

Inter-American Court of Human Rights

Case of Neira-Alegría *et al.* v. Peru

Judgment of January 19, 1995 (*Merits*)

In the case of Neira Alegría *et al.*,

The Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge

also present:

Manuel E. Ventura-Robles, Secretary and
Ana María Reina, Deputy Secretary

delivers, pursuant to Article 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules of Procedure"), the following judgment on the present case.

I

1. On October 10, 1990, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted a case against the State of Peru (hereinafter "the Government," or "Peru"), which originated in petition N° 10.078.

2. The Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention," or the "American Convention") and Article 50 of the Commission's Rules of Procedure. The Commission submitted this case in order for the Court to determine whether the State involved had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar. The Commission asked that the Court "*decide*

this case in accordance with the provisions of the Convention; that it determine the responsibility for the violation indicated; and that it grant fair compensation to the next of kin of the victim(s)." In its final arguments (*infra* para. 57) the Commission added Articles 5 and 27, and deleted Article 2 from its request.

3. According to the denunciation submitted to the Commission, on June 18, 1986, Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar were being detained at the correctional facility of San Juan Bautista, known as "El Frontón," being accused of allegedly committing the offense of terrorism. The Commission adds that as a consequence of a riot at that correctional facility on the date indicated, the Government, by means of Supreme Decree N° 006-86 JUS, delegated the control of the prisons to the Joint Command of the Armed Forces and that, as a result of this decision, the San Juan Bautista correctional facility was included in the so-called "Restricted Military Zones." The Commission further indicated that, since the date on which the Armed Forces proceeded to crush the riots, these persons have been missing; that their relatives have not seen or heard about them since; that the possibility of their being alive has not yet been given up; and that, therefore, concern is expressed for their personal safety and well-being.

4. The Commission affirms that, on August 31, 1987, it received the petition for this case, which was dated at the beginning of that month in Lima, Peru. On September 8, 1987, the Commission acknowledged receipt of the petition and requested the Government to furnish the pertinent information with respect thereto. Not having received an answer, it reiterated its request for information on four occasions (January 11 and June 7, 1988, and February 23 and June 9, 1989), advising the Government, as provided for in Article 42 of the Commission's Regulations, of the consequences of its failure to provide the pertinent information. On June 26, 1989, the Government sent a collective answer to several cases under the Commission's consideration and, on July 20 of the same year, the Commission transmitted this information to the petitioner.

5. On September 13, 1989, the petitioner submitted its comments on the Government's answer and informed the Commission that "*judicial proceedings on the events that occurred at the 'San Juan Bautista' Penitentiary (El Frontón) were in progress before the Exclusive Jurisdiction of Military Justice, proceedings to which the petitioner alleges he was denied access.*"

6. In the memorial submitted to the Court, the Commission stated that on September 25, 1989 it held a hearing attended by the representatives of the petitioners and those of the Government where the former referred to

the enormous disproportion between the seriousness of the riot and the lethal means employed by the military operation to crush it. They affirmed that the repressive zeal materialized in the elimination of prisoners who were no longer resisting or who had already given themselves up. They further insisted that inmates Neira, Zenteno, and Zenteno continued to be regarded as missing since the Government of Peru refused to provide information as to their whereabouts and fate. For his part, the representative of the Government did not make any comments.

7. On September 29, 1989, the Government informed the Commission that the case was under the consideration of the Exclusive Jurisdiction of Military Justice, for which reason "*the internal jurisdiction of the State*" had not been exhausted, and that "*it would be advisable for the IACHR [the Commission] to wait for the conclusion of such proceedings before arriving at a final decision*" on the case.

8. The Commission examined the case during its 77th Regular Session and approved Resolution 43/90 of June 7, 1990, the concluding section of which reads as follows:

1. To declare that the complaint of the present case is admissible.

2. To declare that a friendly solution to the present case is inappropriate.
3. To declare that the Government of Peru has not fulfilled its obligations with respect to human rights and the guarantee imposed by Articles 1 and 2 of the Convention.
4. To declare that the Government of Peru has violated the right to life recognized in Article 4, the right to personal liberty enshrined in Article 7, the judicial guarantees of Article 8 and the right of judicial protection found in Article 25, all from the American Convention on Human Rights, as a consequence of the acts which occurred in the San Juan Bautista Prison, in Lima, on June 18, 1986, that led to the disappearance of Victor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar.
5. To formulate the following recommendations for the Government of Peru (Convention Article 50 (3) and Article 47 of the Inter-American Commission on Human Rights' Regulations):
 - a. Peru must fulfill Articles 1 and 2 of the Convention adopting an effective recourse that guarantees the fundamental rights in the cases of forced or involuntary disappearance of individuals;
 - b. Conduct a thorough, impartial investigation into the facts object of the complaint, so that those responsible may be identified, brought to justice and receive the punishment prescribed for such heinous acts, and determine the situation of the individuals whose disappearance has been denounced;
 - c. Adopt the necessary measures to prevent similar acts from occurring in the future;
 - d. Make the necessary reparations for the violations of rights previously indicated and pay fair compensation to the victims' families.
6. To transmit the present report to the Government of Peru so that the latter may make any observations it deems appropriate within 90 days from the date it is sent. Pursuant to Art. 47(6) of the Commission's Regulations, the parties are not authorized to publish the present report.
7. To submit the present case to the Inter-American Court of Human Rights unless the Government of Peru solves the matter within the three months allotted in the previous paragraph.

9. On June 11, 1990, the Commission notified the Government of the Resolution and informed it that the set time period would commence on that date.

10. On August 14, 1990, the Government requested an extension of 30 days to comply with the recommendations. The Commission granted the requested extension beginning September 11, 1990.

11. On September 24, 1990, the Government informed the Commission, *inter alia*, that the domestic legal remedies had been exhausted as of January 14, 1987. On this date the decision of the Court of Constitutional Guarantees, rejecting the appeal of the *habeas corpus* request (*infra*, para. 40), was published in Peru's Official Journal, "*El Peruano*." The Government concluded that Resolution 43/90 of the Commission should be declared "groundless."

12. The Commission analyzed the Government's note at its 78th Regular Session and confirmed its decision to submit the case to the consideration of the Court.

II

13. The Court is competent to hear the instant case. On July 28, 1978, Peru ratified the Convention, and on January 21, 1981, it accepted the contentious jurisdiction of the Court referred to in Article 62 of the Convention.

