 10 May 1993. This means that the entire administrative disciplinary process was concluded in five days. It should also be noted that General Robles went into exile, seeking political asylum, on 7 May 1993 on account of the threats and harassment he was suffering.

97. General Robles was neither summoned nor heard at the disciplinary proceedings, and therefore, he did not have the opportunity to defend himself before being punished. He was thus denied any possibility of defending himself against the charges made against him, in violation of Article 8 of the American Convention on Human Rights. The Commission interprets the right to defense as including the basic rights of due process set forth in Article 8(2), such as the accused's right to be presumed innocent until his guilt is proven, his right to receive prior notification of the charges against him, his right to adequate time and means for preparing his defense, the right to defend himself personally or to be assisted by legal counsel of his own choosing, etc.

98. The brevity of the proceedings, together with the fact that General Robles was not given a hearing, demonstrates to the Commission that the disciplinary process brought against General Robles to force him into retirement as a disciplinary measure was carried out without observing the right to due process enshrined in Article 8. Peru is therefore responsible for violating Article 8 of the Convention by removing General Robles from active service and depriving him of the entitlements and benefits attached thereto without respecting the rules of due process and the right of defense.

99. The Commission must now examine the reasons or pretexts behind the criminal trial brought against General Robles for the crimes of insubordination, insulting a superior, undermining the Armed Forces, abusing authority, making false statements, dereliction of duty to the detriment of the Peruvian State and army, and crimes against military honor, decorum, and duty--he proceedings which forced General Robles to seek political asylum in Argentina. This trial ended with the terms

of the amnesty law being applied to General Robles. Subsequently, the military courts brought another action against him on 26 November 1996 for undermining the Armed Forces.

100. As stated in the complaint and confirmed in the documents submitted by the State, the military courts began criminal proceedings against General Rodolfo Robles Espinoza for the crimes of insulting a superior and undermining the Armed Forces by revealing the participation of certain Armed Forces officers in the commission of different criminal acts.

101. The criminal trial of General Robles before the military courts began without there previously being an exhaustive investigation of the truthfulness or falsehood of his allegations, as required by law. Moreover, the proceedings continued after the claims made by General Robles were proven to be true. Effectively, his allegations were confirmed at trial in the La Cantuta case, which proved the guilt of the officers he had named as the perpetrators of that crime. In the Barrios Altos case, as a result of his allegations the investigations began and the perpetrators were identified. Consequently, it can be deduced that General Robles's allegations were neither false nor unfounded. Exercising a right or complying with a legal duty cannot make an action illegal.

102. In any event, in a democratic society, revealing criminal acts--particularly when they involve human rights violations committed by state officials--cannot lead to criminal prosecution. Criminalizing allegations about human rights violations is a means of repressing the victims and those individuals who defend human rights and strive to keep checks on abuses committed by the State's security forces. When a state refuses to conduct an investigation into such allegations and makes no effort to establish the truth of the matter, preferring instead to prosecute those who made the allegations, it is violating its duty to investigate the reported crimes and, in general, to protect human rights.

103. By reporting the security forces' involvement in a series of crimes, General Robles was performing his duty as a citizen, as an officer in the army, and as a public employee. State authorities in a democratic society are obliged to protect and monitor respect for human rights. The democratic rule of law sought by the inter-American system is essentially based on the concepts of human dignity, controlling public power, and absolute respect for human rights. All public officials are obliged to defend those values.

104. This gives rise to an obligation, incumbent on each and every public official, to use all the means available to him to denounce the criminal acts of which he becomes aware. General Robles exercised the right of defense in favor of third parties, which is legal. Such a defense is legitimate when it defends either one's own rights or those of a third party; this appears in any penal code. It is therefore a licit activity by the individual, who can only be guilty of "excesses" when, for example, he uses means that are not commensurate with that goal; but there is no question of that in the case at hand. In turn, the State is duty-bound to investigate serious crimes as soon as such allegations are made. In this regard, the Inter-American Court of Human Rights has stated that:

The State has a legal duty to (. . .) use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to

ensure the victim adequate compensation. (*Velásquez Rodríguez Case*, Judgment of 29 July 1988, paragraph 174.)

105. There is no argument the State can use to avoid its duty of investigating a case that involves the violation of basic human rights. This has been stated by the Court in the following terms: the investigation "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family (. . .), without an effective search for the truth by the government. (*Ibid.*, paragraph 177).

106. The obligation of investigating human rights violations also includes the obligation of guaranteeing that the victims, denouncers, witnesses, and their lawyers do not suffer reprisals or negative repercussions after reporting crimes committed by public officials.

107. In bringing criminal proceedings against General Robles for his revelations, the Peruvian State violated its obligation of respecting and protecting human rights, in that it directly threatened the persons who reported a violation of basic rights--in other words, a person exercising his right to defend a third party using means suitable for that purpose.

