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Title/Style of Cause:	Hugo Bustios Saavedra and Eduardo Rojas Arce v. Peru
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Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman.
Dated:	16 October 1997
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Represented by:	APPLICANTS: the Committee to Protect Journalists, Human Rights Watch/Americas, and CEJIL
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I. BACKGROUND

1. On May 10, 1990, the Inter-American Commission on Human Rights (henceforth “the Commission”) received a complaint from the Committee to Protect Journalists, Human Rights Watch/Américas, and CEJIL, reporting the death of the journalist Hugo Bustíos Saavedra and the gunshot wounds suffered by his colleague Eduardo Rojas Arce, acts perpetrated by agents of the Republic of Peru (henceforth “the Peruvian State, “the State” or “Peru”) at the entrance to the city of Erapata in the Department of Ayacucho on November 24, 1988. The petitioners requested a resolution censuring Peru for violating the rights referred to in Articles 1.1, 4.1, 5, 13.1, and 25 of the American Convention.

2. The complaint also asked the Commission to request that the Peruvian State adopt urgent precautionary measures pursuant to article 29 of its regulations.

3. In addition, the Commission was asked separately to request the Court to adopt provisional measures pursuant to Article 63.2 of the American Convention, article 76 of the Commission’s regulations, and Article 23.2 of the Court’s rules of procedure, in order to protect the life and personal integrity of the eye witnesses to the events, since they had been threatened.

II. FACTS DENOUNCED

4. According to the content of the complaint and other material which accompanied it, Hugo Bustíos Saavedra was a journalist--a correspondent for the magazine “Caretas” and President of

the National Association of Journalists of Huanta--who had published a series of articles in which he criticized the human rights abuses committed by the Armed Forces in the area of Huanta, Ayacucho. As for Eduardo Rojas Arce, he was working as the Huanta correspondent of the Lima newspaper "Current Affairs."

5. On November 24, 1988, the two journalists began an investigation of the murders of Primitiva Jorge Sulca and his son Gregorio, residents of Erapata in Huanta, Ayacucho.

6. When they arrived in Erapata to investigate what had happened, a military patrol that was stationed at the house where the events had occurred prevented them from entering, saying that they had no authorization to enter, which led them to leave the town and go to the Castropampa military base in the city of Huanta in order to request the authorization needed to cover the events in the above-mentioned case.

7. On the way back, Bustíos and Rojas met a group from the Investigative Police (now known as Technical Police) who were going to the place where the events had occurred and invited the two journalists to accompany them. Once again, they were denied entry to the house by military personnel.

8. After this second refusal, the two journalists went to regimental headquarters in Castropampa to request the necessary permission. With them was Mrs. Margarita Patiño, the wife of Hugo Bustíos. They finally received permission to cover the murders. According to testimony, the commander in charge of the headquarters, Lt. Col. Javier Landa Dupont, spoke privately with Mr. Bustíos for ten or twenty minutes and asked the journalist about possible links between him and the Shining Path leader called "Sabino," who had been captured.

9. Bustíos's wife stayed in Huanta, while the two journalists went to Erapata by motorcycle. About 300 meters outside of the town, Bustíos and Rojas met and spoke with members of a police patrol from the Guardia Civil (then known as the Policía General). Bustíos and Rojas continued on their way for about 300 meters with the motorcycle turned off, since they were going downhill. A Peruvian military patrol was parked some 300 meters ahead.

10. Without any advance warning, approximately four individuals began to fire on the journalists. All the attackers had their faces covered with handkerchiefs. They were all about the same height and had short hair. At the same time a group of civilians across the highway armed with machine guns also started to fire on them. Bustíos and Rojas shouted that they were journalists, but the attackers did not stop firing. Bustíos fell from the motorcycle when he was wounded and shouted to Rojas, "Run, you idiot, this isn't the Shining Path!" As he ran, Rojas was wounded in the right thigh and arm and in the left part of his abdomen. When he arrived at the house of Primitiva Jorge Sulca, a military patrol was parked there. While running, Rojas saw one of the attackers detonate an explosive above Bustíos's body.[FN1]

[FN1] Accompanying the complaint was a photocopy of a certified copy indicating that: in the inactive files of the Jefatura Provincial de Huanta [Huanta Provincial Headquarters] is Affidavit N° 028-SECOTE-JPM, an affidavit in which section II, point 3 says: Cause of death: "The

medical experts indicate that the death was due to impact, serious wound produced by a high explosive in the area of the left hemithorax and skull.”

11. As both an eye witness and a person affected by the events, Eduardo Rojas Arce, on January 6, 1988, made the following sworn statement before Notary Public, Dr. María Mujica Barreda, stating:

... 300 meters outside of Erapata, we met a Guardia Civil patrol that was going on foot to where two peasants had been killed. The head of the patrol, whose last name was Magallanes, asked about where, exactly, the previous night's events had occurred, and we told them that they were very close and would get there by following the main road.