III

14. On October 22, 1990, the Secretariat of the Court (hereinafter "the Secretariat"), pursuant to Article 26(1) of the Rules of Procedure, notified the Government of the complaint.
15. The Government designated Minister Counselor Eduardo Barandiarán as its Agent, and doctor Jorge E. Orihuela-Iberico as Judge *ad hoc*. On January 2, 1991, doctor Sergio Tapia-Tapia was appointed as the Government's new Agent.
16. By Resolution of November 12, 1990, the President of the Court (hereinafter "the President"), in agreement with the Agent of Peru and the Commission's Delegates and in consultation with the Court's Permanent Commission (hereinafter "the Permanent Commission"), set March 29, 1991 as the deadline for the Commission to submit the memorial to which Article 29 of the Rules of Procedure refers, and June 28 of that same year as the deadline for the Government to submit its countermemorial.
17. These documents were received on March 28 and June 27, 1991 respectively.
18. On June 26, 1991, the Agent of Peru interposed preliminary objections alleging "*the lack of the Commission's jurisdiction*" and the "*expiration of the time period permitted for filing the petition.*" On July 31, 1991, the Secretariat received the Commission's written submission containing its observations and conclusions on these preliminary objections.
19. On December 6, 1991, a public hearing was held to hear the position of the parties on the preliminary objections.
20. On December 11, 1991, in a judgment passed by four votes to one, the Court rejected the preliminary objections interposed by the Government.
21. The Agent of Peru, submitted a request for interpretation and appealed for a revision of the judgment rejecting the preliminary objections, both of which were answered by the Commission. On June 30, 1992, a public hearing was held for this request and, on July 1, 1992, the Government renounced its request for a revision remedy.
22. On July 3, 1992, the Court adopted, by five votes against one, the decision to take note of the discontinuance of the Government's revision remedy and to reject the request for interpretation of its December 11, 1991 judgment on the preliminary objections as improper.
23. In its countermemorial of June 27, 1991, the Government denied and completely opposed the facts described by the Commission to the Court. The Government alleged that those facts did not reflect "*the actual situation as verified by the reality of events that occurred at the 'El Frontón' correctional island on the occasion of the armed riot and taking of hostages under the leadership of more than one hundred*" inmates accused of terrorism. The Government then requested a sanction against the Commission for having submitted the case to the Court.
24. By Resolution of August 3, 1991, the President granted the parties time limits for the submission of evidence, as well as for the formulation of comments concerning these communications, period which expired on October 15, 1991.
25. The Government and the Commission submitted documentary evidence, and Peru presented its comments on the evidence submitted by the Commission. Among other things, the Government objected to the testimonial proof as improper and unnecessary and opposed the appearance of several of the witnesses and experts offered by the Commission.

26. On December 11, 1991, the Court formed a special committee to determine the procedure for examination of the evidence and authorized the President to convoke the parties to a private meeting on January 17 and 18, 1992.

27. As a consequence of the preceding and by Resolution of January 18, 1992, the President summoned the parties to a public hearing to be held on June 30, 1992, in order to hear the allegations of the Government and the comments of the Commission concerning the opposition of the Government to the appearance of some of the witnesses offered by the Commission. The President also resolved that, in case the Court deem it pertinent, the testimonies of the Commission's witnesses and experts would be received in a public hearing on July 1, 1992 and that the Commission should submit the resumes and opinions of said experts before March 2, 1992. He further requested the Government to submit a copy of certain documents and to adopt the measures necessary to ensure that the bodies of the inmates who died at "El Frontón" not be moved from the cemeteries where they were buried.

28. On February 12, 1992, the Government asked the Court to modify the President's Resolution. It also requested that the dates for the hearings be maintained to resolve the issue of the disqualification of witnesses. It further requested that the hearing for the delivery of its allegations and the Commission's comments not be made public. The Court denied this request on June 29, 1992, as it felt that no exceptional circumstances, such as those referred to in Article 14 of the Rules of Procedure, were present in this case.

29. The Commission requested a 30-day extension for submitting its experts' resumes and opinions in compliance with the President's resolution. The Government objected.

30. On March 24, 1992, the President partially modified his January 18, 1992, Resolution and resolved that, if found pertinent after the hearing, the Court would opportunely summon the witnesses and experts offered by the Commission to deliver their testimonies. By note of that same date, the President denied the application for extension to which the preceding paragraph refers *"in view of the fact that the Commission has had the opportunity and the time necessary to submit said information by the deadline set, and that, by their very nature, judicial deadlines must be met except for exceptional causes which are not found in this case."*

31. On April 9, 1992, the Commission applied for reconsideration against the preceding decision and submitted the resumes and expert opinions of Enrique Bernardo, Guillermo Tamayo, Robert H. Kirschner and Clyde C. Snow. By note of April 30, 1992, the Government requested that the documents be returned to the Commission as their submission was improper and would avoid compliance with the March 24 decision.

32. By Resolution of July 1, 1992, the Court confirmed the President's decision not to grant the 30-day extension requested by the Commission; instructed that the resumes and expert opinions submitted be maintained in the case file to be examined in due time; and authorized the President to resolve, subject to prior consultation with the Permanent Commission, whether to admit the statements of the experts offered by the Commission.

33. By note of July 3, 1992, the Government requested the annulment of the preceding decision, which request the President rejected for being notoriously improper.

34. During the 21^o Regular Session of the General Assembly of the Organization of American States (hereinafter "the OAS"), the State Parties in the Convention elected Dr. Alejandro Montiel-Argüello, Dr. Máximo Pacheco-Gómez, and Dr. Hernán Salgado-Pesantes as new judges of the Court and reelected Judge Héctor Fix-Zamudio. On June 29, 1992, the Court, with its new membership having been designated as of January 1, 1992, and in consideration of Judge ad hoc

Jorge E. Orihuela-Iberico's request for an interpretation of Article 54(3) of the Convention in relationship to this case, decided "*to proceed with the consideration of the Neira-Alegría et al. Case, except as it relates to the motions interposed by the Government's Agent against the December 11, 1991 judgment, which shall be decided by the Court with the membership it had at the time said judgment was passed.*" Judge Nieto added a dissenting opinion, and Judges Montiel and Orihuela added their respective individual opinions.

35. On June 30, 1992, the Court, pursuant to the provisions of Article 37 of the Rules of Procedure, decided to reject the objections or disqualification arguments raised against the testimonial evidence offered by the Commission, and authorized the President to determine, subject to prior consultation with the Permanent Commission, the dates for the public hearings. The President scheduled the hearings to start on July 6, 1993 in order to receive the declarations of the witnesses and experts proposed by the Commission and hear the arguments of the parties on the merits of the case.

36. By note of September 22, 1992, the Government reported the following in connection with the President's request of January 18 of that year

The cemeteries mentioned in said resolution have an official and permanent status and generally remain subject to control measures under the direction of their respective administrations. For this reason, the bodies buried therein may not be moved, except in conformity with the rules governing these matters and at the request of the interested party.

37. Between July 6 and 10, 1993, the Court held public hearings on the merits of the case, and heard the concluding arguments of the parties.