108. It can thus be concluded that General Robles was arbitrarily made to face criminal proceedings before the military courts in retaliation for revealing the involvement of officers of the Peruvian Armed Forces in criminal acts, which constitutes an "abuse of power" harmful to General Robles's rights. Similarly, although the exact motive for the criminal charges cannot be determined, it is obvious that the campaign of harassment against General Robles is real. In another similar case, the Commission established that:

Though petitioners have asserted that the campaign of persecution is prompted by the General's complaints of acts of corruption and violation of human rights by the Mexican Army, their argument of the violation of his right to freedom of expression and of the other rights alleged to have been violated springs from the harassment to which General Gallardo is being subjected. In its preliminary report the Commission said nothing about the motives behind this campaign because they could have been various and are insufficiently clear, but it did find sufficient proofs that the campaign of persecution and harassment of the General is real.¹⁴

109. The criminal proceedings against General Robles thus constitute an abuse of power. Again quoting from the precedent in the Gallardo case, the Commission determined that "the fact that 16 proceedings have been opened, some of which have been closed and others dismissed, is evidence of an unreasonable succession of cases, which taken together constitute an 'abuse of power,' with the intent of maintaining constant proceedings against General Gallardo, thereby depriving him of his personal liberty and violating other human rights as established by this Commission."¹⁵ The Commission analyzed this concept of abuse of power in detail, quoting Alibert as follows:

An agent of the administration commits an abuse of power when, in performing an act within his competence and respecting the forms imposed by legislation, he makes use of his power in cases, for motives and to purposes other than those for which this power was conferred upon him. The abuse of power is an abuse of mandate, an abuse of law. An administrative act may have been performed by the competent official with all the appearances of legality and yet this discretionary act, which the qualified official had the strict right to perform, may be rendered illegal if its author has used his powers for a purpose other than that for which they were conferred on him, or to speak in terms of jurisprudence, for a purpose other than the public interest or the good of the service.¹⁶

110. In these circumstances, a criminal trial under military jurisdiction does not offer the minimum guarantees of due process needed to ensure exercise of the right of defense. This criminal trial was not aimed at determining whether or not General Robles was guilty of a criminal act. The criminal case was directly intended to harass General Robles for having made his claims and thus intimidate him into refraining from a continued investigation of the involvement of Peruvian military officers, operating as a death squad, in the La Cantuta and Barrios Altos massacres.

111. Consequently, the authorities attempted to conduct a criminal prosecution against General Robles in such a way as to make it impossible for him to defend himself. With this goal, the military courts' Investigating Magistrate suspended General Robles's defense counsel from practicing law before those courts for a period of five months. By doing so, the military courts deprived General Robles of his right to defense counsel of his own choice and to a competent tribunal, thus contravening Article 8 of the Convention.

112. The fact that both General Robles's criminal proceedings were ultimately dismissed under different amnesty laws does not affect the above conclusion. On the contrary, by preventing the proceedings from following their normal course until totally concluded, they prevented the competent courts from handing down a final ruling, thus denying General Robles the possibility of taking legal action against the judicial officers who acted by abusing their power and in contravention of legal process.

113. This demonstrates that military justice has posed a constant threat to General Robles's security, in that it has kept him expecting fresh criminal charges to be filed against him. In this way, military justice is wielded as a tool of arbitrary repression against any person who reports its crimes or abuses of power. Consequently, the standard of reasonableness is violated through excesses or abuses of power.

114. The fact that a number of criminal cases were begun, that there was a series of trials followed by the promulgation of amnesty laws, and that all these affected the same person leads the Commission to assume that the right to the presumption of innocence, enshrined in Article 8(2) of the American Convention, was violated through the use of the organs of military justice.[17](#)

115. Article 25(1) of the American Convention states that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his 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.

116. The American Convention requires States to offer effective recourse to the victims of human rights violations. In the case at hand, General Robles has not been given such a recourse to protect him from the intimidation and harassment which he has suffered and continues to endure.

117. General Robles has, in fact, invoked a series of remedies to protect himself from the arbitrary acts committed by the military authorities and courts. These include the filing of an *amparo* action in November 1995, to annul the disciplinary measure forcing him into retirement imposed by Supreme Resolution 175, and to restore the rights he was consequently denied, and the bringing of a writ of habeas

corpus to regain his freedom when he was arbitrarily arrested by the Armed Forces in November 1996.

118. With the *amparo* action, the final ruling has been delayed excessively in spite of the seriousness of the resolution it challenges--namely, the imposition of a disciplinary measure in violation of all the guarantees of Article 8 of the Convention and of the Peruvian Constitution itself.

119. In this regard, it should be noted that the fact that a disciplinary decision is handed down through an administrative procedure in no way affects the State's obligation of observing the rules of due process. On the contrary, in cases of administrative procedures involving the loss of rights, not only is the State obliged to implement the administrative procedure in which all the guarantees of Article 8 are observed, it is also obliged to supply effective legal remedies for the courts to review the actions of the public administration.¹⁸

120. As the Commission sees it, there can be no doubt that General Robles's situation when Supreme Resolution 174 was issued prevented him from exercising any defense or bringing any administrative or judicial appeal to revoke it. This was in contravention of the commitment assumed by the State under Article 25(2)(b) of the American Convention:

The States Parties undertake: (. . .) to develop the possibilities of judicial remedy.

121. The death threats made against him and the criminal prosecutions brought by the military courts constituted adequate and justified reason for General Robles to feel forced to leave Peru in order to protect his life and person. In the Commission's view, it has been fully shown that the Peruvian army launched a campaign of harassment and intimidation against General Robles, which prevented him from making use of the remedies offered by Peru's domestic legislation. The Peruvian State therefore, is responsible for violating its obligation of guaranteeing access to justice and of developing the possibilities of simple and prompt judicial remedies before the courts.