Following this we continued on our way. A little further on, they started firing on us from the left side of the highway, hiding in the thick vegetation and in a half-destroyed house. Before the attack no word was spoken, nor was there any sign to halt, and all the shooting was to kill. I started to shout when I became aware of the attack, yelling that we were journalists. Despite this, they continued firing. Hugos Bustíos was the first to be hit. I was hit by two bullets on my left arm and on the left side of my abdomen...

In view of this, I began to run, and a bullet hit me in the right thigh. I kept running in a zigzag, looking over my shoulder now and then. In that way I became aware of a man wearing blue jeans and a brown shirt or sweater, with his mouth covered by a handkerchief. He approached Hugo where he had fallen, and I could not see what he was doing. I ran another 400 meters to where the Army patrol was, at the house of the victims, so they could help me...

12. On December 16, 1988, witness Alejandro Ortiz Serna testified under oath and before Lima notary public, Dr. María Mujica Barreda, that:

I saw a man dressed in blue jeans and a white T-shirt shoot at Hugo Bustíos. He was using a short automatic weapon that did not make much noise. The individual shooting had white skin, curly hair, and a mustache. I know that it is one of the Army officials from the Castropampa base, also known by the nickname "Cat's Eyes" After shooting at Bustíos I saw the same man throw a grenade on his body ...

13. The magazine "Caretas," issue number 1035, dated December 5, 1988, published the testimony of seven witnesses; some of these stated that:

The one who shot is from the Army. I know it, because he is known as "Rogelio" here. They also call him "Cat's Eyes." He is the one who had the group's short weapon.

-- ...I saw there that the military were sitting at the side of the white house. They were there at the corner a while. They are the ones who made the bullets fly...

At about eleven thirty two Army vehicles came. At the house a number of men got out, some dressed in civilian clothes...

III. PROCEEDINGS BEFORE THE COMMISSION

A. Request for precautionary and provisional measures

14. The complaint submitted to the Commission, as indicated above, requested that the Commission ask the Peruvian State to adopt urgent precautionary measures and also asked that the Court be requested to provide provisional measures.

15. The reasons which moved the petitioners to request these measures were, inter alia, the arrest of two witnesses to the attack on Bustíos and Rojas, threats against Bustíos's widow, Margarita Patiño, and the murder of eye witness Alejandro Ortiz Serna, who had made a sworn statement on the events before a notary in Lima and a few days after doing so had expressly asked the office of the Attorney General of Lima for measures of protection for his life.

16. On May 16, 1990, in its 77th session, the Commission resolved in Resolution No. 2/90 to ask the Peruvian State to adopt precautionary measures in order to protect the life and physical integrity of the witnesses in the case. The pertinent parts of that resolution state:

That the victims had received threats from the military personnel, that the military knew in detail the route that the journalists were going to take, that the attack occurred 300 meters after passing a military patrol and 300 meters before the place in the same road where another such patrol was stopped.

That eye witnesses saw military personnel arriving at a house next to the place moments before the attack, some of them dressed in civilian clothes, some in uniform, some of whom they were personally acquainted with.

That following the attack, military personnel went to the house of one of the witnesses and made death threats on account of his testimony, arrested him and a woman witness, and released them later without charging them.

That the Technical Police, too, after interrogating the wife of victim Bustíos, made death threats against her.

That eye witness Alejandro Ortiz Serna, despite the fact that he had asked the attorney general to take measures to guarantee his life, was murdered along with other people a few days after doing so.

Considering:

Numerous cases of journalists disappearing, being killed, and/or being threatened in recent years because they are doing their professional work in emergency areas, in general, and in Ayacucho, in particular, with five journalists having died in 1989 in circumstances related to their work, apparently some of them by Shining Path attacks, and others after having received threats from military or police personnel.

That during its on-site visit to the area in May of 1989 the Commission was able to confirm the level of violence and the defenselessness which characterize the conditions in which a great proportion of the civilian population in the emergency areas live, due to the “cross fire” nature of the situation, where insurgent groups are in action on one side and agents of the government on the other - a situation which the material in the Commission’s possession suggests has not changed since.

That from the facts of the case emerges, *prima facie*, a situation of present grave and urgent danger to the rights to life and integrity of victims and witnesses in the case ...

Resolves:

1. To request that the Government of the Republic of Peru adopt precautionary measures to protect the life and personal integrity of journalist Eduardo Rojas Arce and of the witnesses in the case, in particular Armenio Pacheco Aguado, Teodosio Gálvez Porras, Aurelia Onofre Anaya, Florinda Morote Cartagena, and Paulina Escalante.