Appearing before the Court:

For the Government of Peru:

Sergio Tapia-Tapia, Agent

Hernán Ponce-Monge, Advisor

José Ernesto Ráez-González, Advisor (*)

For the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, Delegate

Domingo Acevedo, Attorney of the Secretariat

José Miguel Vivanco, Advisor

Juan Méndez, Advisor

Carlos Chipoco, Advisor

Witnesses and experts presented by the Commission:

(*) Mr. Ráez-González was presented as a witness by the Commission, after which he was accredited also as Government advisor for the hearing held on July 9, 1993.

Sonia Goldenberg, witness
Pilar Coll, witness
Ricardo Chumbes-Paz, witness
José Burneo, witness
Rolando Ames, witness
César Delgado, witness
José Ráez-González, witness
Augusto Yamada-Yamada, witness
Juan H. Kruger, witness
Robert H. Kirschner, expert
Clyde C. Snow, expert
Guillermo Tamayo, expert
Enrique Bernardo, expert

Regardless of the notice served by the Court, the following witnesses offered by the Commission did not appear at these hearings:

Aquilina M. Tapia de Neira
José Rojas-Mar
Agustín Mantilla-Campos
César Elejalde-Estensoro
Enrique Zileri
Juan de Dios Jiménez-Morán
César San Martín-Castro

Notwithstanding the fact that the Secretariat had opportunely convoked the Judge *ad hoc*, he did not appear at these hearings. Judge Máximo Pacheco-Gómez excused himself from participating in the XXVIII Regular Session and, consequently, was not present at these hearings.

38. The Court granted the parties a term ending September 10, 1993 by which to submit their written conclusions concerning the evidence presented in this case. The Commission and the Government submitted their conclusions in due time.

39. Notwithstanding the fact that the Judge *ad hoc* had been convoked, he did not attend the sessions held by the Court concerning this judgment and, therefore, does not sign the judgment.

IV

40. According to the documents delivered to the Court on July 16, 1986, Irene Neira-Alegría and Julio Zenteno-Camahualí interposed an action for *habeas corpus* in favor of the three persons to whom this case refers. The Instructional Judge of the Twenty-First Court of Lima took a statement from the President of the National Correctional Council; the latter submitted a list showing the three persons cited to have been under custody in the San Juan Bautista Prison, charged with the offense of terrorism, on the date that the riot was crushed. On July 17, 1986, the Judge declared that the action was estopped on the basis that the Government, by Supreme Decree 012-86-IN of June 2 of that year, had decreed a state of emergency in the provinces of Lima and El Callao and that Supreme Decree 006-86 JUS was published on the 20th of the same month declaring the San Juan Bautista Prison a Restricted Military Zone. The Judge's decision was confirmed on August 1, 1986 by the Eleventh Correctional Court of Lima. On the 25th of that same month, the Supreme Court of Justice, Criminal Section, declared that it found no grounds for annulment in the latter decision and, on December 5, the Constitutional Guarantees Court ruled that "*the Supreme Court's decision that had been appealed stood inalterable.*" This latter decision was published in the "El Peruano" Official Journal (*supra*, para. 11).

41. The Second Permanent Instructional Court of the Navy initiated proceedings to determine the possible criminal responsibility of members of the Navy who had crushed the riot, because during that action, in addition to the inmates killed, three members of the Marine Infantry were wounded by gun fire and one of the hostages who belonged to the Republican Guard also died.

The Instructional Judge arrived at the following conclusions: 34 inmates had surrendered; 97 had died, and adding to that number the skeletal remains of at least fourteen additional persons resulted in a total of 111 dead inmates; the removal of debris from the prison was accomplished with great difficulty between June 20, 1986 and March 31, 1987; only four of the 97 bodies (excluding the remains of at least fourteen additional persons) were identified (a figure that contrasts with that established by the fingerprint analysis which indicated that seven persons were identified). In this respect the following was stated:

21. The identification task carried out by Investigations Police personnel became more difficult because of the state of putrefaction, saponification and mummification of most of the corpses and skeletal remains found during the removal of debris; thus, because of their very nature, the remains cannot be identified. Nor has it been possible to compare the fingerprint samples taken by DIP-PIP and DIRCOTE with those on the identification cards that are in the files of INPE, since, in spite of several requests by the court, the latter have not been sent.

22. The tooth prints taken by Navy Medical personnel from those corpses from which it was still possible to do so, were not compared since such a method of identification of inmates was not used, neither at the INPE, nor at DIP, Lima, Callao, or DIRCOTE.

It would be appropriate to point out that, in many of the autopsy reports, crushing and multiple trauma are cited among the causes of death. The Navy Court also pointed out that it had not been possible to establish the total number of inmates who were at the correctional facility on the day that the riot started, since the criminal identification cards had not been delivered to the Court. On July 6, 1987, the case was dismissed, and it was determined that there was no responsibility on the part of the accused, a decision that was confirmed on the 16th of the same month and year by the Permanent War Council of the Navy.

42. The proceedings were reopened by decision of the Supreme Council of Military Justice in order to carry out procedures that remained to be completed, none of which refers to

identification of the deceased. On October 5, 1987, the Second Permanent Instructional Court of the Navy ratified its July 6, 1987 decision to dismiss the case, which was confirmed by the Permanent War Council of the Navy on the 7th of the same month of October.

Again, on December 23, 1987, the Supreme Council of Military Justice decided to refer the case back to the instructional stage and, for that purpose, to activate the jurisdiction of its War Section. These proceedings ended on July 20, 1989 with the decision that those who participated in the crushing of the riot were not liable.

43. The Congress of Peru appointed an investigative commission to examine the events that occurred at the San Juan Bautista and two other correctional institutions. The Commission was formally installed on August 7, 1987 and, in December of that same year, submitted a majority and a minority report to Congress.

In Conclusion 14, the majority report reads as follows:

At 03:00 hours the Navy of Peru takes charge of the operations.

Its action is in response to the conviction that the inmates are armed and equipped with fortifications and tunnels, as was later corroborated by the subsequent investigation. Also, the inmates had not been subdued by the Republican Guard and they caused the death of and injuries to Navy and Police officers.

The disproportion of the war potential employed is nevertheless inferred from the results of the action. The final demolition, after the surrender which occurred at 14:30 hours on the nineteenth, would not have a logical explanation and would, consequently, be unjustified.

...

Amnesty International states it has compiled versions from survivors and has disseminated them in a document published in several languages, stating that alleged executions of surrendered rioters had occurred at El Frontón.

One of the survivors of the riots informally reported the same to a third person who, upon being summoned by the Investigative Committee to ratify his version, refused to do so.

The Military Jurisdiction should investigate these reports in depth.

In the statement of the facts contained in the minority report of the investigative commission of Congress the following is stated:

15(D) Attention is called to the lack of interest for rescuing possible survivors after the demolition . . .