122. Although General Robles was able to return to Peru in October 1995 and file *amparo* proceedings, the Commission must note that:

a. First, the intimidation and harassment of General Robles continued through direct means, in the form of telephone threats, permanent surveillance of his home, and his being followed by individuals with ties to the security forces. This harassment increased when he began the *amparo* proceedings.

b. Second, *amparo* is a "simple and prompt" recourse for protecting basic rights. Its aim is to restore to a citizen the full use and enjoyment of rights violated by arbitrary acts committed by official bodies.

123. The Commission thus holds that the right to a simple and prompt recourse set forth in the Convention requires a decision to be made within a "reasonable time" in accordance with the nature and purpose of such a remedy. When the final result of a decision is delayed for more than a year and a half, it must be concluded that the State has not provided the affected person with a simple and prompt recourse, thus violating his right to judicial protection.

124. In this regard, Article 25(2)(a) of the Convention states that:

The States Parties undertake to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state.

125. Similar comments could be made with regard to the habeas corpus action brought in General Robles's favor after his arrest on 26 November 1996. Although the judicial authorities reported almost immediately to the Real Felipe General Barracks, where General Robles was being held, in order to carry out the habeas corpus order, the military authorities refused them access to their facilities to check on his physical state. Later, when the judicial authorities declared General Robles's arrest to be arbitrary, the military authorities refused to receive the notification of that resolution or to carry out the Court order.

126. Article 25(2)(c) stipulates that States shall guarantee enforcement, by the competent authorities, of all decisions in which remedies are accorded.

127. In the case at hand, the judicial authorities ordered General Robles to be released. The military authorities openly disobeyed that order. General Robles's arrest, as an arbitrary and illegal act carried out by the military authorities, gave rise to criminal responsibility. In the resolution, the judicial authorities ordered proceedings to begin against the members of the military who ordered the arrest. This judicial resolution was also disregarded, in that the officers involved in the arbitrary arrest of General Robles and the arbitrary proceedings brought against him were able to benefit from an ad hoc amnesty law.

128. The Commission concludes that on different occasions, General Robles attempted to use constitutional actions and remedies to protect his rights and, even when those remedies were declared admissible, the competent military authorities either openly disregarded the judicial decisions or delayed the final decision indefinitely. In any event, those remedies have proven to be completely ineffective in protecting the victim's basic rights. As a result, the Commission declares that the Peruvian State has violated the right of judicial protection enshrined in Article 25(2) of the Convention, in respect of General Rodolfo Robles Espinoza, through the military courts' failure to comply with the habeas corpus ruling.

The Right to Personal Freedom

129. Article 7(2) of the American Convention stipulates that no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. Article 7(5) of the Convention states that: "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings." The detainee must be brought without delay before the judicial authorities. His detention may not exceed the time needed for transportation.

130. According to Article 2(20)(f) of the Peruvian Constitution:

No person may be arrested except by a written, substantiated order from a judge or, in cases of *flagrante delicto*, by the police. The detainee must be referred to the corresponding court within 24 hours or within the time imposed by the distance involved.

Paragraph 14 of Article 138 states that:

The principle of not being denied the right of defense at any stage in proceedings. All persons shall be immediately informed in writing of the cause or reasons for their arrest. They shall be entitled to personal communications with a defense attorney of their choosing and to receive advice from that attorney from such time as they are summoned or arrested by any authority.

131. The Peruvian Constitution clearly empowers the police to arrest a person, but only in cases of *flagrante delicto*. When this does not apply, a "written, substantiated order from a judge" is required.

132. General Robles was arrested on 26 November 1996, without being shown a written, substantiated order from a judge. Not only was he not shown this order; his defense attorney was not allowed to see it when he began to investigate the reasons for General Robles's arrest.

133. In any event, the order for his arrest was issued by an incompetent court, as resolved by the civilian judicial authorities that ruled on the habeas corpus action in General Robles's favor.

134. Under Article 173 of the Peruvian Constitution, the terms of the Code of Military Justice are not applicable to civilians, except in cases involving the crimes of treason against the fatherland or terrorism. General Robles had been retired, and therefore, was not an active member of the Armed Forces or subject to military jurisdiction or the Code of Military Justice. In this regard, Judge Elba Greta Minaya Calle declared that:

Since General Rodolfo Robles Espinoza has the status of a retired general and as such is not subject to military jurisdiction as stipulated by Article 12 of Legislative Decree No. 752, the Military Status Law, which states that: "Only officers in active duty or reserve are subject to the scope of the Code of Military Justice . . ." but not those who are retired, as indicated by Article 70 of the same Legislative Decree, which states that: "Retired officers shall exercise their rights and obligations in accordance with the Constitution, with no limitations whatsoever," a provision that is incompatible with the principle that military justice can be neither extended nor renounced."¹⁹

135. Based on the above facts, Judge Elba Greta Minaya Calle reached the conclusion that in General Robles's case, the constitutional provision stating that no person may be arrested without a written, substantiated order from a judge was not observed, "in light of the refusal of the military authorities to provide the necessary information." She therefore admitted the habeas corpus action and declared that Articles 2.24(f), 2.24(h), and 139.3 of the Peruvian Constitution had been violated. This ruling was upheld on appeal.