2. To communicate with the Inter-American Court of Human Rights for it to adopt provisional measures relating to the persons mentioned ...

17. On May 24, 1990, the Commission submitted to the Inter-American Court of Human Rights the request for provisional measures for the sake of the above-mentioned witnesses, and the Executive Secretary of the Court acknowledged receipt of the requested measures on May 30, 1990.

18. On June 5, 1990, the President of the Inter-American Court of Human Rights, pursuant to article 23.4 of the Court’s Rules of Procedure, issued a resolution in which he asked the State of Peru to adopt without delay whatever measures might be necessary to protect the right to life and personal integrity of the witnesses to the murder of Hugo Bustíos Saavedra. He also resolved to call the Court into session from August 6 to 10, 1990, to deal with the Commission’s request for provisional measures and the resolution of the President of the Court.

19. The Peruvian Acting Head of Mission, in San Jose, Costa Rica submitted a note to the President of the Court on July 23, 1990, requesting a postponement of the hearing due to the short time that the new Peruvian government would have to make an adequate presentation to the Court. In that note, the Peruvian Representative states that “the precautionary measures necessary to protect the alleged recipients of death threats due to their connection with the Bustíos case have been adopted.”

20. On July 26, 1990, the President of the Court, in consultation with the Permanent Commission, denied the requested postponement due to the urgent character of the provisional measures.

21. On August 7, 1990, the public hearing that had been scheduled took place at the Court. Appearing were Commission delegate Dr. Leo Valladares assisted by Dr. Juan Méndez, and Ambassador Antonio Belaúnde Moreyra representing Peru.

22. At the hearing, the representatives of the Inter-American Commission of Human Rights went over the reported events and laid out the legal basis on which the Court's authority to issue provisional measures rests. They also asked the Court to ratify the June 5, 1990 resolution as well as adopting other specific measures. The Commission representatives also stated that the only notice they had of Peru having taken any measures to comply with the June 5, 1990 resolution was a summons broadcast on the radio calling on all persons who had been threatened to appear at a military establishment to coordinate provisional measures. This measure, in the Commission's opinion, would tend rather to be of an intimidating nature rather than to constitute a protective measure.

23. The representative of the Peruvian Government explained the current situation in the Andean area, and the regular attacks by guerrilla groups. He also indicated the difficulties involved for his government in identifying those persons in the Andean area who, according to the Inter-American Commission, are under threat. It is germane here to emphasize the ninth "Considering" section of the Court's resolution, which states:

To questions from the Court's judges, the Representative of Peru stated that his Government has no objections, in principle, to put forward with regard to the events and law laid out by the Inter-American Commission. Also that there could be a lack of knowledge on the part of the Court of the measures which Peru had adopted to comply with the July 5, 1990 resolution, and he acknowledged that the previous Government of his country had shown a "certain negligence" in this respect.

Finally, he stated that his Government was ready to respect whatever provisional measures the Court might adopt.

24. On August 8 the Court resolved, among other things, to confirm and adopt the June 5, 1990 resolution by the President of the Court. It also gave the Government of Peru 30 days to comply with its stipulations.

25. On December 14, 1990 the Government of Peru reported on its compliance with the precautionary measures established by the Court.

B. Subsequent Commission proceedings regarding the case - Position of the parties

26. The Commission began proceedings on the complaint on May 10, 1990, and registered the case as number 10.548.

27. The day following receipt of the complaint, and acting pursuant to article 48.1 of the American Convention, the Commission sent the Peruvian State the relevant parts of the complaint, asking it to provide information on the facts dealt with in that document in terms of article 34 of its regulations. Information was also requested on the exhaustion of internal remedies, and it was made clear that proceeding with the case did not imply a prejudgment on the admissibility of the complaint.

