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Session:	Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause:	Gregorio Castellares Robles v. Peru
Doc. Type:	Report
Decided by:	Chairman: Patrick L. Robinson; First Vice Chairman: Marco Tulio Bruni Celli; Second Vice Chairman: Oscar Lujan Fappiano; Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares Lanza; Michael Reisman
Dated:	22 February 1991
Citation:	Castellares Robles v. Peru, Case 10.444, Inter-Am. C.H.R., Report No. 78/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)

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HAVING SEEN the background information on this case, as follows:

1. The petition received by the Inter-American Commission on Human Rights on May 11, 1989, the pertinent parts of which are transcribed below:

Mr. Gregorio Castellares Robles, mayor of the peasant community of Carhuancho, District of San Pedro de Coris, Province of Churcampa, Department of Huancavelica, who was arrested on March 20 of this year by military forces of the Peruvian Army from the Churcampa Base under the command of a non-commissioned officer named Caiter Huaman and guided by two civilians, Ascencio Ccahuana of the Ccaccenna community and Isaac Medina Pirca of the Ccotoy community. The officials of the community were arrested for no legitimate reason whatever but because of personal revenge and land disputes that were turned into a presumption of the crime of terrorism. They were beaten up along the way, taken to the military base at Castropampa and subsequently to DIRCOTE, their release having been ordered by the provincial prosecutor for the Province of Huanta-Ayacucho, Dr. Maximiliano de la Cruz Hinostroza.

The complaint deals with the tortures suffered while being held by members of the Peruvian Army and the National Police (formerly GC and PIP).

2. The Commission, in a note of August 30, 1989, initiated processing of the case and requested the Government of Peru to furnish pertinent information on the incidents referred to in the note, in addition to any other relevant factors that would make it possible to ascertain whether in this case all remedies under domestic law had been exhausted. A period of 90 days was given to reply to the request.

3. On March 7, 1990, the Commission repeated its request for information from the Government of Peru, noting that if such information was not received within a period of 30 days, the Commission would consider possible application of Article 42 of the Regulations, which provides that the facts reported in the petition shall be presumed to be true as long as the government in question has not provided the

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information requested within the period of time indicated by the Commission.

4. The Commission repeated its request for information from the Government of Peru on April 12, 1990, regarding the disappearance of Gregorio Castellares Robles, basing its request on the provisions of Article 42 of the Regulations.

WHEREAS:

1. The Commission is competent to consider the present case inasmuch as it deals with violations of the rights recognized in Article 5 of the Inter-American Convention on Human Rights, regarding the right to humane treatment, and Article 7, regarding the right to personal liberty, as provided for in Article 44 of the Convention, of which Peru is a State Party.

2. The petition fulfills the formal requirements for admissibility contained in the Inter-American Convention on Human Rights and in the Regulations of the Commission.

3. In the present case it is evident that the petitioner has not been able to secure effective protection from jurisdictional organizations, and therefore the requirements of exhaustion of remedies under domestic law provided for in Article 46 of the Convention are not applicable.

4. The petition is not pending any other international settlement procedures nor is it a reproduction of a previous petition already examined by the Commission.

5. In spite of the time elapsed and the reiterated procedures undertaken by the Commission, the Government of Peru has not provided a reply concerning the facts involved in the present case.

6. By virtue of the fact that the Government of Peru has failed to reply it has failed to fulfill its international obligation to provide information to the Commission within a reasonable period of time, as established in Article 48 of the Convention.

7. The Commission has repeatedly expressed, in various documents, its clear-cut rejection of the serious phenomenon of forced disappearance of persons in its reports on the situation of human rights, as follows:

... this procedure is cruel and inhuman, and disappearance not only constitutes an arbitrary privation of freedom but also a very serious grave danger for the personal integrity, safety and life of the victim. [FN10]

[FN10] Cf. Annual Report 1978, 1980-1981, 1982-1983, 1985-1986, 1986-1987.

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8. The General Assembly of the OAS, in various resolutions, has stressed the need for countries in which forced disappearances have taken place to put an end to this practice, and it has urged governments to carry out whatever efforts are required to ascertain the situation of such persons. Furthermore, at the proposal of the Commission, the General Assembly of the OAS has declared that the forced disappearance of persons in the Americas constitutes a crime against humanity. [FN11]

[FN11] Cf. Res. 443 (IX-O/79), 510 (X-)/80), 543 (XI-O/81), 618 (XII-O/82), 666 (XIII-O/83), and 742 (XIV-O/84).

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9. The Inter-American Court of Human Rights, in its Judgment of July 29, 1988, in the Velasquez Rodriguez case, declared the following:

The practice of abductions, besides directly violating numerous Articles of the Convention (...) entails a radical breech of that treaty, inasmuch as it signals a crass abandonment of the values of human dignity and the principles that lie at the heart of the Inter-American system and the Convention itself. [FN12]

[FN12] Cf. Inter-American Court of Human Rights, Velasquez Rodriguez case, Judgment of July 29, 1988, Series C, No. 4, paragraph 158.

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10. Article 42 of the Regulations of the Commission provides as follows:

The facts reported in the petition whose pertinent parts have been transmitted to the Government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

11. Since the friendly settlement procedure is inapplicable (Article 48 (1) (f) of the Convention) because of the very nature of the actions complained of and the absence of a reply from the Government, the Commission must comply with Article 50 (1) of the American Convention and issue its findings and recommendations on the application before it.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume true the events reported in the communication of May 11, 1989, concerning the arrest and tortures of Gregorio Castellares Robles, by military forces of the Peruvian Army, in San Pedro de Coris, Province de Churcampa, Department of Huancavelica.

2. To declare that the Government of Peru has not complied with its obligation to respect the human rights and guarantees mentioned in Article 1 of the American Convention on Human Rights.

3. To declare that such actions are violations of the right to life and the right to freedom enshrined in Articles 5 and 7 of the Convention.

4. To make the following recommendations to the Government of Peru (Article 50 (3) of the Convention and Article 47 of the Regulations of the Commission):

a. That it conduct a full, swift, and impartial investigation of the events complained of, with a view to identifying the persons responsible for them and bringing them to justice, in order that they may be appropriately punished for such serious violations.
b. That it take the necessary steps to prevent similar occurrences in the future.
c. That it repair the consequences of the above-mentioned breech of rights and pay a fair compensation to the injured parties.

5. To convey this report to the Government of Peru, so that the latter may, within three months of the date of transmittal, inform the Commission about the steps taken to settle the matter. In line with

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Article 50 of the Convention, the Government is not authorized to publish this report.

6. If the Government does not settle the matter within the period of three months, the Commission may set forth its opinion and conclusions in accordance with Article 51.1 of the Convention and may include this report in its annual report to the General Assembly of the Organization of American States, as provided for in Article 63 (g) of the Regulations of the Commission.

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