136. In addition to the military courts' lack of competence to order the arrest of General Robles, the Commission cannot remain silent regarding the existence of an arbitrary criminal prosecution, intended to intimidate and silence him, which constitutes an "abuse of power."

137. The resolution of the Investigating Magistrate of the Supreme Council of Military Justice of 29 November 1996, given during case 5296-102, states in its first reasoning clause that the accused Rodolfo Robles:

In his capacity as a Retired Army General, since his return to the country on 17 June of last year, in spite of having benefited from the effects of the public amnesty law, has been making public declarations containing defamatory phrases to the detriment of our Armed Forces; declarations made with the clear aim of undermining the prestige, morale, and discipline of the Peruvian Army. Thus, referring to the Army's actions in the CENEPA, he states that: "What happened at the CENEPA was not a relaxation of morale, because there have been acts of great heroism; instead, it was an extension of corruption," "The truth is that we have not won. At least we have not had the overwhelming victory of 1981," "not only crimes against civilians are being covered up, but also

crimes within the army," ". . . and so our army is increasingly inefficient, and those are the results of the CENEPA," as can be seen in *APRODEH* magazine, on pages 11 and 12 of the proceedings. In the same tone he has referred to General Nicolás de Bari Hermoza Rios, Commander in Chief of the Army and Chairman of the Armed Forces Joint Chiefs of Staff, saying that: "The values that have invariably guided our army are being enormously distorted; this is perhaps the greatest harm being done to it by Fujimori and Hermoza, who, in their urge to attain personal goals, are taking the institution along other paths," as published in *La República* magazine on 28 January 1996, appearing on pages nine and ten of the proceedings. These declarations violate the terms of Articles 142 and 147 of the Military Code, constituting the crime of insulting a superior wherein the military situations of the injured party and his aggressor are irrelevant, and, in addition, the accused's insulting, offensive, and untruthful phrases undermine discipline and order among the members of the Army by affecting the position of a superior vis-à-vis his subordinates . . . (emphasis added).

138. The Commission concludes that the act of depriving General Robles of his freedom was ordered by the military courts with a purpose other than those set forth in legislation, with which they exceeded their legal powers and contravened the express provisions of the Constitution. Said act was therefore a violation of General Rodolfo Robles's right to personal freedom as set forth in Article 7 of the American Convention.

Right to Protection of Honor and Dignity

139. Article 11 of the American Convention states that:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

140. The petitioner has stated that there have been actions and campaigns to discredit and libel General Robles at the national level, among all the members of the army and public opinion, by displaying and distributing fliers, documents, letters, photographs, and biased and false declarations in the press and on radio and television.

141. One example of this in an insulting poster (showing a doctored photograph of General Robles in convict's garb) that was authorized by the Commander in Chief of the Army and distributed around all Peru's military barracks at the end of May 1993.

The poster reads as follows:

Wanted: Guerrilla in the Barracks; Alias: "Little Bird," "The Crow," "Mr. Henpecked," "Robles the Caterpillar."
Distinguishing Features: Hides behind his wife's skirts; only takes orders in English. Accomplices: "La Cicciolina" Vargas Llosa, "Crazy Horse" García, Godfather Reynaldo. Accused of: Treason against the fatherland, collaborating with the enemy, being a cheap and cowardly mercenary. Reward: A free and sovereign Peru without terrorists.

142. On 10 May 1993, 53 army generals signed an open letter that was distributed to the main media outlets, saying:

That Major General Rodolfo Robles Espinoza has, through his felony and cowardice, dishonored the uniform bestowed on him by the Nation and that therefore, regardless of his criminal punishment, must be considered unworthy of belonging to the Peruvian Army and of bearing the noble decorations that the Nation has granted to him and must be expelled from the institution and removed from the ranks of Army officers.

143. From the above, the Commission notes that it has been fully documented that authorities of the Peruvian State made statements and issued declarations naming General Robles as guilty of betraying the Peruvian army and discrediting the Armed Forces by reporting the involvement of several ranking military officers in crimes and human rights violations. The way in which General Robles has been denigrated, the fact that he has been called a liar, a coward, and a traitor, the drawings and posters ridiculing his image, as contained in the documents, are an affront to General Robles's dignity and honor in that they have directly harmed his name and reputation, particularly so when the criminal proceedings brought against him concluded with the application of amnesty laws and when the allegations made by General Robles have been duly proven by the competent judicial authorities. The campaign to discredit General Robles also shows that power has been abused in the campaign of public harassment waged against him to sully his name among the general public and within the Armed Forces.

144. From the foregoing it is concluded that the Peruvian State violated General Robles's right to dignity and honor as enshrined in Article 11 of the American Convention.

Right to Freedom of Thought and Expression

145. In this case, the petitioner has claimed that the main objective of the attacks on General Robles was to curtail his freedom of expression and thought, in contravention of Article 13 of the Convention,²⁰ in order to prevent him from stating his position regarding the violation of human rights by the Armed Forces.