28. Not having received a response from the Peruvian State, the Commission repeated its request for information on October 31, 1990.
29. On November 26, 1990, the State, through its Permanent Mission at the Organization of American States, provided information to the effect that the Attorney General's office had arranged the coordination of relevant actions in order to continue with the investigations necessary to determine the identity of the perpetrators of the murder. To this purpose, the Attorney General had sent letters to the Ministers of Interior and Defense. In the letter to the Minister of Defense there was a request to arrange for the appearance of the then Political-Military Head of Ayacucho, Commander E.P. Javier Landa Dupont, at the Attorney General's office in Huanta; the complete name and rank of the officer known as "Cat's Eyes" were also requested.
30. On December 3, 1990, the petitioners were sent copies of the information sent by the Peruvian State.
31. On December 11, 1990, the Commission asked the State to report on the progress of and results from the investigations ordered by the Attorney General.
32. On December 16, 1990, the Commission received a communication from the petitioners in which they answered the November 26 statements of the Peruvian State. It stated that the military avoided and obstructed the administration of justice by virtue of the fact that Major Amador Vidal Sambento and Lt. Col. Víctor La Vera Hernández have not appeared to testify, despite being required to do so by the trial judge handling the case. The requirement to arrest the mentioned military personnel on a charge of homicide has also not been complied with. The initiation of a jurisdictional contest between the military and civilian courts constitutes another attempt to obstruct justice, as there is an attempt to make the citizenry believe that justice will be done via the military justice system.
33. On December 21, 1990, the petitioner reported on new judicial developments in the case. It was indicated that the summons by the military prosecutor's office to the Ministry of Defense that members of the military, Landa Dupont and "Cat's Eyes" be made to appear is still being obstructed, as the Ministry of Defense reports that army records show no one with the last name Landa Dupont, and no one is known by the pseudonym "Cat's Eyes." The information adds that the magazine "Caretas" has identified these two officers. Javier Landa Dupont's real name is Lt. Col. Víctor Fernando La Vera Hernández.
34. On January 15, 1991, the Commission asked the Peruvian State to report on the progress in the judicial investigation of the Bustíos case and related facts.
35. On February 8, 1991, Peru's Permanent Mission at the Organization of American States reported to the Commission that the addresses of three officers had been located so that they could testify in the judicial proceedings. They also reported that the Bustíos case was under way before the military judge of Ayacucho.

36. On June 5, 1991, the Peruvian Asociación Pro Derechos Humanos reported that troops raided the home of Huanta trial Judge Dr. Moisés Ochoa Girón, who was presiding in the Hugo Bustíos homicide trial. It was also alleged that this event was a case of intimidation carried out against the judge, given that he had issued an arrest warrant for those responsible for the death of Hugo Bustíos, namely, Commander Víctor Fernando La Vera Hernández (who was Political-Military Head of Huanta at the time of the occurrence and used the false name of Javier Landa Dupont) and Capt. Amador Vidal Sambento (aka “Cat’s Eyes,” who commanded the military patrol that perpetrated the murder). In a press clipping that was attached, the judge who is the Dean of Judges of Huanta, Toribio Vega Fajardo, denounced the occurrences as an affront to the judiciary.

37. On June 7, the Commission asked the Peruvian State for background on the claims about the raid mentioned above. On June 21 the State’s response was received, with a transcription of the communique issued by the Political-Military Headquarters of Huanta, stating:

In response to distorted information appearing in some communications media ... the following information is released to the public:

On June 3, 1991, an army patrol made a routine visit to the town of Huanta, situated two kilometers south of the city of Huanta.

After the head of the patrol spoke with the population, they proceeded with house visits, having determined that one of them belonged to a relative of Dr. Moisés Ochoa Girón...

The judge mentioned took the initiative of inviting the officer to the house so that it could be searched, which the officer accepted, greeting the relative in a friendly way, and no search was carried out, as it was considered unnecessary.

Dr. Ochoa Girón does not appear on the rolls of the town of Huanta.

At no time was there a raid...

C. Friendly Settlement Procedure

38. With respect to Article 45, paragraph 1 of the Commission’s Regulations, the Commission has maintained that any of the parties has the authority at any time to request that the friendly settlement resolution procedure be initiated. (Caballero Delgado y Santana Case, Preliminary Objections, January 21, 1994, paragraph 30).

39. In its March 5, 1996 session, the Commission agreed to put itself at the disposition of the interested parties in order to determine whether a friendly settlement could be reached before proceeding to the notification phase of the present report. In Note No. 7-5-M/O90 of April 1, 1996, Peru’s Permanent Mission at the Organization of American States communicated the State’s request that the date for a statement on the possibility of a friendly settlement resolution of the case be postponed.

40. On April 9, the Commission's Executive Secretariat addressed itself to the Peruvian State to report that the President of the Inter-American Commission on Human Rights, pursuant to the recommendation of the Rapporteur for Peruvian cases, had agreed to extend until April 26, 1996 the date for the State to inform whether it agrees to submit itself to the friendly settlement procedure or not.

D. Proceedings After Commission Adoption of the Article 50 Report

41. The Peruvian State and the petitioners have not responded in any way to the Commission's offer. Consequently, the Commission, on October 17, 1996, during its 93rd session, adopted Report No. 52/96, its Article 50 report on the case. By letter dated November 21, 1996, the Commission transmitted this report to the Peruvian State, which was not authorized to publish it.

42. By note dated February 25, 1997, Peru's Permanent Mission submitted its response to confidential Report No. 52/96. In those observations, the Peruvian State only spoke to the recommendation regarding the need for the State to offer and guarantee journalists and communications media the protection necessary for them to fully carry out the work which their profession requires of them in areas of armed conflict. On this particular, Peru stated:

The Ministry of the Interior, through the National Police, has been providing the relevant guarantees to journalists and the communications media in the work they carry out to comply with their duty to collect information and report it to the public.