15(E) The subsequent appearance of a survivor on June 20 and four survivors on June 21 indicates that it would have been possible to rescue more inmates, had there been an interest in doing so . . . 16. The removal of debris in search of corpses took the Navy an excessively and inexplicably long period of time . . .

In the chapter entitled "Previous Matters" which presents the conclusions of the same minority report, the following is established:

3. It has been shown that the action of the judicial and Public Ministry authorities was illegally impaired and limited . . . 4. It has been shown that the government, in failing to comply with its obligation to protect human life, gave orders which resulted in an unjustifiable number of deaths . . . a. The option adopted, to crush the riots by means of military force in the shortest and most critical time, meant placing the life of the hostages and inmates in serious and unnecessary danger . . . b. The military force used was disproportionate in relationship to the actual danger present, and no precautionary measures were put into effect to reduce the human cost of crushing the riot . . . 5. . . . At the El Frontón Correctional Island, the initial version concerning the operation has not satisfactorily explained either the goal of the operation or the fate of the survivors, which gives rise to the possibility that executions outside the judicial domain, similar to those at the Lurigancho correctional facility, may have taken place. Even if such executions did not take place, the fact alone of the demolition of the Blue Pavilion, whether intentional or not, constitutes a crime against life (2).

Note (2) which is quoted at the end of the preceding paragraph reads as follows:

(2) The technical report we are attaching hereto points to the existence of evidence that at least one of the columns which supported the structure of the Pavilion was blasted with dynamite from the outside, causing the final collapse. Our evaluation has revealed, likewise, serious inconsistencies in the official explanation as to the manner in which the inmates, who were allegedly enclosed in tunnels, lost their lives by the collapse of the Pavilion.

V

44. During the public hearings held on this case, the Government abstained from presenting evidence and the Commission introduced the witnesses and experts whose statements are summarized below.

45. Witness Sonia Goldenberg stated that, as a journalist, she had interviewed Jesús Mejía-Huerta who informed her that after the bombing of the correctional facility some 70 inmates were still inside; that they were summoned in groups and that there were executions; that he had eight or ten bullet wounds and was thrown into a ditch with others who were wounded. Later, the Blue Pavilion was blown with dynamite. She also stated that she interviewed Juan Tulich-Morales who informed her that he knew that the leaders arrested were taken to the naval base of San Lorenzo and were later shot.

46. Witness Pilar Coll stated that, in August 1987, she was in an office authorized by the investigative Commission of Congress to take the testimonies of the relatives of those detained in the correctional facilities and of some of the survivors; that she interviewed Jesús Mejía-Huerta who told her in greater detail what he had already stated to the previous witness. The witness also stated that some relatives of the prisoners knew that some of the survivors had disappeared.

47. Expert Guillermo Tamayo-Pinto Bazurco, a civil engineer, stated that in 1987 the Projects and Construction Center, of which he is Chairman, was contracted by the Congressional Commission that was investigating the events at the correctional institutions; that he visited the Correctional Island of El Frontón; that the Blue Pavilion had been demolished and that the total demolition had been caused by plastic explosives placed at the foot of the columns; that he had seen the traces of the shock wave outside the building; that there were twenty meters of tunnels but that they did not affect the solidity of the structure and that there was no indication that there had been explosions in them.

48. Expert Enrique Bernardo-Cangahuala, a civil engineer, stated that he had been hired some years before by the Senate Commission to make an assessment, from the civil engineering point of view, of the problem at the San Juan Bautista Correctional Facility; that they prepared a report after visiting the site and gathering background information; that the Association of Engineers endorsed the report; that they found tunnels but that those tunnels did not go through to openings on the coastline; that they found evidence of explosives on the Pavilion columns; that with the work of ten workers the debris could have been removed in one month; that, had the purpose of using explosives been to enter the Pavilion, the explosives would have been placed on the walls, thus, the objective was to demolish the building; that there is no evidence that an explosion would have taken place inside the building; that a plastic explosive could not provoke an explosion comparable to that of dynamite; and that it had been possible for the people to take shelter inside the tunnels, but not for them to get out.

49. Witness Ricardo Aurelio Chumbes-Paz stated that he is a lawyer and that at the time of the events he was Instructional Judge of El Callao and is currently a Criminal Judge; that on June 18, 1986, he heard on the radio about certain riots at the El Frontón Correctional Facility; that, at approximately 1:00 pm, the President of the Supreme Court commissioned him to observe the events without decision-making powers in order to report on them later; that the Naval authorities denied him the means to travel to the correctional island; that, at approximately 3:00

or 4:00 pm, a *habeas corpus* petition interposed by the lawyers of the inmates at the correctional institution was filed with his office; that, at approximately 9:00 pm, a boat was made available to him that took him to the island; that he interviewed the Warden of the prison who informed him that the island was under Navy control; that he also interviewed the Vice Minister of the Interior who informed him that the Government, through the Cabinet, had authorized the Armed Forces to crush the riots; that immediately thereafter there was a power outage and explosions; that he approached a railing located some 50 meters from the prison and yelled, urging delegates of the inmates to come out but did not obtain any answer; that he was denied contact with the Commander in charge of the military operation; that at dawn, as he was boarding a boat to leave, he heard explosions; that on the third day he learned through the media of the deaths resulting from the crushing of the riot; that he tried to visit the prison again but was stopped, having been told that it was a Restricted Military Zone; that in other cases of uprisings the riots had been crushed without having to use lethal means; that the inmates of the "El Frontón" Prison could not have escaped; that the guarantees or, in the specific case of "El Frontón", *habeas corpus* remedy, were ineffective in protecting the lives, the physical safety and the basic rights of the persons mentioned in these measures; that when corpses are examined before they are taken away, fingerprints, tooth prints and sometimes toe prints are taken; and that, when a prisoner enters the prison, fingerprints and photographs are taken.

50. Witness José Antonio Burneo-Labrín, an attorney and professor of human rights at San Marcos University, stated that in 1986 he was Director of the Juridical Department of the Social Action Episcopal Commission of the Catholic Church; that some two or three weeks after the events at the prisons, Ms. Alegría, the mother of one of the victims, and the father of the two Zenteno boys came to that office requesting assistance in obtaining information on the fate of their children; that he filed a *habeas corpus* writ with the Twenty-First Instructional Court of Lima on July 16, 1986; that the Chairman of the Joint Command of the Armed Forces and the Commandant General of the Navy stated that the information had to be requested from the correctional authorities or the Special Judge of the Navy who was examining the bodies; that the President of the National Correctional Council delivered to the Judge a list of the prisoners who were at "El Frontón" on the day of the events, which showed 152 inmates, Víctor Raúl Neira-Alegría and the Zenteno brothers being among them, and stated that 27 safe and unharmed prisoners and seven wounded ones had been placed under his custody; that the judge decided not to proceed with the *habeas corpus* motion; that an appeal was made against this decision which, by two votes to one, was dismissed by the Correctional Court of Lima; that on August 25, 1986, he lodged an appeal for annulment with the Supreme Court, and that the Criminal Section of that Court decided that there was no nullity; that the CEAS lodged an appeal for annulment with the Constitutional Guarantees Court and that four of its members voted in favor of the appeal but that one vote was still necessary, since five favorable votes are required; and that, in this manner, the national jurisdiction was exhausted and the family was advised to address the Inter-American Commission.