146. Thus, in connection with his revelations regarding the existence of a death squad called the Colina Group, comprising members of the National Intelligence Service and of the Armed Forces, the Court-Martial of the Supreme Council of Military Justice began proceedings against Major General Rodolfo Robles Espinoza for the crimes of insubordination, insulting a superior, undermining the Nation and the Armed Forces, abusing his authority, making false statements, and dereliction of duty. These criminal proceedings began only two days after his allegations against the Armed Forces were published.

147. The Investigating Magistrate of the Supreme Council of Military Justice ordered the capture and subsequent definitive arrest of General Robles for having made statements slandering the Armed Forces. The phrases deemed slanderous included ". . . not only crimes against civilians are being covered up, but also crimes within the army" and the claim that there was corruption within the Peruvian Army.

148. In the Commission's view, the exercise of the right of freedom of thought and expression within a democratic society includes the right to not be prosecuted or harassed for one's opinions or for one's allegations about or criticisms of public officials. As the Commission has established in another case, reasonable limits can be placed on the freedom of expression of members of the Armed Services on active duty in a democratic society.²¹ The right of free expression also includes the right to analyze critically and to oppose. This protection is broader, however, when the statements made by a person deal with alleged violations of human rights. In such a case, not only is a person's individual right to transmit or disseminate information being violated, the right of the entire community to receive information is also being undermined.

149. As the Inter-American Court of Human Rights has stated in connection with Article 13:

Those to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas. The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others. (Advisory Opinion OC-5/85 of 13 November 1985, paragraph 30.)

150. The Commission concludes that in this case, the organ of the military justice have been used to repress General Robles's opinions and denunciations regarding serious human rights violations committed by ranking military officers.

151. It can, therefore, be stated that, in the case at hand, the Military Justice system has been used to repress criticisms, opinions, and denunciations about the actions of its officers and the crimes they have committed. In this, the Military Justice system has made particular use of the crimes of undermining the Armed Forces and of insulting a superior, holding that allegations of criminal acts constitute "slanderous phrases" or "insults." The Commission believes that undermining the Armed Forces or insulting a superior are appropriate terms when applied to the crimes for which they were created, in order to maintain a level of discipline suitable to the vertical command structure needed in a military environment, but that they are totally inappropriate when used to cover up allegations of crimes within the Armed Forces.

152. Moreover, the ambiguity and unclear limits of criminal definitions of this kind can undermine the juridical security of human rights, giving rise to arbitrary prosecutions, arbitrary preventive imprisonment, and other rights violations. Ultimately, the principle violated in this instance is that of the legality of the crime or the punishment. Among the members of the Armed Forces, the threat of such consequences fuels a permanent fear of facing an investigation or prosecution for revealing criminal acts committed by superiors.

153. This situation is incompatible with the principles of a democratic society, where the information available about the activities of public officials should be as transparent as possible and accessible to all social groups. Allowing criminal definitions that can be used to curtail freedom of information and the free dissemination of ideas and opinions, particularly in cases involving human rights violations and, consequently, punishable acts, is unquestionably a serious violation of freedom of thought and expression and, above all, of society's right to receive information and to control the exercise of public power. In this regard, the Commission noted the following in its 1994 Annual Report:

Articles 13(2) and (3) [of the American Convention] recognize that the zone of legitimate State intervention begins at the point where the expression of an opinion or idea interferes directly with the rights of others or constitutes a direct and obvious threat to life in society. However, particularly in the political arena, the threshold of State intervention with respect to freedom of expression is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence.²²

154. The Commission therefore concludes that Peru violated General Rodolfo Robles Espinoza's right of freedom of thought and expression enshrined in Article 13 of the Convention.

Obligation to Respect Rights

155. The violations described in this case show that the Peruvian State failed to comply with the commitment, set forth in Article 1(1) of the Convention, to respect the rights and freedoms recognized therein and to ensure their free and full exercise by all persons subject to their jurisdiction.

156. In this regard, the Court has stated that:

The first obligation assumed by the States Parties under Article 1(1) is "to respect the rights and freedoms" recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. (*Velásquez Rodríguez Case, Judgment, op. cit.*, paragraph 165.)

157. Their second obligation is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to their jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. (*Ibid.*, paragraph 166.)

158. With regard to this second obligation, the Commission notes that the State has tried to avoid its obligation of investigating and punishing those responsible for General Robles's arbitrary arrest, by means of Amnesty Law N° 26.700, which stipulates, *inter alia*, that:

Article 1.

A general amnesty is granted to military and civilian staff, regardless of their military or duty status, being investigated, denounced, or prosecuted, under civilian or military jurisdiction, for acts committed on the occasion of or as a consequence of their intervention in acts related or associated with criminal actions defined as undermining the Armed Forces, insulting a superior, disobedience, generic falsehood, and those for which an amnesty would have been granted.

This amnesty does not cover acts related to the attack on Canal Trece and Radio Samoa in Puno.

159. The Commission's jurisprudence has clearly established that by promulgating and enacting amnesty decrees and laws a State precludes "any judicial possibility of continuing the criminal trials intended to establish the crimes denounced; to identify their authors, accomplices and accessories after the fact, and to impose the corresponding punishments."²³ Petitioners, relatives, and victims of human rights violations are therefore curtailed in their right to an impartial, exhaustive judicial investigation for clearing up the facts and establishing the fate and whereabouts of the victim.