43. During its 95th session, the Commission, on March 11, 1997, adopted Report No. 16/97, its Article 51 report on this case, and sent a confidential copy of the report to the petitioners and to the State.

44. By letter dated May 2, 1997, the petitioners questioned the fact that the Commission continued to maintain the confidentiality of its Article 51 report, which it alleged, violated the letter and spirit of Article 51 of the American Convention.

45. By Note No. 7-5-M/270 dated August 1, 1997, the Permanent Representative of Peru transmitted the report prepared by the National Commission on Human Rights in response to confidential Report No. 16/97. The Peruvian report stated that a new investigation would be undertaken by the Huanta district prosecutor in order to identify the individuals responsible for the murder of Bustíos and the injuries of Rojas.

46. The Peruvian Amnesty Laws, Laws Nos. 26479 and 26492, effectively tie the hands of the State with respect to undertaking any investigation, exhaustive or otherwise, of any case of forced disappearance or any other human rights violation committed by a member of the armed forces, or any other perpetrator, during the period May 1980 - June 14, 1995. The amnesty laws cover all military, police and civilian officials, whether they have been arraigned, investigated, tried, indicted or convicted before a regular or special court for common or military crimes for any occurrence--whether perpetrated individually or by a group during this period--stemming from or originating on the occasion of, or as a consequence of, the struggle against

terrorism.[FN2] An amnesty, by its nature, removes the criminal element from the conduct, and the penalty, if the individual has been convicted or has served a sentence, is considered never to have been applied.[FN3]

[FN2] See IACHR, ANNUAL REPORT 1996, pp. 739-41.

[FN3] UN STUDY ON AMNESTY LAWS, Report of Mr. Louis Joinet, Special Rapporteur of the SubCommission on the Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1985/16/Rev.1 (June 21, 1985).

47. In the case of Peruvian Amnesty Law No. 26479, article 6 provides:

The facts or crimes covered by the present amnesty, as well as the dismissals and acquittals, are not susceptible of investigation, inquiry or summary procedure; resulting in the definitive suspension of all judicial proceedings in process or pending enforcement. (Emphasis added).

In summary, this law provides that the instant case is not susceptible of investigation, in flagrant disregard of the Peruvian government's obligations under the American Convention and the jurisprudence of both the Commission and the Inter American Court of Human Rights.

48. Amnesty laws frustrate and run contrary to a State's obligation to investigate and punish those responsible for human rights violations whether those responsible be members of the military or civilians. The expectation of an eventual amnesty casts a blanket of impunity over the armed forces or any non-military perpetrator, enabling them to commit any atrocity in the name of their cause, and such a climate breeds inevitable excess and contempt for the rule of law.[FN4]An amnesty in one country in the region which has ended its civil conflict provokes the expectation of an amnesty in a second, though the latter be still in a state of internal conflict. A state policy of impunity, enshrined in amnesty laws, eventually leads to a loss of prestige and professionalism of the military in the eyes of the rest of the population.

[FN4] Emblematic of this position is Chilean General Augusto Pinochet's statement in October 1989, two months before Chile's first free elections, "The day they touch one of my men, the rule of law ends. This I say once and will not say again." See Tina Rosenberg, "Overcoming the Legacies of Dictatorship" FOREIGN AFFAIRS, Volume 74, No. 3 at p. 134.

49. Consequently, the Commission, during its 97th session, has taken the decision to publish the present report.

IV. ANALYSIS

50. In this phase, the Inter-American Commission on Human Rights develops its conclusions and recommendation on the case, pursuant to article 51 of the American Convention on Human Rights.

a. Admissibility

51. From the information examined it is clear that the Commission has authority *ratione personae y materiae* to deal with the case, since the complaint lays out facts that describe alleged violations of the rights of Hugo Bustíos Saavedra and Eduardo Rojas Arce set forth in Articles 1.1, 4.1, 5,13.1, and 25 of the American Convention on Human Rights.

52. The Commission considers that there are no reasons justifying an allegation that the petition is manifestly groundless or that its inadmissibility is obvious, or that it constitutes the substantial reproduction of an already examined petition.

b. Exhaustion of internal remedies

53. From the notes addressed to the Commission by the petitioners and the Peruvian State, it emerges that Peru's internal remedies have turned out to be futile in identifying and punishing those responsible for the death of Hugo Bustíos Saavedra and the injuries of Eduardo Rojas Arce.