51. Witness César Delgado-Barreto, an attorney, stated that he had been elected Senator in 1985; that he was a member of the Senate Human Rights Justice Commission; that after the events at the prisons, at the request of the President of the Republic, the Congress named a bicameral and multiparty commission of 13 members, including the witness, which held meetings for four months; that at the "El Frontón" riot the Republican Guard entered into action first, the Marine Infantry following it; that three rockets were launched first, after which plastic explosives were used; that, in his opinion, the means employed were disproportionate, since there was no need to have used explosives; that the commission was assisted by a group of engineers who prepared a report on the demolition; that he does not know of any investigation which would have determined the whereabouts of Neira-Alegría and the Zentenos; that the majority and minority reports of the commission coincide as to the facts and differ because of the commission's political make-up concerning the liability of the ministers who approved the participation of the

Joint Command in the crushing action at the prisons; and that one of the survivors informed a third person that there were executions of rioters after they had surrendered, but that, after having been summoned by the Commission to ratify his version, he refused to do so.

52. Witness Rolando Ames-Cobián, a graduate in Political Science, stated that in 1987, while he was a Senator, he was named President of the Congressional Commission created to investigate the events at the three prisons where riots had occurred; that the Commission conducted the inquiry as rigorously as possible; that the majority and minority reports coincide as to the facts, the difference being in the amount of responsibility attributed to the highest echelons of Government in the process of repression at the prisons; that the Government expressed that it did not deem the rebellion at the three prisons to be a problem related to the police, but rather *"like the great confrontation between the Government and Sendero Luminoso . . . since the public announcements and the declarations of the President of the Republic are clear in so defining the state of affairs, Sendero Luminoso vs. the Government;"* that this led to the crushing of the riots in the shortest possible time through the Joint Command of the Armed Forces; that the two-thirds of the Blue Pavilion still standing were demolished by dynamite charges placed on the outside columns, which produced an absolutely unnecessary number of deaths of the persons that were not actively resisting; that no interest was expressed in looking for the wounded or for persons in the tunnels; that access to the prison was not allowed until one year later; that Neira-Alegría and the Zenteno brothers were not among the surrendered prisoners but were on the list that the National Correctional Council gave to the Commission; that the survivors of the riots refused to testify before the Commission; that Congress approved the majority report of the investigative Commission; that the final explosion that demolished the prison occurred not while an intense attack was in progress but instead when the attack ended and that it did not occur as a result of a dynamite explosion but rather by the blasting of the columns that sustained the building; that, in addition to the 28 inmates who surrendered on the actual day of the events, one day later there appeared one or two more, and three days later another one or two; that the investigative Commission requested information about the investigation being carried out by the Supreme Council of Military Justice, but that the Navy Section did not provide any information and even refused to provide the names of the officers who were in charge of the operation; that the Commission did not obtain any evidence that the inmates of the prison had dynamite; that the commission attempted to obtain information as to why instruments such as tear or nerve gas were not used, and it was told that there was no time to apply such methods because of the urgency to crush the riot that same night; and that the rioters did not have any possibility to escape.

53. Witness José Ráez-González, a surgeon, stated that at the request of the Navy he asked the Forensic Medicine Institute to appoint two experts to make studies on the remains of bodies from "El Frontón" and, that in this capacity, he traveled to the island from February to April 1987 and examined more or less 90 corpses; that the purpose of the forensic doctor is to determine the cause of death and help with identification; that the corpses had gone beyond the entire primary putrefaction stage, some were mummified, and others had lost all soft parts and only fragments were left; that in many cases it was not possible to determine the cause of death since only bone remains were available and, that in other cases, it was determined that death occurred because of multiple fractures; that in some cases a description was made of pieces of clothing, size, sex, age, and dental remains; that it is not the responsibility of the doctor to contact the relatives of the victims to try to identify the corpses; that identification is the responsibility of the Investigations Department; that he was able to take fingerprints from some of the corpses; that most of the deaths occurred by crushing; that once the expert examination was concluded, he delivered the records, summaries and comments to the Navy judge and signed the death certificates; that many factors make it impossible to take fingerprints from a corpse; and that he does not remember seeing burns on the corpses.

54. Witness Augusto Yamada-Yamada, M.D., Head Physician of the Pathological Anatomy Department of the Navy Hospital, an officer of the Navy with the rank of Commander of Navy Health, stated that on June 19 and 20, 1986 he started to conduct autopsies at "El Frontón"; that members of the police took fingerprints, while an odontologist took the tooth prints; that he prepared the autopsy records and the death certificates; that he was under the orders of the Judge of the Navy; that of the 38 autopsies, he certified that seventeen indicated firearm wounds and 21 indicated crushing as the cause of death; that in some cases the bullet wounds were multiple and had not been inflicted at short distance; that identification was being handled by the Investigations Police; that on four death certificates, the names of the dead to be written on them were provided by the Judge; that he did not find shrapnel in the corpses; that the bodies he examined were more or less complete, except for three which did not have their heads and that he performed the autopsies on June 19 and 20, several in July, and five on January 22, 1989.

55. Witness Juan Kruger-Párraga, an anatomical-pathologist M.D., stated that, up to 1989, he was head of the Pathology Department of the Naval Medical Center with the rank of Captain; that the purpose of the autopsy, among others, is to determine the cause of death, because in Peru identification of the bodies is the responsibility of the Investigations Police; that the identification is not a part of the doctor's mission; that he was summoned to perform autopsies at the "El Frontón" Island, and the first time that he was there was on July 5, 1986, and the last on January 22, 1987; that he performed 23 autopsies and on all of the records he indicated that "*some were in, or the majority were in, a state of putrefaction*" and many showed multiple fractures by crushing; that none of the autopsy records that he signed identifies the person; that odontologists participated in the autopsies taking tooth prints in those cases where dental pieces were found, and that these prints were given to the Judge of the Navy; that some of the bodies were in civilian clothes but that he did not specify this in the record; that he did not find traces of firearm wounds in the bodies; that, because of the condition of the bodies, he was not able to determine whether any among them had died on the 18th or the 19th; that each autopsy took two or more hours; that in few of the corpses did he find signs of burns.