160. One of the effects of amnesty decrees is to "weaken the victim's right to bring a criminal action in a court of law against those responsible for these human rights

violations." Consequently, amnesty laws directly prevent exercise of the right to prompt and effective recourse to judicial guarantees and they violate the State's obligation of ensuring free and full exercise of the rights recognized in the Convention.²⁴ This is totally incompatible with the State's obligation to make reparation for the consequences of an act or situation that constituted a violation of its international human rights commitments.

161. It is a generally accepted principle of international law that a State's failure to comply with a commitment causes it to incur in the obligation of making reparation (*Aloeboetoe et al. Case, Reparations* (Article 63(1) American Convention on Human Rights), Judgment of 10 September 1993, paragraph 43). Liability is the necessary corollary of a right. All rights at the international level impose a liability on the State. If the obligation in question is not satisfied, the liability requires adequate redress to be made. Reparation is therefore obligatory following a State's failure to enforce an international convention or commitment.

162. Within the inter-American human rights system, the provision governing redress following a human rights violation is Article 63(1) of the American Convention, which stipulates the following:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

163. As the Inter-American Court of Human Rights has stated, "this article codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law, as has been recognized by this Court (. . .) and the case law of other tribunals." (*Aloeboetoe et al. Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of 10 September 1993, Series C, No. 15, paragraph 43.)

164. As the Inter-American Court of Human Rights has stated, the obligations arising from the duty to make reparations for human rights violations "shall not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law." (*Aloeboetoe et al. Case, Reparations*, paragraph 44.)

165. In light of the foregoing, the Commission holds that the Peruvian State violated, to the detriment of Major General Rodolfo Robles Espinoza, its general commitment to protecting and respecting human rights set forth in Article 1(1) of the American Convention on Human Rights.

VI. ACTIVITIES FOLLOWING REPORT N° 23/98

166. On 2 March 1998, during its 98th session, the Commission adopted Report N° 23/98 (Article 50) on this case. This report, along with the Commission's recommendations, were transmitted to the Peruvian State on 23 March 1998 and the State was given two months, as of the date the report was sent, to comply with its recommendations.

167. By means of note N° 7-5-M/197, date 19 May 1998, the State transmitted to the Commission its reply to Report N° 23/98. In this note, the State maintained that the Commission, in the conclusions and recommendations contained in Report No. 23/98, had adopted "a position that was not impartial in that having decided the admissibility of complaint 11.317 did not exempt it from including the position and evidence presented by Peru to the same extent that it had granted the petitioner's position in the inter-American proceedings related to this case." The State then offered a detailed "analysis" of the Commission's recommendations, ratified the arguments and evidence it had invoked during the proceedings before the Commission, and stated that for a number of reasons it was unable to comply with the Commission's recommendations.

168. With regard to the Commission's recommendation that the State adopt all means of reparation necessary in order to restore the honor and reputation of General Robles Espinoza, Peru held that this would imply an alteration of its domestic legal system, which contained legal provisions dealing with "rectifications and the responsibilities of individuals who commit acts against honor and reputation." It added that the victim had not made use of domestic law to make his claims regarding such acts and that "he was wrong to file a complaint with the IACHR, seeking for it to recommend measures for the restitution of a moral quality which, had it been harmed (a claim that is not accepted), would be the responsibility of individuals and not of the State; it would also be an issue to be assessed within a juridical and geographical reality, and not within the ideal world with which the esteemed Commission conducts its examinations."

169. The State added that "at the moment when Major General Rodolfo Robles Espinoza (ret.) was granted amnesty under Law No. 26,699, the proceedings against him for the crimes of undermining the Armed Forces, insulting a superior, disobedience, and general mendacity were dismissed, his judicial record was deleted, the arrest warrants and bans on leaving the country imposed on him were lifted, the sums previously embargoed as civil reparations were returned to him, and all other effects implied by the granting of an amnesty . . . at the administrative, level, General Robles was placed in retirement . . . Consequently, the Amnesty Law repaired and reinstated the honor and reputation of Major General Rodolfo Robles Espinoza (ret.)."

170. With regard to the Commission's recommendation that the State immediately revoke Supreme Resolution 179 of 10 May 1993 and return to General Rodolfo Robles Espinoza all the rights, honors, and other privileges due to a member in active duty of the Peruvian Armed Forces that were arbitrarily suspended or annulled by that Supreme Resolution, the Peruvian State argued that, "it was juridically impossible because, under the relevant provisions of the Military Status Law that govern military employment and hierarchy and the statuses of active service, retirement, and reserve among the military, there is no provision within the military service for the incorporation of an officer who does not comply with the corresponding age limits. In other words, General Robles (ret.) does not meet those requirements and so giving him the status of an officer in active duty is impossible, unless the aim is to affect the rule of law of the Peruvian nation-state." The State added that General Robles Espinoza was enjoying all the rights and benefits due to him as a retired general.