54. The performance of the ordinary (civilian) jurisdiction seems to have moved in a positive direction with respect to the crime when Judge Moisés Ochoa Girón, judge on the case in Huanta, issued an arrest warrant for military personnel Amador Vidal Sambento (aka "Cat's Eyes") and Victor Fernando La Vera Hernández, the latter, head of the Political-Military Command of Huanta during 1988. Nevertheless, both the judge and the provincial prosecutor received death threats, and furthermore, three days after the judge's ruling, thirty troops raided the judge's house.

55. Two years after the perpetration of the crime, the military jurisdiction initiated a parallel process in which there was an attempt to supplant the authority of the ordinary judge and remove the case from the responsibility of the judiciary by establishing *res judicata*.

On September 13, 1991, Peru's Permanent Representative at the Organization of American States informed the Commission that in accordance with the findings of the Auditor General, based on material provided, there was a confirmation of the decree of the permanent war council in the Army's second judicial district, dated April 29, 1991, which, on pages 180 and 183, dismissed the case against Peruvian army personnel Lt. Col. of the Infantry Javier La Vera Hernández and Cavalry Major Amador Vidal Sambento for the crimes of homicide, abuse of authority, and harm to the person who was journalist Hugo Bustíos Saavedra, and against civilian Eduardo Rojas Arce, they revoked the part which ordered the proceedings against those responsible for the crimes of homicide, injury, and abuses of authority against said civilian journalists to be definitively filed. . .

56. The Peruvian State has shown lack of interest in carrying forward an efficient and adequate investigation to punish and identify those responsible for the death of journalist Hugo Bustíos and for the injuries of Eduardo Rojas. This circumstance coincides with a pattern of

inefficacy of legal remedies which the Commission has discerned in Peru both at the time of the occurrences referred to in the complaint and subsequently.[FN5]

[FN5] See, IACHR, ANNUAL REPORT 1993-4.

c. Non-existence of other proceedings

57. This case is not pending before other international organizations, nor does it constitute the reproduction of a petition which has already been considered and resolved by the Commission or another international organization.

d. Merits of the case

Right to life

58. The Commission notes that common article 3 of the 1949 Geneva Conventions contains minimum rules governing the conduct of hostilities, and that these are as mandatory for state armed forces as well as for dissident armed groups in any internal armed conflict, including Peru's.[FN6]

[FN6] Peru ratified the Geneva Conventions of 1949 on February 15, 1959. Common article 3 provides: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture."

59. The Commission wishes to emphasize that during such conflicts the non-derogable norms of the American Convention continue to apply simultaneously with the provisions of common Article 3.[FN7]Specifically, both Article 4 of the American Convention and common Article 3 prohibit, inter alia, arbitrary deprivations of life.[FN8]

[FN7] Article 29 of the American Convention provides that no provision of this Convention shall be interpreted as "excluding or limiting the effect" of other international acts of the same nature, be they norms of customary international law and general principles of international law. Consequently, the Commission is competent to directly apply the norms of international

humanitarian law, or to inform its interpretations of the provisions of the Convention by reference to said norms.

[FN8] UN General Assembly Resolution 2444 "Respect for Human Rights in Armed Conflicts," adopted unanimously on December 19, 1969, expressly recognized the common law principle of civilian immunity and the complementary principle requiring parties in combat always to distinguish between civilians and other combatants.

60. From the factual background laid out above it can be held that Hugo Bustíos Saavedra was extra-judicially executed by agents of the Peruvian State who arbitrarily deprived him of the right to life.

61. The standards of international customary law that govern armed conflicts, as well as common article 3 of the Geneva Conventions, prohibit attacks by combatants against civilians and against the civilian population in general. In this respect, the only circumstance in any armed conflict where a civilian loses the immunity from direct individualized attack is when that civilian directly participates in hostilities, which, practically speaking, means assuming the role of a combatant, either individually or as a member of a group. Though journalists or reporters in combat zones implicitly assume a risk of death or injury either incidentally or as a collateral effect of attacks on legitimate military targets, the circumstances surrounding the attacks on Hugo Bustíos and Alejandro Arce clearly indicate that they were not accidental, but intentional.

62. The version of events given by the Peruvian State as to members of Shining Path having been responsible for the ambush that caused the death of Hugo Bustíos and the injuries of Alejandro Rojas lacks foundation, as the events occurred roughly 300 meters from two military patrols which, according to the military themselves, were looking for those responsible for the murder of two inhabitants of Huanta. That version is also contradictory to the testimony of eye witnesses of the events, who say that it was military troops who were responsible for the occurrences.

63. Thus, the Commission considers that the Peruvian State, wronging Hugo Bustíos Saavedra, has violated the right to life guaranteed by article 4 of the American Convention on Human Rights and common Article 3 of the 1949 Geneva Conventions.