56. Expert Robert H. Kirschner, a forensic doctor and pathologist, stated that he is Assistant and Deputy Medical Examiner to the main Medical Examiner of Cook County, Illinois, in Chicago and surrounding areas; that in his professional practice he has performed more than seven thousand autopsies and described some of his experiences. It was his opinion that, in the case of the prison in Peru, the authorities must have had, as is customary, fingerprints of the inmates and that it would have been easy to compare them to those of the corpses, the same as with tooth prints, tattoos, and old scars; that, to this effect, the assistance of the family is very important; that on June 20 it would have been very easy, having the necessary information, to identify all the corpses; that it is very important to photograph and make diagrams of the site of a disaster before removing the bodies, even to determine the cause of death; that the autopsies were performed professionally but that mistakes were made by those in charge of the identifications; that, even now, many identifications could be made, even without an exhumation, especially with the relatives cooperation; that identification is impossible in only a few cases; that an internal explosion would leave perceptible traces on the body.

57. Expert Dr. Clyde C. Snow, a forensic doctor and anthropologist, stated that since 1984 he has been called many times outside the United States of America to investigate cases of disappearances or mass executions in Argentina, Bolivia, Chile, Guatemala, El Salvador, Iraq, Kurdistan, and the former Yugoslavia; that many of those cases were more difficult than the "El Frontón" case because, in this case, a list of the inmates was available, and the correctional records should have contained physical descriptions, fingerprints, dental proof, etc.; that to a certain extent mummification makes identification easier, particularly because of fingerprints and marks on the skin; that statistically it is not probable that one doctor would have found 17 bodies among 96 with bullet wounds while the other two doctors found none; that, in a building much

larger than the Blue Pavilion, the removal and identification of the bodies was done in two or three weeks; that if he had been summoned to identify the bodies at "El Frontón", he would have first gathered all the data about the victims and then would have photographed each body at the place where it had been found; that even seven months after the incident it would have been possible to identify more than 90 per cent of the bodies, and that even now this would be possible by gathering all the data on fingerprints and tooth prints and, in some cases by exhuming the bodies.

VI

58. In the concluding arguments of September 10, 1993, the Commission prepared its analysis of the evidence and requested:

1. By virtue of the *de facto* and *de jure* reasons previously pointed out, the Commission asks the Honorable Court to pass judgment in the instant case, declaring:

a. That Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar were disappeared between June 18 and 19, 1986, by agents of the Peruvian State during a military operation controlled and directed by the Navy of Peru at the correctional establishment of El Frontón.

b. That, as a consequence thereof, the Peruvian State has violated, to the detriment of the victims, the right to life, the right to humane treatment, the right to personal liberty and the right to judicial protection recognized in Articles 4, 5, 7, and 25 of the American Convention on Human Rights. That the Peruvian State has likewise violated the deadlines established for cases of suspension of guarantees, as provided for in Article 27 of the Convention. All of the preceding stands in relationship to the failure to comply with the obligation to respect and assure the rights recognized in Article 1(1) of the Convention, to which Peru is a party.

2. That in consequence, the Court order the Peruvian State to:

a. Carry out an exhaustive investigation of the events that occurred on June 18 and 19, 1986 at the correctional establishment of El Frontón, in order to identify those responsible for the violations of human rights committed to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar; punish the perpetrators; and inform the victims' next of kin of the whereabouts of those who have disappeared.

b. Pay pecuniary compensation to the victims' next of kin for the damages inflicted upon them.

c. Take charge of the payment of court costs and attorneys' fees, including professional fees of the Commission's legal consultants who have participated in the handling of these cases, in accordance with the provisions of Article 45, paragraph 1, of the Rules of Procedure of the Court, and in conformity with the statement of account the parties must submit to the Honorable Court for approval. In this respect the Commission requests that the Court, at the applicable procedural stage, open a special proceeding to itemize the expenditures that the processing of the instant case has warranted . . .

59. In the final argument of September 10, 1993, the Government prepared its analysis of the evidence and concluded:

4.1. The complaint has not been duly proven with respect to the allegation that the Peruvian State violated the commitments pledged to under the American Convention on Human Rights, particularly Articles 1, 2, 4, 7, 8, and 25, on the occasion of the crushing of the riots led by inmates charged with the crime of terrorism at the "El Frontón" correctional island on June 18 and 19, 1986 and the following days.

4.2. The Government of Peru has complied with its obligations to respect the rights and liberties recognized in the American Convention on Human Rights, and, consequently, the allegation of the complaint which indicates failure to comply with Article 1 of said inter-American legal instrument must be declared groundless. To the extent that the violation of the precepts specified in the complaint are not ascertained, it follows that there has not been failure to comply with Article 1 of the American Convention, in light of the interpretation of the Inter-American Court contained in the judgments of July 29, 1988 (paras. 161 to 167) and January 20, 1989 (paras. 170 to 176).

4.3. The Government of Peru has complied with the duty of adopting domestic legal provisions. The evidence submitted in the instant case does not verify a failure to observe the precept contained in Article 2 of the American Convention since it has been demonstrated that a regulatory order was in force prior to the events in question, as well as the fact that it displayed its legal consequences through authorities that were pre-determined by the Constitution and the Law . . .

4.4. In the instant case, the abundant evidence submitted does not prove that the Peruvian State violated Article 7 of the American Convention, given the fact that the alleged victims were deprived of their freedom by decisions of ordinary justice . . .

4.5. In the case under consideration, there is no proof that the Peruvian State was involved with the violation of Article 8 of the American Convention . . .

4.6. In the course of the proceedings, it has not been proven that the Government of Peru would be responsible for having violated Article 25 of the American Convention . . .

VII

60. In the terms of Article 5(2) of the Convention, every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.

61. In the instant case, Peru had the right and the duty to subdue the uprising of the San Juan Bautista Prison, even more so given the fact that it did not occur suddenly. Rather, the uprising appears to have been prepared in advance, given that the prisoners had made weapons of different types, dug tunnels, and practically taken control of the Blue Pavilion. It must also be kept in mind that, during the initial phase of the crushing of the riot by the Republican Guard, the prisoners captured one corporal and two guards as hostages, wounded another four guards, and took possession of three rifles and an automatic pistol with which they caused deaths among the forces that entered to crush the riot.

62. The majority's Peruvian Congressional Commission investigative report states that the "*disproportion of the war potential employed is nevertheless inferred from the results of the action. The final demolition, after the surrender which occurred at 14:30 hours on the nineteenth, would not have a logical explanation and would, consequently, be unjustified*" Also, the minority report stated as follows:

It has been shown that the government, in failing to comply with its obligation to protect human life, gave orders which resulted in an unjustifiable number of deaths . . . The military force used was disproportionate in relationship to the actual danger present, and no precautionary measures were put into effect to reduce the human cost of crushing the riot (*supra* para. 43).

63. The Court considered it unnecessary to analyze whether the functionaries and authorities who took part in the crushing of the riot acted consistently with their functions and in accordance with domestic law, since the responsibility for the actions of Government functionaries is attributable to the State, independently of whether the functionary

contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 170; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, para. 179).