171. Regarding the Commission's recommendations that the State revoke Amnesty Law N° 26.700 and all other legal provisions hindering the investigation, trial, and punishment of the persons responsible for persecuting, defaming, and harassing General Rodolfo Robles Espinoza, particularly the military justice authorities who ordered his arbitrary arrest and prosecution, and that, consequently, compliance be given to the ruling of the 33rd Criminal Court of 29 November 1996, ordering the Duty Provincial Prosecutor to begin a criminal investigation into the violation of the right to individual freedom, through kidnapping, and of the right to due process in respect of General Robles, Peru argued that, "an amnesty law cannot be revoked in an attempt to return things to how they were in order to allow prosecution and/or conviction of the persons to whom the amnesty was granted. We should remember that the (amnesty) law remains in force as long as the object that caused it to arise continues to exist; its effects impinge on the past. Otherwise there would be a violation of the principle of juridical security that all States must uphold so that their citizens can be sure that their acquired rights are not going to change overnight." The State added that since in one of the suits General Robles Espinoza brought in the domestic courts he did not seek punishment for those who masterminded, perpetrated, acted as accomplices in, and covered up the crime of kidnapping carried out against him, the recommendation made by the Commission as a result of the corresponding international process "goes beyond what was requested and, therefore, lacks legal grounds in that it was not invoked by the complainant and is consequently inadmissible."

172. With regard to the Commission's recommendation that the State make a compensatory payment to General Rodolfo Robles Espinoza for the violations he suffered, Peru stated that for this, "the harm and damages must be shown by means of trustworthy evidence within the normal proceedings established by a country's laws," which, according to the State, General Robles Espinoza had not done.

173. The Commission refrains from analyzing the Peruvian State's repeated claims regarding arguments made prior to the adoption of Report No. 23/98, since under Article 51(1) of the Convention, what the Commission must determine at this stage in the proceedings is whether or not the State has resolved the matter. In this regard it notes that the State has complied with none of the recommendations made by the Commission. The State's only concrete comment regarding compliance with the Commission's recommendations states that Law No. 26.699 repaired and restored General Rodolfo Robles Espinoza's honor and reputation. The Commission must inform the Peruvian State that the law in question was enacted on 6 December 1996, whereas the Commission's Report No. 23/98 was adopted on 2 March 1998. Hence, had the Commission believed that the aforesaid law repaired and restored General Rodolfo Robles Espinoza's honor and reputation, it would not have made that recommendation to Peru.

174. With regard to the other recommendations that Peru maintains it cannot implement because it is prevented from so doing by its domestic laws, the Commission believes it is important to remind the Peruvian State that in ratifying the American Convention on Human Rights on 28 July 1978, it acquired the obligation of respecting and ensuring the rights it contains with respect to all inhabitants of that country. Thus, and in accordance with Article 27 of the Vienna Convention on the Law of Treaties, the Peruvian State cannot invoke its domestic laws as an excuse for failing to comply with the obligations it acquired by ratifying the aforesaid Convention on Human Rights.

VII. CONCLUSIONS

175. For the reasons given above, the Commission concludes that through the imposition of enforced retirement as a disciplinary measure, the filing of two criminal suits, and other threats made by means of direct channels, the Peruvian State has submitted General Rodolfo Robles Espinoza to a process of harassment and intimidation in retaliation for his revelations regarding human rights violations committed by members of the Peruvian Armed Forces . The Peruvian State has failed to comply with the obligation of respecting and ensuring General Rodolfo Robles Espinoza's rights to personal freedom (Article 7), a fair trial (Article 8), honor and dignity (Article 11), freedom of thought and expression (Article 13), and judicial protection (Article 25) as enshrined in the American Convention. The Commission also concludes that as a result of the aforesaid violations, the Peruvian State has failed in its obligation to respect and ensure human rights and guarantees as set forth in Article 1(1) of the American Convention.

VIII. RECOMMENDATIONS

176. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE PERUVIAN STATE SHOULD:

1. Adopt all the necessary means of reparation to restore the honor and reputation of Major General Rodolfo Robles Espinoza.
2. Immediately revoke Supreme Resolution 175 of 10 May 1993, and return to General Rodolfo Robles Espinoza all the rights, benefits, honors, and other privileges due to him as a member of the Peruvian Armed Forces on active duty that were arbitrarily suspended or annulled by that Supreme Resolution.
3. Revoke all legal provisions preventing the investigation, prosecution, and punishment of the individuals responsible for harassing General Rodolfo Robles Espinoza and, in particular, repeal Amnesty Law N° 26.700.
4. Proceed to investigate and punish the individuals responsible for the campaign of persecution, defamation, and harassment waged against General Rodolfo Robles Espinoza and, in particular, the military justice authorities who ordered his arbitrary arrest and prosecution.
5. Proceed to comply with the 33rd Criminal Court's ruling of 29 November 1996, upheld by the decision of the Specialized Public Law Circuit of the Lima Superior Court on 13 December 1996, ordering the Duty Provincial Prosecutor to begin a criminal investigation into the violation of General Robles's right of individual freedom, through kidnapping, and right to due process.
6. Pay General Rodolfo Robles Espinoza a compensatory indemnification for the violations he has suffered.

IX. NOTIFICATION

177. On December 9, 1998, the Commission approved Report 62/98 --the text of which precedes-- and transmitted it to the Peruvian State and to the petitioners, in conformity with the terms established in article 51(2) of the American Convention it granted an additional period of 2 months to Peru for it to comply with the preceding recommendations, calculated from December 15, 1998, the date on which the report was transmitted.

178. On February 11, 1999, the Peruvian State communicated that it did not agree with the considerations set forth in the instant report, and pointed out that its observations to Report 23/98 should be analyzed by the Commission and should not be disregarded so lightly. The State reiterated its earlier arguments, and pointed out that compliance with the recommendations contained in the present report would be a legal impossibility that would affect the juridical structure of the Peruvian State and, especially, the "organization and discipline of the military institution." The State added that granted that by ratifying the American Convention, Peru assumed the obligation to respect the rights set forth therein as regards all its inhabitants, it is also true that said Convention sets forth that "the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society."

179. By virtue of the foregoing considerations, the Commission, in conformity with article 51(3) of the American Convention, concludes that the Peruvian State has not taken adequate measures to solve the violations committed in detriment of the victim, and, in consequence, ratifies its conclusions and recommendations; decides to make the present report public and decides to include it in its Report to the General Assembly of the OAS. The Commission also decides, in conformity with the provisions which govern its mandate, to continue evaluating the measures adopted by the Peruvian State in regard to the recommendations contained in the present report, until they have been totally complied with by said State.

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 23 day of the month of February 1999. (Signed): Robert K. Goldman Chairman; Hélio Bicudo First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Jean Joseph Exumé.

¹ On 6 May 1993, General Robles denounced the perpetration and perpetrators of the "La Cantuta" military operation. He revealed the existence of a death squad, set up by Peru's National Intelligence Service (SIN), the officers involved, those who had covered up the incident, and the individuals who had masterminded it (President Fujimori's advisor and the Commander in Chief of the Army).

² Letter from General Rodolfo Robles Espinoza, dated 5 May 1993, published in the newspaper *Expreso* on Friday, 7 May 1993.

³ Supreme Council of Military Justice Document No. 561-S-CSJM, informing the General Director for Special Affairs at the Ministry of Foreign Relations about the criminal proceedings brought against Major General Rodolfo Robles Espinoza.

⁴ Supreme Council of Military Justice Document No. 561-S-CSJM, informing the General Director for Special Affairs at the Ministry of Foreign Relations about the criminal proceedings brought against Major General Rodolfo Robles Espinoza.

⁵ *Ibid.*

6 *Ibid.*

7 Verbatim extract from a copy of the poster attacking General Rodolfo Robles Espinoza distributed around army barracks by the Office of the Commander in Chief, submitted to the IACHR by General Robles himself.

⁸ Note from the office of the Permanent Representative of Peru, dated 5 September, 7-5-M/309, and enclosure.

⁹ Document No. 1045-94-JUS/VM, dated 16 August 1994.

¹⁰ Article 2(5): "To request, without giving reason, such information as he requires and to receive it from any public agency, within the timeframe set down in law, meeting the cost of the request. This does not apply to information affecting personal privacy and information expressly excluded by law or for reasons of national security. Bank secrecy and fiscal confidentiality may be overruled at the request of a judge, the attorney general, or a congressional investigation commission in accordance with the law and provided it is of relevance to the case in hand."

11 Article 2.6: "That public and private information systems, be they computerized or not, shall not supply information affecting personal and family privacy."

12 Article 2.7: "To honor and good reputation, to personal and family privacy, and to one's own voice and image. All persons affected by incorrect statements or affronted by any media outlet shall be entitled to free, immediate, and proportionate rectification, irrespective of the liabilities set forth by law."

¹³ Report N° 43/96, 15 October 1996. Case 11.430 (Mexico). IACHR, Annual Report, 1996 (OEA/Ser.L/V/II.95 Doc.7 rev. 14 March 1997).

14 Report N° 43/96, Case 11.430 (Mexico), 15 October 1996, published in the Commission's 1996 Annual Report, paragraph 104.

15 *Ibid.*, paragraph 113.

16 Alibert, "*Le contrôle juridictionnel de l'Administration*," Paris 1926, p. 236, quoted in Report No. 43/96, *op. cit.*, paragraph 114.

17 In connection with this, see Report No. 43/96, Case 11.430 (Mexico), IACHR, Annual Report, 1996, paragraph 62.

18 As has been stated by the European Court of Human Rights: "Decisions taken by administrative authorities which do not themselves satisfy the requirements of (. . .) the [European] Convention (. . .) must be subject to subsequent control by a 'judicial body that has full jurisdiction.'" ECHR: *Schmautzer vs. Austria*, (A/328-A), 1996, Vol. 21, paragraph 47.

19 Ruling of 29 November 1996, handed down by Judge Elba Greta Minaya Calle of the 33rd Criminal Court in Lima, in the habeas corpus action brought in favor of General Rodolfo Robles.

²⁰ Article 13 of the American Convention states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

21 Report N° 43/96, *op. cit.*

22 IACHR, Annual Report 1994, p. 222.

23 Report N° 36/96, Case 10.843 (Chile), and Report N° 34/96, Cases 11.228, 11.229, 11.231, and 11.282 (Chile), IACHR, Annual Report, 1996.

24 IACHR, Reports Nos. 28/92 (Argentina), 29/92 (Uruguay), and 26/92 (El Salvador), in Inter-American Yearbook of Human Rights (1992), Vol. 1, pp. 749 ff., 885 ff., and 827 ff.