Right to personal integrity

64. Article 5 of the American Convention on Human Rights recognizes the right to personal integrity and states in that connection, *inter alia*, that:

1. Every person has the right to have his physical, psychological, and moral integrity respected.

65. The injuries of Eduardo Rojas Arce produced in the ambush carried out by Peruvian troops is a clear case of impact on personal integrity in the terms of the American Convention.

66. Also, all the earlier considerations relating to the application of common article 3 of the Geneva Conventions are fully applicable in the case of Eduardo Rojas, as any attack on the bodily integrity of civilians not participating directly in hostilities is prohibited.

Freedom of thought and expression

67. Freedom of thought and expression is a basic right in the inter-American system for the protection of human rights. Article IV of the American Declaration of the Rights and Duties of Man establishes that: (....)

Every person has a right to freedom of research, of opinion and of expression and of dissemination of thought in any medium.

68. As for article 13 of the American Convention on Human Rights, it protects freedom of thought and expression, stating in this regard that:

1. Every person has a right to freedom of thought and expression. This right includes the freedom to seek, receive, and disseminate information and ideas of every sort, without regard to borders, either orally or in written, printed, or artistic form, or by any other procedure of his choice.

2. The exercise of the right provided for in the preceding section cannot be subject to prior censorship but only to subsequent response, which must be expressly established by law and be necessary to ensure (....)

3. The right of expression cannot be restricted in indirect ways or by indirect means such as ... or any other means undertaken to prevent communication and the circulation of ideas and opinions.

69. The Inter-American Commission on Human Rights has stated in this regard that:

Freedom of expression is universal and conceptually comprises the legal authority which supports every person, considered individually or collectively, in expressing, transmitting, and disseminating his thought instantaneously and diachronically; the freedom to inform oneself is also universal and entails the collective right of persons to receive information without distorting interference.[FN9]

[FN9] IACHR, ANNUAL REPORT 1980-1981. OAS/Ser.L/V/II, 54, doc.9.

70. The Inter-American Court of Human Rights has interpreted the above-mentioned article in its advisory opinion OC-5/85, dated November 13, 1985:

(30.) Article 13 indicates that freedom of thought and expression “includes freedom to seek, receive, and impart information and ideas of all kinds” This language establishes that 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.

(31.) In its individual dimension, freedom of expression goes further than the theoretical recognition of the right to speak or write. It also includes and cannot be separated from the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible. When the Convention proclaims that freedom of thought and expression includes the right to impart information and ideas through "any ... medium," it emphasizes the fact that the expression and dissemination of ideas and information are indivisible concepts. This means that restrictions that are imposed on dissemination represent, in equal measure, a direct limitation on the right to express oneself freely. The importance of the legal rules applicable to the press and to the status of those who dedicate themselves professionally to it derives from this concept.

(32.) In its social dimension, freedom of expression is a means for the interchange of ideas and information among human beings and for mass communication. It includes the right of each person to seek to communicate his own views to others, as well as the right to receive opinions and news from others. For the average citizen it is just as important to know the opinions of others or to have access to information generally as is the very right to impart his own opinions.

(33.) The two dimensions mentioned (supra 30) of the right to freedom of expression must be guaranteed simultaneously.[FN10]

[FN10] I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 30-33.

71. The same advisory opinion emphasizes the role which freedom of expression plays in the democratic order and the importance of journalism in this context, stating:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.

In this context, journalism is the primary and principal manifestation of the freedom to express thought.[FN11]

[FN11] Ibid. paras. 70-71.

72. The Inter-American Commission on Human Rights has also referred on numerous occasions to the exercise of these freedoms, considering as part of its doctrine that lack of freedom of expression is a cause that “contributes to lack of respect for the other human rights.”[FN12]

[FN12] IACHR, TEN YEARS OF ACTIVITIES 1971-1981, General Secretariat of the Organization of American States, Washington D.C., 1982.

73. Recently developed international practice dictates that making the work of the press possible in periods of armed conflict, even with irregular armed combatants, requires the greatest protection. It is journalists who are risking their lives to bring the public an independent and professional view of what is really happening in areas of conflict.

74. It emerges from an evaluation of the material in this case that the military authorities in charge of the Huanta area knew perfectly well that Hugo Bustíos and Eduardo Rojas were journalists and that they generally did journalistic coverage of occurrences of human rights violations in said area.

75. The fact that an armed conflict existed and that the authorities in the Ayacucho area knew that Bustíos and Rojas were journalists demanded that the former provide the greatest possible protection to the two journalists in order for them to have the ability to carry out their function of seeking, covering, and disseminating information on occurrences in the area with the greatest guarantees possible, a course which the Peruvian State did not guarantee.

76. With respect to the individual aspect of freedom of expression, this was violated since Hugo Bustíos and Eduardo Rojas were arbitrarily prevented from seeking out, covering, and disseminating information on a particular occurrence. Similarly, the death of the former and the injuries caused to the latter touch on the individual dimension due to the fact that these occurrences are a sign of harassment and intimidation of those functioning as journalists, which positively has an impact on the quality and characteristics of information.