64. Of the 97 bodies on which autopsies were performed, only seven were identified. It has not been shown that all procedures necessary to obtain a larger number of identifications were carried out, nor is there proof that the assistance of the relatives of the victims was requested for that purpose. It should be noted that there is a discrepancy in the number of prisoners in the Blue Pavilion before the riot and the number of rioters who surrendered plus the number of dead. According to the proceedings in the military jurisdiction, there were 111 dead (bone remains of fourteen persons and 97 bodies) and 34 survivors, which adds up to a total of 145 persons, while the non-official list delivered by the President of the National Correctional Council includes 152 inmates before the riot. The removal of debris took place between June 23, 1986 and March 31, 1987, that is, over a period of nine months.

VIII

65. The Court feels that it is not up to the Inter-American Commission to determine the whereabouts of the three persons to whom these proceedings refer, but instead, because of the circumstances at the time, the prisons and then the investigations were under the exclusive control of the Government, the burden of proof therefore corresponds to the defendant State. This evidence was or should have been at the disposal of the Government had it acted with the diligence required. In previous cases, the Court has said:

[i]n contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State. (*Velásquez Rodríguez Case*, *supra* 63, paras. 135-136; *Godínez Cruz Case*, *supra* 63, paras. 141-142).

66. The Court deems it proven that Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar were being held in the Blue Pavilion of the San Juan Bautista Prison on June 18, 1986, the date on which the crushing of the uprising started. This fact is certified by the list submitted by the President of the National Correctional Council to the Instructional Judge of the Twenty-First Court of Lima, where a *habeas corpus* writ was under consideration, and by the list submitted by the Head of Identifications of the San Juan Bautista Prison to the Second Permanent Instructional Court of the Navy. This fact has not been contested by the Government.

67. The Court considers it proven that the three cited persons were not among the rioters who surrendered and that their bodies were not identified. The preceding was certified by the September 20, 1990 note sent by the Minister of Foreign Affairs of Peru to the Commission, which was transmitted by its Alternate Ambassador to the OAS. This note is binding on the Peruvian State (*cf.* *Legal Status of Eastern Greenland*, Judgment, 1933, P.C.I.J., Series A/B, No. 53, page 71) and reads as follows:

The allegedly missing persons, Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar, are not among the rioters who surrendered in the events of the San Juan Bautista Prison from June 18 to 19, 1986, nor are their bodies, according to the records, among the few that could be identified.

On the other hand, as a result of these incidents, 92 death certificates were issued corresponding to non-identified bodies, three of which undoubtedly correspond to those three persons whom the Commission regards as missing.

68. In the instant case, an escape of the inmates and actions by third parties other than State authorities not alleged by the Peruvian State are excluded.

69. The Court considers it proven that the Pavilion was demolished by the forces of the Peruvian Navy, as may be concluded from the reports submitted by the experts in the hearing (*supra*, paras. 47 and 48), from the deposition made on July 16, 1986 by the President of the National Correctional Council before the Instructional Judge of the Twenty-First Court of Lima, and from the fact that many of the dead, according to the autopsies, had been crushed to death. The majority and minority reports of the Congress (*supra* para. 43) are consistent in regards to the disproportionate use of force. These reports are official and are regarded by this Court to be sufficient proof of that fact.

70. Also to be taken into consideration is the congressional minority commission report, which affirmed without objection by the Government, that there was lack of interest in rescuing the surviving rioters after the demolition, since a few days later four inmates appeared alive and more could have been alive (*supra* para. 43).

71. The Court likewise considers it proven that the identification of the bodies was not undertaken with the required diligence, since only a few of those bodies recovered during the days immediately following the end of the conflict were identified. Of the rest, which were recovered over a span of nine months, certainly a long period, this was not done either although, according to the statement of the experts (*supra* paras. 56 and 57), identification could have been possible by applying certain techniques. This conduct on the part of the Government constitutes a serious act of negligence.

72. Based on the preceding, the Court concludes that Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar lost their lives due to the effects of the crushing of the uprising by the forces of the Government and as a consequence of the disproportionate use of force.

IX

73. The Court must now determine whether the actions and omissions attributable to the State constitute violations of the American Convention. It must be pointed out that the Commission, in its complaint, indicates the violation of Articles 1, 2, 4, 7, 8, and 25, but that, in its closing arguments, it omits Article 2 and adds Articles 5 and 27.

74. Article 4(1) of the Convention states that "*[n]o one shall be arbitrarily deprived of his life.*" The expression "arbitrarily" excludes, as is obvious, the legal proceedings applicable in those countries that still maintain the death penalty. But, in the present case, the analysis that must be made has to do with the right of the State to use force, even if this implies depriving people of their lives to maintain law and order, an issue that currently is not under discussion. There is an abundance of reflections in philosophy and history as to how the death of individuals in these circumstances generates no responsibility whatsoever against the State or its officials. Although it appears from arguments previously expressed in this judgment that those detained in the Blue Pavilion of the San Juan Bautista Prison were highly dangerous and, in fact armed, it is the opinion of this Court, those do not constitute sufficient reasons to justify the amount of force used in this and other prisons where riots had occurred. The incident was understood as a political confrontation between the Government and the real or alleged terrorists of Sendero Luminoso (*supra* para.52), a confrontation which probably led to the demolition of the Pavilion and all of its consequences; among them the death of inmates who would have eventually surrendered, the clear negligence in the search for survivors and, later, in the recovery of the bodies.

75. As this Court has stated in previous cases,

[w]ithout question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action. (*Velásquez Rodríguez Case*, *supra* 63, para. 154; *Godínez Cruz Case*, *supra* 63, para. 162.)

76. Given the circumstances that surrounded the crushing of the riot at the San Juan Bautista Prison; the fact that eight years after the riot occurred there is still no knowledge of the whereabouts of the three persons to whom this case refers, as was acknowledged by the Minister of Foreign Affairs stating that the victims were not among the survivors and that "*three of the [non-identified bodies] undoubtedly correspond to those three persons;*" and the disproportionate use of force; it may be reasonably concluded that they were arbitrarily deprived of their lives by the Peruvian forces in violation of Article 4(1) of the Convention.

77. This Court likewise considers that the Government also violated the provisions of Articles 7(6) and 27(2) of the American Convention through the application of Supreme Decrees 012-IN and 006-86 JUS of June 2 and 6, 1986, which declared the state of emergency in the Provinces of Lima and El Callao and applied the status of Restricted Military Zone in three correctional facilities, including the San Juan Bautista Prison. In effect, while such decrees did not expressly suspend the *habeas corpus* remedy or action recognized in Article 7(6) of the Convention, in reality, compliance with both decrees resulted in the ineffectiveness of said instrument of protection, thereby resulting in its suspension to the detriment of the alleged victims. *Habeas corpus* was the ideal procedure by which the judicial authority could investigate and acquire knowledge as to the whereabouts of the three persons to which this case refers.