77. Freedom of expression in its collective dimension was violated, since society is being deprived of receiving information on a particular occurrence.

Right to judicial guarantees and their judicial protection

78. Article 25.1 incorporates the principle recognized in international human rights law of the effectiveness of the procedural means or instruments intended to guarantee such rights. It is not sufficient for a State's legislation to formally recognize the remedy in question, but rather, it is must develop the actual possibility of effective remedy and give it substance pursuant to the rules of due legal process.[FN13]

[FN13] I/A Court of Human Rights, Velásquez Rodríguez, Fairen Garbi and Solís Corrales, and Godínez Cruz Cases, Preliminary Objections of June 26, 1987, paragraphs 90, 91, and 92, respectively.

79. The Peruvian State has not provided adequate remedy which complies with the minimum guarantees of due process, and there has been no actual identification and punishment of those responsible for the homicide and bodily harm of Hugo Bustíos Saavedra and Eduardo Rojas Arce.

80. The inefficacy of the remedies available under internal jurisdiction which is thus evident in this case not only justifies the statement that the petitioners are not obliged to initiate proceedings with and exhaust such remedies, but also leads us to conclude that the State of Peru has violated the rights of judicial protection and judicial guarantees recognized in Article 25 of the American Convention.[FN14]

[FN14] Idem.

Obligation to guarantee and respect rights

81. The Peruvian State has not complied with the obligation deriving from Article 1.1 of the American Convention to "respect the rights and freedoms recognized in it and to guarantee their free and full exercise to every person subject to its jurisdiction." Therefore, the Peruvian State is responsible in this case for the violation of the rights provided for in Articles 4.1, 5, 13.1, and 25 of the American Convention.

82. In the terms of Article 1.1, the first obligation of the states that are party to the American Convention is to respect the rights and freedoms established in it.

83. In determining what forms of exercise of public power violate the obligation of Article 1.1 to respect rights, the Inter-American Court has held that "...under international law a State is responsible for 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." Also that "...any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State."[FN15]

[FN15] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4 paras. 170 and 172.

84. The Commission has concluded that the murder of Hugo Bustíos Saavedra and the injuries caused to Eduardo Rojas Arce, occurrences of November 24, 1988, were perpetrated by agents under color of law. Hence it is that, as reflected above, the State of Peru has violated the obligation of Article 1.1 to respect the rights of Hugo Bustíos and Eduardo Rojas Arce provided for in the American Convention.

85. The second obligation deriving from Article 1.1 is to guarantee the free and full exercise of the rights and freedoms recognized in the Convention. "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...."[FN16]

[FN16] *Idem*, paragraph 166.

86. The Commission has concluded that the internal remedies of the Peruvian State have not sufficed to effectively investigate the violation of rights suffered by journalists Hugo Bustíos Saavedra and Eduardo Rojas, and the guilty have not been punished. Consequently, this Commission concludes that the Peruvian State also violated Article 1.1 because it did not guarantee the exercise of the rights of Hugo Bustíos and Eduardo Rojas Arce.

CONCLUSIONS AND RECOMMENDATIONS

87. By virtue of the considerations of fact and law which appear above, the Inter-American Commission of Human Rights

CONCLUDES:

88. That the Peruvian State has violated the rights to life, freedom of expression, and judicial protection of Hugo Bustíos Saavedra. Similarly, it has violated the rights to personal integrity, freedom of expression, and judicial protection, of Eduardo Rojas Arce. These rights are recognized respectively in Articles 4, 5, 13, and 25 of the American Convention on Human Rights, in connection with Article 1.1 of same. With respect to the right to life of Hugo Bustíos Saavedra and the personal integrity of Eduardo Rojas Arce, the Peruvian State has also violated common Article 3 of the 1949 Geneva Conventions.

89. In light of the foregoing considerations, the Commission ratifies the following

RECOMMENDATIONS:

90. That the Peruvian State immediately carry out a new, serious, impartial and effective investigation of the facts reported, in order to identify those responsible for the execution of Hugo Bustíos Saavedra and the crime of causing injury to Eduardo Rojas Arce.

91. That the Peruvian State immediately and adequately adopt full reparations measures for the verified violations, including compensatory indemnification to the families of the victims.

92. That the Peruvian State guarantee journalists and communications media, in general, the protection necessary for them to fully carry out the work required by their profession in areas under a state of emergency, in order to avoid the occurrence of similar situations in the future.

93. The Commission decides to publish the present report in its Annual Report to the General Assembly of the OAS, pursuant to the provisions of articles 51.3 of the American Convention on Human Rights and 48 of the Commission's Regulations.