78. In the *habeas corpus* writ filed on June 16, 1986 with the Twenty-First Instructional Judge of Lima, in favor of Víctor Neira-Alegría and Edgar and William Zenteno-Escobar against the President of the Joint Command of the Armed Forces and the Commandant General of the Navy, Irene Neira-Alegría and Julio Zenteno-Camahualí stated that their next of kin had not been found on the occasion of the crushing of the uprising at the San Juan Bautista Prison where they were being held and had not since appeared, possibly because they had been abducted. The petitioners requested that, in the event that the detainees had died, the Judge demand that the military authorities indicate where the bodies could be found and deliver the respective death certificates.

79. The *habeas corpus* application was declared inadmissible by the Judge in his decision of July 17, 1986, on the grounds that the petitioners did not prove that the prisoners had been abducted, the incidents that occurred at the three prisons (including the San Juan Bautista Prison) were subject to investigation by the military courts and the Office of the Attorney General of the Nation, and that such occurrences were outside the scope of the summary *habeas corpus* procedure.

80. In accordance with arguments previously pointed out (*supra* para. 40), on August 1 of that year, the Eleventh Correctional Court of Lima confirmed the original judgment based on the essential argument that the exclusive military tribunal was exercising jurisdiction with respect to the San Juan Bautista Prison, making it impossible for the regular jurisdictional bodies to intervene. On the 25th of the same month of August, the Criminal Section of the Supreme Court declared that, "*in consideration of its grounds,*" the application for annulment made against the appeal decree judgment was inadmissible. Finally, on December 5, 1986, the Constitutional Guarantees Court, to which the petitioners had appealed, declared, that the judgment of the Supreme Court "*stood inalterable,*" since the minimum number of five votes in favor, had not been obtained as required by Peruvian law.

81. This Court considers it useful to stress that the judgment of the Constitutional Guarantees Court stood upon a voting where four justices were in favor of admitting the appeal filed, and two were in favor of denying the annulment. In virtue of this, while it is true that the minimum number of five votes in favor was not obtained, the singular vote of the four justices represents the majority opinion of the Court. The pertinent section of the opinion was affirmed when it said: "*That, while it is true that such a situation does not constitute a legal definition for kidnapping, it leads to the conclusion that the judge should have exhausted the investigation concerning the lives and whereabouts of the persons in whose favor the [habeas corpus] action is being brought.*" Thus, in the opinion of said justices, the appeal against the judgment of the Supreme Court was justiciable. Had the appeal been admitted, the intervention of military justice would not have impaired the habeas corpus proceeding.

82. The Court has interpreted articles 7(6) and 27(2) of the Convention in advisory opinions OC-8 and OC-9 of January 30 and October 6, 1987 respectively. In the former opinion, the Court maintained that

writs of *habeas corpus* and of "amparo" are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by Article 27(2) and that they serve, moreover, to preserve legality in a democratic society. This Court also deemed that [i]n order for *habeas corpus* to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here *habeas corpus* performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment. (*Habeas Corpus in Emergency Situations*, (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paras. 42 and 35.)

83. In Advisory Opinion OC-9, this Court added

that the judicial guarantees essential for the protection of the human rights not subject to derogation, according to Article 27(2) of the Convention, are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the Rule of Law, even during the state of exception that results from the suspension of guarantees. (*Judicial Guarantees in States of Emergency*, (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 38.)

84. These interpretive criteria are applicable to this case in that the control and jurisdiction of the armed forces over the San Juan Bautista Prison translated into an implicit suspension of the *habeas corpus* action, by virtue of the application of the Supreme Decrees that imposed the state of emergency and the Restricted Military Zone status.

85. In accordance with Article 1(1) of the Convention, "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." Thus, as a consequence, this provision is a general one, and its violation is always related to the violation of a provision that establishes a specific human right. As the Court already expressed in a previous case, Article 1

specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1(1) of the Convention has also been violated. (*Velásquez Rodríguez Case*, *supra* 63, para. 162; *Godínez Cruz Case*, *supra* 63, para. 171.)

86. This Court considers that in this case the Government has not violated Article 5 of the Convention. While the deprivation of a person's life could also be understood as an injury to his or

her personal integrity, this is not the meaning of the cited provision of the Convention. In essence, Article 5 refers to the rule that nobody should be subjected to torture or to cruel, inhuman, or degrading punishment or treatment, and that all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person. It has not been demonstrated that the three persons to whom this matter refers had been subjected to cruel treatment or that the Peruvian authorities had damaged their dignity during the time that they were being detained at the San Juan Bautista Prison. Nor is there proof that said persons would have been deprived of the judicial guarantees to which Article 8 of the Convention refers during the proceedings brought against them.

87. The Court must express its position concerning the court costs and attorneys' fees of these proceedings. In this respect, it would be appropriate to insist that

the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American System is funded by the Member States by means of their annual contributions. (*Aloeboetoe et al. Case, Reparations (Article 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 114.)

88. However, the Court must sentence Peru to pay the expenditures that the victims' next of kin may have incurred during these proceedings, which determination shall be left to the Government and the Commission, the Court reserving the right to determine them should the parties not reach an agreement.

89. Article 63(1) of the Convention states as follows:

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.

In the current circumstances it is clear that the Court may not rule that the victims be guaranteed the enjoyment of the rights of which they were deprived. It is then only appropriate to determine the reparation of the consequences of the violation and the payment of fair compensation.

90. The Court lacks the elements of judgment that would enable it to determine the extent of the compensation, as such information was neither submitted by the parties nor discussed during the proceedings. Therefore, the Court shall limit itself to the passing of an *in genere* judgment, leaving its determination in the hands of the parties. Should the parties not reach an agreement, the final decision shall be made by the Court.

X

91. Therefore,

THE COURT,

unanimously

1. Declares that Peru has violated the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar.

2. Declares that Peru has, to the detriment of the three persons cited, violated the right to *habeas corpus* established in Article 7(6), in relation to the prohibition established in Article 27(2) of the American Convention on Human Rights.

3. Decides that Peru is obliged to pay fair compensation to the next of kin of the victims on the occasion of these proceedings and to reimburse the expenditures that they have incurred in their petitions before the national authorities.

4. Decides that the form and extent of the compensation and the reimbursement of the expenditures shall be determined by Peru and the Commission, by mutual agreement, within a term of six months as of the date of notification of this judgment.

5. Reserves the power to review and approve the agreement and, should there be no agreement, to determine the extent of the compensation and expenditures, to which effect the Court does not close this case.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on January 19, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Rafael Nieto-Navia

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Manuel E. Ventura-Robles

Read at a public session at the Seat of the Court in San José, Costa Rica, on January 20, 1995.

So Ordered

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary