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Title/Style of Cause:	Martin Javier Roca Casas v. Peru
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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	19 February 1998
Citation:	Roca Casas v. Peru, Case 11.233, Inter-Am. C.H.R., Report No. 39/97, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: the Association for Human Rights
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I. BACKGROUND

The Facts

1. On January 18, 1994, the Inter-American Commission of Human Rights (hereinafter, "the Commission") received a complaint denouncing the responsibility of the Republic of Peru (hereinafter, the "Peruvian State, the "State, or "Peru") for the forced disappearance of Martín Javier Roca Casas, aged 27, a student at the University of Callao and Press and Propaganda Secretary of that university's Student Federation.
2. Before his disappearance, on August 17, 1993, Martín Roca took part in a protest march along with other students from the University of Callao. During the march, the students caught two strangers filming the event. They presumed they were journalists and demanded that they identify themselves. When they refused, there was a row during which the students grabbed the video tape and immediately destroyed it.
3. At 11.15 p.m. that same day --August 17-- the people who had been filming went to Roca Casas' home demanding to know where the tape was. One of them identified himself as rank three naval officer in the Peruvian Navy, Percy Tarazona Estevez. Roca Casas denied possession of the tape and they went away, only to return shortly thereafter accompanied by a group of Navy personnel aboard a military vehicle. This group proceeded to ransack the house in search of the tape.
4. The following day, August 18, Tarazona returned to Roca's house. The victim's father refused to talk to him and requested help from the police. The police then took officer Tarazona to the Carmen de la Lengua police station. There officer Tarazona contacted an Intelligence

officer who called himself Commander Ponce and arrived at the police station in order to confirm that Tarazona was engaged in intelligence activities under his command. Commander Ponce stated that he was only interested in recovering the tape because it contained pictures of individuals under observation because of their suspected links with subversion and that there was no operation underway against Roca Casas.

5. From that day on, according to the petitioner, the Roca Casas family home was subject to constant surveillance by individuals presumably belonging to the Peruvian Navy.

6. On October 5, 1993, Martín Javier Roca Casas left his house at 5 p.m. and has not returned since then. Martín Roca's father denounced his disappearance to the Assistant Prosecutor for Human Rights (Fiscal Supremo Adjunto) who delegated the task of carrying out inquiries to the Third District Attorney's Office for Criminal Investigations in Callao.

Alleged violations

7. The petitioners point out that the events described constitute a case of forced disappearance, as a result of which the Peruvian State is guilty of violating articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection) set forth in the American Convention on Human Rights (hereinafter, the "Convention").

II. PROCESSING BY THE COMMISSION

8. Having received the denunciation, and without prejudging its admissibility, the Commission registered the case as Case No. 11.233 and transmitted the pertinent parts of the petition to the Peruvian State in a communication dated January 18, 1994, asking it to supply the relevant information.

The State's reply

9. In a Note dated July 1, 1994, the Peruvian State replied to the Commission stating, among other things, that:

. . . in an Official Communication, No. 088-94-MP-FN, dated April 14, 1994, the Prosecutor in charge of the Prosecutor's Office for the Ombudsman reported as follows: after making appropriate inquiries, on April 7 this year the District Attorney for Callao of the Third District Attorney's Office for Criminal Investigations brought criminal charges against Peruvian Navy Commander Elías Manuel Ponce Feijoo and OM3 Percy Tarazona Esteves for the crime of forced disappearance of Martín Javier Roca Casas.

10. In a Note dated July 5, 1994, the State expanded on its reply, indicating that Navy High Command had ordered that two lawyers be contracted to defend Commander Manuel Ponce Feijoo and OM3 Esteves Pérez Tarazona (sic), in the proceedings against them on charges related to the forced disappearance of Martín Roca. In addition, the Government pointed out that this case was under review by the Working Group on Forced or Involuntary Disappearances of

the UN Human Rights Commission... which had received the petition before the Inter-American Human Rights Commission.

11. On July 19, 1994, the Commission transmitted the State's reply to the petitioners and asked them to submit their observations within 45 days.

Rejection of the State's request that the case be filed

12. By means of a communication dated August 2, 1994, the Commission rejected the admissibility argument presented by the State alleging that the presentation of a complaint before the United Nations Working Group constituted an obstacle to its admissibility before the Commission, pursuant to Article 47.d of the Convention. The Commission relied on its practice and jurisprudence, in which it had been established that the procedure before the Working Group on Forced or Involuntary Disappearances did not produce an "effective settlement" of the violation, pursuant to the terms of Article 46.1.c of the American Convention. Consequently, the Commission notified the State that:

In accordance with the provisions of Article 39, paragraph 2 of the Regulations of the Commission, the Commission's interpretation is that the ban on presenting the same case to other international organizations only applies with regard to bodies of a similar nature with similar powers of decision as those of the IACHR. The IACHR considers that the nature and powers of decision of the United Nations Working Group on Forced or Involuntary Disappearances differ from those of the IACHR and that the prohibition mentioned in its note dated July 5, 1994 is not applicable.

Additional information presented by the State

13. In a Note dated November 8, 1994, the Peruvian State presented additional information indicating the existence of criminal proceedings regarding the forced disappearance of Martín Javier Roca Casas.

14. In a communication dated December 15, 1994, the Commission transmitted to the petitioner the additional information provided by the State, requesting comments within a period of 45 days.

15. In a Note dated February 9, 1995, the Peruvian State presented to the Commission information regarding progress in the criminal proceedings brought on account of the forced disappearance of Martín Roca.

16. This information was passed on to the petitioner in a communication dated March 2, 1995.

17. In a note dated March 27, 1995, the Peruvian State informed the Commission that the Prosecutor's Office for the Ombudsman had reported that:

. . . in case No 711-94 against Elías Feijoo and another for the forced disappearance of Martín Roca Casas, the First Higher Criminal Court of Callao resolved on November 17, 1994 that there was "no justification for a trial of those allegedly responsible."(Emphasis added)

This information was transmitted to the petitioner in a communication dated April 21, 1995.

18. In a note dated May 30, 1995, the Peruvian State presented additional information, enclosing a report written by the Ministry of Defense and dated May 8, 1995. This information was forwarded to the petitioner in a communication dated June 14, 1995.

Observations submitted by the petitioner

19. On September 25, 1995, the Commission received the observations of the petitioner, which stated:

. . . that in the criminal trial referred to by the Peruvian Government, judgment had already been passed by the Third Criminal Court of Callao, the Criminal Chamber of the Superior Court of Callao, and the Criminal Chamber of the Supreme Court, ordering the case to be filed.

All judicial instances declared the accused not guilty, so that they were not brought to trial, despite the fact that the evidence brought by the plaintiff was not examined.

20. The petitioner pointed out that the judicial authorities did not request the presence of the soldiers and police who took part in the search party operation carried out in the Villa Señor de los Milagros shanty town, where the victim lived, on October 5-6, 1993, the date the victim disappeared. Nor were statements taken from members of the Peruvian Navy's Intelligence Service. Consequently, the petitioner concluded that the criminal proceedings did not fulfill the requirement that they be adequate and effective, given that the investigations were unable to determine the whereabouts of the victim.

21. The petitioner also pointed out that, through the Amnesty Law (Law No. 26.479), the Peruvian State ordered the definitive filing of all judicial cases and sentences brought against all the military personnel accused, tried, or condemned for violations of human rights committed between 1980 and June 1995. In this way, the Peruvian State banned any investigation, inquiry, or indictment with respect to the occurrences and offenses eligible for amnesty, which means that this case cannot be reinvestigated. On July 2, 1995, the petitioner adds, Law No. 26.492 was promulgated, extending the scope of the amnesty and forbidding its interpretation by the courts.

22. For the petitioner, the promulgation of the amnesty laws constitutes a violation of the obligation to respect human rights enshrined in the American Convention on Human Rights, as well as a violation of the right to effective protection against violations of human rights, implying a restriction of human rights guarantees beyond that contemplated in the Convention itself.

23. The petitioner's observations were forwarded to the State in a note dated September 27, 1995.

Observations of the State

24. On November 3, 1995, Peru enclosed a copy of the resolution dated June 15, 1995, which confirmed that there was no justification for proceeding to try Percy Tarazona Estevez and Elías Ponce Feijoo and ordered the definitive filing of the criminal proceedings.

25. On November 10, 1995, the State presented an additional communication informing the Commission that the Ministry of Justice had reported the following with regard to the case of the forced disappearance of Mr. Martín Roca Casas:

...the proceedings began in the Third Specialized Criminal Court of Callao (File No. 247-94), with summary charges against navy personnel Percy Tarazona Estevez and Elías Ponce Feijoo for the forced disappearance of student Martín Xavier Roca Casas; and against Alberto Lau Cavero for the crime of perjury against the State. Subsequently, the First Criminal Chamber of Callao (File No. 711-94) declared in a resolution dated November 17, 1994 there was no justification for trying the above-mentioned persons for lack of evidence proving their culpability. The Supreme Court of Justice, consulted on this case, confirmed the resolution.

26. The observations presented by the State were forwarded to the petitioner on November 21, 1995.

Additional observations by the petitioner

27. In a communication dated January 31, 1996, the petitioner presented his observations regarding the State's reply pointing out that "the Government's statement confirms previous information, restricting itself to a brief summary of the status of the criminal proceedings with regard to the disappearance of Martín Javier Roca Casas. Consequently, for the petitioner it is abundantly clear that criminal proceedings ended with the Supreme Court resolution confirming that of the First Criminal Chamber of the Superior Court of Callao."

28. The petitioner also points out that Peru's claim that no evidence exists of the criminal responsibility of the accused in the disappearance of Martín Javier Roca Casas is false because that evidence can be found in the judicial file; if no more evidence was examined, it was because the judicial authorities refused. The petitioner requests that the Peruvian State submit the judicial file on the case as proof, particularly since the proceedings have terminated.

29. In a communication dated February 22, 1996, the Commission transmitted to the Peruvian State the pertinent parts of the petitioner's observations.

Hearing before the Commission

30. On February 21, 1996, a hearing was held at the Commission's headquarters at which the parties orally presented their positions with respect to this case.

Observations by the State

31. In a Note dated March 5, 1996, the Peruvian State indicated that in this case domestic remedies had not been exhausted and that it had requested that the case be filed because it was under review by another international body. In the State's view, this case is also inadmissible because the deadline established in Article 46 of the Convention for declaring the admissibility of the petition had long since expired. In a note dated March 26, 1996, the Commission transmitted the information supplied by the State to the petitioner.

32. In a Note dated April 10, 1996, the State presented a copy of the information provided by the Attorney's Office on the processing of the criminal case regarding the forced disappearance of Martín Roca Casas. This was transmitted to the petitioner on April 24, 1996.

Final observations by the petitioner

33. In a communication dated July 4, 1996, the petitioner contested the preliminary objection regarding non-exhaustion of domestic remedies saying that it should have been lodged at the start and not two years after processing by the Commission began. He invoked the jurisprudence of the Inter-American Court of Human Rights, which he considered opportune.

34. In a Note dated July 11, 1996, the father of Martín Javier Roca Casas presented his observations to the reply by the Peruvian State. In his view, the State has restricted itself to reporting, late, on the status of the criminal proceedings, without the slightest evidence to disprove the version of events he presented in his denunciation, which is thereby confirmed. The criminal proceedings before the judiciary were merely formal, with no interest in carrying out a real investigation into what happened, which is no wonder, given that of all the innumerable cases of violations of human rights, above all disappearances, very few have reached the courts and even fewer have ended with those guilty being sentenced.

35. The victim's father points out that the authorities did nothing to prevent the disappearance of Roca Casas. After the events of August 17 and 18, 1993, his son asked the Prefecture in Callao for guarantees for his life and personal safety and told them everything that had happened. The Prefecture ordered the national police to protect him. However, the police refused to carry out the order saying it was none of their business, as the judicial file on the case records. When the Prefecture got round to insisting that the police protect Roca Casas, it was too late; he had already been kidnapped. In this regard, the authorities' behavior was, at best, negligent.

Addition of Co-petitioner

36. By letter dated November 20, 1996, Mr. Miguel Jugo Viera, the Deputy Director of APRODEH, the Association for Human Rights in Peru advised the Commission that it and the Center for Justice and International Law (CEJIL) had been named co-petitioners by Mr. Javier Roca Oregón, the father of Martín Roca Casas in this case.

Hearing before the Commission

37. On March 4, 1997, at the headquarters of the Commission, a hearing was held at which representatives of the Peruvian State and the Association for Human Rights (APRODEH), appeared on behalf of the victim, in order to present the current status of the case. The petitioners presented a videotape which contained the testimony of various persons and, furthermore, the parties presented their respective oral positions, reiterating the arguments presented during the different stages of the proceedings in this case.

III. PROCEEDINGS AFTER COMMISSION ADOPTION OF THE ARTICLE 50 REPORT

38. Pursuant to article 50 of the Convention, the Commission on March 11, 1997, during its 95th Regular Session, approved its article 50 report No. 15/97 concerning the present case. The report was sent to the Peruvian State on June 11, 1997 with a request that information regarding the measures adopted to comply with the Commission's recommendations be presented within a period of three months, calculated from the date of transmittal.

39. By Note No. 7-5-M/329, dated September 12, 1997, the Permanent Mission of Peru to the OAS informed the Commission that the National Council of Human Rights (Consejo Nacional de Derechos Humanos) had prepared the attached response to the confidential report in Case No. 11.233.

40. The response of the Peruvian State of September 12th, did not address the issue of the measures adopted to comply with the Commission's recommendations, as set forth in article 51 of the American Convention, but was limited to disputing the admissibility of the case.

41. During the Commission's 97th Regular Session, the Peruvian State requested a hearing before the Commission, which was held on October 9, 1997, during which it requested the Commission to declare the case inadmissible for failure to exhaust domestic remedies.

IV. ADMISSIBILITY

Presentation within the prescribed period of time

42. In its Note of March 5, 1996, the Peruvian State took the position, *inter alia*:

That the sixth-month period of time established in Article 46 of the Convention for declaring the admissibility has long since passed, particularly given the Honorable Commission has made no express mention of the matter.

43. The preliminary exception posed by the State is baseless, since Article 46 of the Convention points out that it is the petition or communication that must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

44. It is clear that the deadline referred to in Article 46 paragraph b. does not apply to the Commission, but to the petitioner. It is the petitioner who has to lodge his petition within six

months of the alleged violation. Nowhere does this article state that the Commission must rule expressly on admissibility within six months.

45. Martín Javier Roca Casas disappeared on October 5, 1993 and the communication containing the denunciation of his disappearance was presented to the Commission on January 18, 1994, i.e. three months after it occurred. Consequently, the petition was lodged within the period of time contemplated in Articles 46.b. of the Convention and 38.1 of the regulations of the Commission.

Competence

46. In accordance with Article 44 of the American Convention, to which Peru is a State Party, the Commission is competent to consider this case because it deals with claims alleging violation of rights guaranteed in articles 4, 5, 7, 8, and 25, in respect of the right to life, humane treatment, a fair trial, and judicial protection, and in Articles 1.1, 2, and 43 on the obligation of States to respect and ensure the effective application of the Convention, to adopt domestic legal measures to give effect to the rights and freedoms established in the Convention, and to report back on that to the Inter-American Commission on Human Rights.

Formal requirements

47. The petition fulfills the formal requirements for admissibility established in Article 46.1 of the Convention and Article 32 of the Regulations of the Commission.

Inexistence of other proceedings

48. In its communication dated March 5, 1996, the Peruvian State requested that the case be declared inadmissible since it was under review by another international instance, in this case the Working Group on Forced or Involuntary Disappearances of the United Nations Commission on Human Rights. The Commission rejected, on August 2, 1994 (*supra*, para. 12) the Peruvian State's request, informing it that the Commission has consistently held that the prohibition on submitting the same case to other international organizations only applies in the case of entities of a similar nature with similar powers of settlement to those of the Commission. [FN1]

[FN1] Reports No. 30/88, No. 33/99 on Cases Nos. 9.748 and 9.786. IACHR, ANNUAL REPORT 1988-1989. OEA/Ser.P. AG/DOC.2518/89 of November 17, 1989.

49. The Commission informed the Peruvian State that, in its view, the nature and powers of decision of the United Nations Working Group referred to, differ from those assigned to the IACHR under the Convention. For that reason, the Commission concluded that this case was not pending in another international proceeding for settlement that prevented it from admitting and examining the petition. Consequently, this case cannot be declared inadmissible since it does not duplicate a petition already examined and settled by the Commission.

Exhaustion of remedies under domestic law

50. In its note dated March 5, 1996, the Peruvian State alleged that remedies under domestic law had not been exhausted. To substantiate this claim it argued that:

The messages sent by the Government of Peru in reply to requests from the Executive Secretariat were designed to provide detailed information on the status of the criminal proceedings brought before the Authorities and Courts of Peru, and should not therefore be interpreted as exonerating procedures envisaged in the American Convention on Human Rights.

Furthermore, the petitioner's observations contained in the Honorable Executive Secretary's Notes dated September 27, 1995 and February 22, 1996 do not really follow the procedures for observations contemplated in the American Convention on Human Rights, since, formally, the present case has not begun pursuant to Article 46 et seq. of the Convention.

The exhaustion of domestic remedies argument put forward at the start, and throughout the proceedings pursued by the Executive Secretariat remains valid, because a new event (the issuing of the Supreme Resolution of June 15, 1995) cannot validate something that was irregular from the start and thus at variance with generally established norms...

51. Hence the first point to settle is whether the Peruvian State invoked non-exhaustion of domestic remedies at the appropriate time in the proceedings.

52. Regarding exhaustion of domestic remedies, the Inter-American Court of Rights has ruled that:

According to generally recognized principles of international law, it turns out, first, to be a rule which may be explicitly or tacitly waived by the State entitled to invoke it. Second, the exception based on non-exhaustion of domestic remedies, in order to be timely, should be lodged in the early stages of proceedings, otherwise it may be assumed that the State involved waives its right to the exception (Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987, para. 90).

53. The Inter-American Court has also ruled that tacit waiving of the application of this requirement is to be presumed when the State does not challenge the admissibility of the petition on these grounds "at an early stage of the proceedings" (Fairén Garbí and Solís Corrales case, Preliminary Objections. Judgment of June 26, 1987, para. 87). This doctrine was later confirmed when the Court ruled that the non-exhaustion of domestic remedies "to be timely, must be made at an early stage of the proceedings by the State entitled to make it, (Neira Alegría and Others Case. Preliminary Objections. Judgment of December 11, 1991, para. 30.)

54. For the Commission it is clear from the file of the case that neither in its initial document nor in subsequent statements did the State invoke non-exhaustion of domestic remedies. Indeed, when the State replied regarding this case in its note dated July 1, 1994, it restricted itself to transmitting the information supplied by the Prosecutor of the Ombudsman's Office regarding the criminal charges against two members of the Navy for the forced disappearance of Martín

Roca. There is no way that this can be taken to be an invocation of non-exhaustion of domestic remedies.

55. Nor did the State invoke non-exhaustion of domestic remedies in a subsequent document, dated July 5, 1994. In that document it requested that the case be filed because it was pending before the United Nations Working Group on Forced or Involuntary Disappearances.

56. It may thus be concluded that in the early stages of the proceedings, the Peruvian State did not argue that this complaint was inadmissible because domestic remedies had not been exhausted. Much less did it point out the effective means at the petitioner's disposal to remedy the violation of his rights. What is more, the Government answered the requests for information made by the Commission, including those regarding domestic remedies.

57. The jurisprudence of the Inter-American Court of Human Rights clearly indicates that the contesting of a petition on the grounds that domestic remedies have not been exhausted has to be explicit. "International practice indicates that when a party in a case adopts a position that is either beneficial to it or detrimental to the other party, the principle of estoppel prevents it from subsequently assuming the contrary position. Here the rule of non concedit venire contra factum proprium applies. (Neira Alegría and Others Case. Preliminary Objections. Judgment of December 11, 1991, para. 29).

58. Not having received any indication from the State regarding prior exhaustion of domestic remedies at the time it responded to the complaint, the Commission considers that Peru tacitly waived invoking the exhaustion of domestic remedies rule. From this it is evident that Peru's argument is extemporaneous, coming as it does two years after it replied to the denunciation.

59. The Peruvian State has taken the position that the communications sent by the Government, and the petitioner's observations, do not really constitute the observations procedure contemplated in the Convention, since this case has not yet formally begun.

60. This is an erroneous observation by the State and it contradicts the practice on which international protection of human rights in the inter-american system is based and which derives from the need to safeguard the victim from the arbitrary exercise of political power. "Thus" --as the Inter-American Court of Human Rights has declared--, "whenever a petitioner alleges that such remedies do not exist or are illusory, the granting of a such protection may be not only justified, but urgent. In those cases, not only is Article 37.3 of the Regulations of the Commission on the burden of proof applicable, but the timing of the decision on domestic remedies must also fit the purposes of the international protection system. The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective." (Godínez Cruz Case. Preliminary Objections. Op.cit., para. 95.).

61. This is a case of forced disappearance of persons ordered by the authorities. The Inter-American Court of Human Rights has pointed out that:

Wherever this practice has existed, it has been made possible precisely by the lack of domestic remedies or their lack of effectiveness in protecting the essential rights of those persecuted by the authorities. (Godínez Cruz Case. Preliminary Exceptions. Id. para, 96.)

62. In any event, the Commission must remind the Peruvian State that given the links between the domestic remedies problem and violation of human rights per se, it is evident that the question of their prior exhaustion must be considered together with the merits. In accordance with the jurisprudence of the Inter-American Court of Human Rights, given the safeguarding nature of the system for international protection of human rights, in such cases it is not necessary to issue an admissibility decision prior to reviewing the substantial issue or in order to continue processing a case.

63. For these reasons, when the Commission begins processing a case of forced disappearance it acts in accordance with its own Regulations and the Convention. Hence it follows that this case was formally initiated and processed in accordance with the Convention, and both the Government's reply and the petitioner's observations are formal procedures carried out according to the norms governing them.

64. Invocation of the non-exhaustion rule further requires the State to identify the domestic remedies at the victim's disposal. It is clear in this case that there are no judicial resources available with which the petitioner could remedy the violation of which the State is accused, particularly since criminal proceedings on account of the forced disappearance have been definitively shelved and since, in addition, the Peruvian State has declared a general amnesty preventing investigation of the case. Thus, it is evident, that in the domestic sphere there are no remedies for compensating the violation of the victim's rights.

Friendly settlement

65. The friendly settlement procedure contemplated in Article 48.1.f of the Convention and in Article 45 of the Regulations of the Commission was proposed to the parties by the Commission, but no understanding was reached. Having failed to reach a friendly settlement, the Commission complied with the provisions of Article 50 of the Convention, and issued its report stating its conclusions and recommendations regarding the subject submitted for its consideration.

V. THE MERITS

The facts proven

66. The petitioner denounced before the Commission the disappearance of Martín Javier Roca Casas on October 5, 1993, when he was on his way to classes at the Economics Faculty in the University of Callao. The petitioner indicated that those possibly responsible were Peruvian Naval Intelligence officers.

67. The occurrences denounced by the petitioner were not contested by the State. On the contrary, the State's reply confirms the petitioner's version, and indicates that after various

inquiries carried out by the Prosecutor in charge of the Prosecutor's division of the Ombudsman's Office, criminal charges had been brought against Navy Captain Elías Manuel Ponce Feijoo and 3rd seaman Percy Tarazona Esteves, on account of the forced disappearance of Martín Roca.

68. In the Commission's view, there is no doubt that the intelligence services of the Armed Forces had been keeping an eye on student Martín Roca for several months prior to his disappearance, suspecting that he belonged to or collaborated with the Shining Path.

69. The previous information is confirmed in Report No. 079-94-JUS/CNDH-D by the Ministry of Justice, attached to the Peruvian State's Note dated November 8, 1994. The Report states, inter alia:

In official note No. 3126-SMGD-M, of 24FEB94, the Brigadier General and Secretary General of MINDEF (Ministry of Defense), informs Ambassador Gilbert Chauny, Director of Special Affairs at the Ministry of Foreign Affairs, regarding the participation of Navy personnel in the case referred to. According to that note, Naval Intelligence had ordered an operation and the filming of a march and disturbances that were going to be carried out by students at the Technical University of Callao. Third seaman TARAZONA was deployed among them, and attacked by the students when he was carrying out his mission. In an act in which the above mentioned victim took part directly, they managed to grab his camera. Subsequently, the Naval Intelligence Operator went to the student's home to ask him to return the cassette and the camera. It was agreed that they would be returned in the afternoon, at which point seaman (OM3) TARAZONA was detained by national police officer (SO2) ROCA, a relative of the student, and taken to Carmen de Lengua police station, where a Naval Intelligence officer turned up and explained to the police and to the student's relatives that he had taken part in activities bordering on the subversive, and demanded once again that the video cassette and camera be returned (emphasis added).

70. From statements made to the Third Criminal Court of Callao it transpires that in the night of August 17, 1993, Navy officers Percy Tarazona Estevez, Ricardo Moreno Bautista, and Oscar Alarcón Montes went to Martín Roca Casas' home. They then returned with more personnel and proceeded to carry out a thorough search in order to find the video. The search order had been given by Commander Elías Ponce Feijoo, who had instructed his subordinates "to recover the tape" (declarations transcribed in the Opinion of the First Criminal Chamber of the Supreme Court of Callao, dated June 15, 1995).

71. On August 18, 1993, Officer Tarazona returned to the house in search of the video. On that occasion, they proceeded to detain him and to take him to the Police Station at Carmen de Lengua. The head of that police station confirmed, in official Note No. 1254-DOP.PNP.CA.DCLR.JA, that:

. . . on August 18, 1993, three persons dressed in civilian clothes came to the station and two of them asked the third person to identify himself since he had been lurking near their home. He identified himself as a member of the Navy, and contacted his unit. Subsequently a Navy Commander appeared and ratified the identity of the member of the Navy...

72. Following these incidents, Martín Roca's house was subjected to constant vigilance by suspicious characters assumed to be members of the Security Forces. The pressure put on Martín Roca Casas by these security forces motivated him to seek legal advice, through lawyer Alberto Lau Salvador Cavero, who works with the police's National Anti-Terrorist Unit (DINCOTE). This lawyer suggested that he should collaborate with DINCOTE, by informing it regarding which Callao University students might be members or collaborators of Shining Path. Martín Roca then talked to several DINCOTE officers and gave them information.

73. According to the DINCOTE officers who interviewed Roca, he only appeared once and the information he provided was vague "and was not used since it bore no relation to any intelligence operation then underway." (Declarations transcribed in the Opinion of the First Criminal Chamber of the Supreme Court of Callao, dated June 15, 1995).

74. Martín Roca's father stated that on the day his son disappeared, October 5, 1993, a joint (anti-terrorist) search operation was staged in the vicinity of the house and lasted until dawn the next day. This information was confirmed by the Secretary General of the Ministry of Defense. Although the Ministry of Defense does not admit that Roca was arrested, it does admit that four people were arrested in the operation, although none of them matched the description of the disappeared student.

75. During the judicial proceedings, the military officers tried to prevent the truth from emerging and there were acts of intimidation against the relatives of the victim, their lawyers, and witnesses.

76. As regards the military's efforts to obstruct the judicial proceedings, in the trial against two Peruvian Navy officers, it transpires that:

a. Navy High Command ordered that "two lawyers be contracted for the defense" of Commander (Capitán de Fragata) Manuel Ponce Feijoo and Third Seaman Tarazona. Thus, the Peruvian Navy opted not for a thorough and impartial inquiry into what happened but rather to help its officers by directly assuming their defense. This corroborates a desire to protect its officers from being punished by the courts and to cover up what happened.

b. From the file it emerges that the Peruvian Navy failed to provide vital data for the investigation, such as the names of the members of the patrol that carried out an operation on the day Roca disappeared.

77. The attacks against the victims of the relatives, witnesses and lawyers include:

a. Constant surveillance of Javier Roca Casas' relatives after they denounced his disappearance.

b. On January 10, 1994, the day after a television interview with Javier Roca Obregón, the victim's father, was broadcast, he found a note saying: "Your son died because he stained the honor of the Navy. Shut your mouth or else we'll shut it for you."

c. Two students from the Economics Faculty at the University of Callao who played an active part looking for Martín Roca were subsequently disappeared. Kenneth Anzualdo Castro

was kidnapped --according to eye-witnesses-- by policemen who took him off a bus he was travelling in on December 16, 1993. On January 17, 1995, José Clemente Cigueñas Linares was kidnapped by four armed men. Nothing has been heard of either student since.

78. In the habeas corpus writ lodged by Keneth Anzualdo Castro's father, which was attached to the Peruvian State's Note of May 30, 1995, it says:

"The reason why we point to Navy Intelligence is because when Martín Roca Casas, another student at the Economics Faculty of the National University of Callao, was disappeared ...my son constantly accompanied Roca's relatives in the denunciations they filed."

79. The acts of harassment include initiating criminal proceedings against the lawyer advising the Roca family, Alberto Salvador Lau Cavero, for perjury against the State after he denounced the disappearance of Martín Roca.

Violation of the rights of the victim

80. The Commission considers that forced disappearance has occurred when person is arrested by State agents or with the acquiescence of same, with or without orders from a competent authority, and this arrest is then denied and no information is made available as to the whereabouts of the detainee and the exercise of legal remedies and pertinent judicial guarantees are impeded.

81. In addition, State functionaries and Government officials failed to collaborate in investigating the Navy and Police personnel who took part in a search operation the day of Roca's disappearance. The inertia shown by investigative organs and judicial bodies demonstrates that we are dealing with events that are supposed to go unpunished.

82. The practice of forced or involuntary disappearance has been classified by the international community as a crime against humanity, [FN2] which violates fundamental rights of human beings, such as personal liberty, humane treatment, the right to a fair trial and due process, and even the right to life.

[FN2] Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

83. Regarding the practice of forced disappearance, the Commission has maintained that:

These cruel and inhuman practices constitute not only an arbitrary deprivation of liberty, but also an extremely serious hazard to the personal integrity, security and very life of the person concerned. They moreover place the victim in a state of absolute defenselessness with serious violation of his rights to a fair trial, protection against arbitrary arrest and due process. [FN3]

Therefore, the Commission concludes that the Peruvian State has violated the rights of the victim by failing to investigate the events surrounding his disappearance and by failing to conduct judicial investigations into the responsibility of those suspected of having caused his disappearance.

[FN3] IACHR, DIEZ AÑOS DE ACTIVIDADES, 1971-1981, OAS 1982, p. 317.

Right to life (Article 4 of the Convention)

84. The Inter-American Court of Human Rights has pointed out that the forced disappearance of persons "often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention." (Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 157).

85. In the case of Martín Roca Casas, the testimony and evidence submitted demonstrate that he was being watched by the security forces and arrested by state agents. In addition, following his arrest-disappearance his whereabouts have been unknown for over four years.

86. All this data leads to the presumption that Martín Javier Roca Casas has died, bearing in mind that over four years have elapsed since his arrest and disappearance and that those responsible are agents of the State. (See Velásquez Rodríguez Case. Id. para. 147).

87. Jurisprudence of the Court states: "The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life(...). It also demands of the States that they take all appropriate measures to protect and preserve it (...).International protection of human rights, as it relates to article 4.1 of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions." (Gangaram Panday Case, Judgment of January 21, 1994, dissident opinions of Judges Picado-Sotela-Aranguren and Cançado Trindade, paras. 3, 4).

88. Therefore, the Commission considers that the Peruvian State has violated the right to life, a fundamental right protected under Article 4 of the Convention which states that "Every person has the right to have his life respected (...)" and "No one shall be arbitrarily deprived of his life."

Right to humane treatment (Article 5 of the Convention)

89. Given that forced disappearance involves violation of multiple rights, implicitly violated is the right to humane treatment of Martín Javier Roca Casas. In this regard, the Court has ruled: "... prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and violation of the right of every detainee to respect for his inherent dignity as a human being. Such treatment,

therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person" (Velásquez Rodríguez Case. Op.cit., para. 156).

90. There exists, moreover, evidence that leads one to the well-founded presumption that the detainee was tortured. The conditions under which the victim was held, in secrecy, isolation, and deprived of communication; the defenselessness to which the victim was reduced, by preventing or denying him any form of protection or safeguards of rights, lead one to the well-founded presumption that torture was applied to the victim by the armed forces, for the purpose of extracting information about subversive groups or meetings. Above all, the facts of the case show that efforts had been made to turn Martín Roca Casas into an informant for DINCOTE, and that his collaboration had been deemed unsatisfactory in the opinion of that institution. For these reasons, the Commission considers proven the violation of the right to humane treatment, set forth in Article 5 of the Convention.

Right to personal liberty. (Article 7 of the Convention)

91. A detention is arbitrary and illegal when the detention is carried out for reasons other than those that are set forth in the law, when it is carried out without observing the standards required by law and when it is carried out deviating from the purposes of detention, i.e. when a detention is carried out for reasons other than those contemplated and required by law. The Commission has also pointed out that detention for improper purposes is in itself a punishment or sentence, a kind of sentence without trial or extralegal sentence violating the democratic principles of the independence and separation of powers as well as the right to a trial.

92. In this case, student Martín Javier Roca Casas was detained illegally and arbitrarily by members of a Peruvian Navy patrol, acting jointly with the National Police, on October 5, 1993. It also transpires from the file of the case that the military authorities deny having made the arrest, despite having followed him and kept him under surveillance for several months.

93. One should bear in mind the context at the time of Martín Roca's disappearance. In June 1993, the security forces proceeded to capture Callao University students presumed to belong to Shining Path, which led DINCOTE and Naval Intelligence to start investigating student leaders in the Economics Faculty at the University of Callao. Among the students captured in August 1993 were José Antonio Melgar Arias, Martín Palomino Sayritupac, and Daniel Guillermo Yanac Padilla, who were charged by DINCOTE with treason and terrorism. From then on, students were watched and followed, a process that culminated with the detention of Martín Roca Casas on October 5, 1993.

94. Article 7.5 of the American Convention sets forth that "[A]ny person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released (...)." The Commission has also stated that any person deprived of his liberty must be kept in officially recognized detention centers and presented, without delay, pursuant to domestic law, before the competent judicial authority. In case the State authority does not carry out the legal obligation, the State is obliged to guarantee to the detainee the possibility of presenting an effective judicial recourse permitting judicial review of the legality of the detention.

95. The right to be brought before a competent judge is a fundamental guarantee of the rights of every detainee. As the Inter- American Court of Human Rights has stated, the judicial supervision over detention, by means of 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 a secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment." (Habeas corpus in emergency situations (Articles 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, para. 35).

96. The arrest and illegal detention which took place in this case, by keeping the detainee in an irregular place, impeded the access of the detainee to the means and legal recourses necessary in order to exercise his rights himself. The Commission concludes that the Peruvian State is responsible for having violated the right to personal liberty and security, by arbitrarily imprisoning Martín Roca. It also violated his right to recourse to a competent judge or court to rule on the lawfulness of his arrest, as established in article 7 of the American Convention on Human Rights.

Right to Judicial Protection (Article 25 of the Convention)

97. Judging by the information submitted by the parties, it has been ascertained that the victim and his relatives were denied the right to simple and prompt recourse for protection against acts that violate their fundamental rights recognized by the American Convention on Human Rights.

98. The Inter-American Court of Human Rights has stated that the principles of international law "refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46.2" (Velásquez Rodríguez Case. Op.cit., para. 63). It has also explained that the lack of an effective and non-formal trial implies not just an exception to the exhaustion of domestic remedies but also a violation of Articles 8 and 25 of the Convention. (Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987, para. 91).

99. Criminal proceedings under the domestic laws of the Peruvian State have consisted of nothing more than formal and irrelevant paperwork and thorough and impartial investigations were never carried out, so that important evidence was never gathered.

100. In the Commission's view, the non-existence of effective domestic remedies corroborates the existence of an administrative practice of forced disappearances. There exists sufficient evidence to show that forced disappearances have occurred consistently in Peru since 1980. The United Nations Working Group on Forced and Involuntary Disappearances has reported that by December 1993 it had listed a total of 2,847 cases of disappeared persons, of which 2,240 [FN4] had still to be clarified. From this it can be concluded that in Peru there have been a substantial number of cases of forced disappearance and that they reflect a pattern of behavior attributable to the Police and the Peruvian Army. The pattern also shows that most of the cases have occurred in

zones declared to be in a state of emergency and have been perpetrated against students and peasants.

[FN4] Report of the Working Group on Enforced or Involuntary Disappearances. E/CN.4/1994/26. 22 December 1993. Paragraph 393, p.95.

101. It has also been fully proven that senior Peruvian governmental authorities have failed to collaborate in throwing light on what happened and that witnesses and the victims' lawyers were harassed. This example of lack of collaboration by the judicial authorities is not an isolated one. It occurs every time that members of the Armed Forces are investigated. As the Working Group on Forced or Involuntary Disappearances has pointed out:

The lack of cooperation by the security forces in investigations by civilian attorneys and the absence of an independent judiciary are major impediments to legal due process. The vast majority of denunciations of human rights violations lodged with the Public Ministry over the past ten years have frequently not been adequately investigated for lack of cooperation by the police or army, the lack of official support and resources, or else because such cases were handed over to military courts. It is reported that provincial attorneys attempting to investigate such denunciations in emergency zones have been subjected to threats, hampered in their work or denied information by the armed forces. Witnesses and family members also report having been threatened, harassed, and, in some cases, even murdered. Under these circumstances, the Peruvian judiciary does not provide or is incapable of providing even minimal guarantees against the constant violation of human rights. [FN5]

[FN5] Ibid. para. 372.

102. In view of the above, there is no doubt that the decision taken in the criminal proceedings against officers Elías Ponce Feijoo and Percy Tarazona Estevez for the forced disappearance of Martín Javier Roca Casas to shelve the case definitively was the product of a deficient investigation by the competent Peruvian State authorities and of the acts of harassment carried out against relatives of the victim.

103. The jurisprudence of the Inter-American Court of Human Rights has established among the obligations of the State, in connection with the obligation to investigate:

The State has a legal duty to take reasonable steps carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. (Velásquez Rodríguez Case. Op.cit., para. 174).

104. The Government may not elude, under any pretext whatsoever, its duty to investigate a case involving violation of fundamental human rights. The Court says as much when it states:

"An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government." (Velásquez Rodríguez Case. Op.cit., para. 177).

105. These aspects of the criminal investigation proceedings under domestic law amount to a violation by the Peruvian State of Article 25 of the Convention.

On the obligation of States to guarantee and respect rights

106. In the case at hand, it has been demonstrated that the Peruvian State has not complied with the provision contained in Article 1.1 regarding the undertaking of States to "respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction."

107. The first obligation of States, in light of Article 1.1, is to respect the rights and freedoms of all persons subject to their jurisdiction. Referring to this obligation, the Court stated that: "... under international law a State is responsible for the acts of its agents (...) and for their omissions, even when those agents act outside the sphere of their authority or violate internal law." It held furthermore 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." (Velásquez Rodríguez Case. Op.cit., paras. 170 and 172).

108. The Commission concludes that the disappearance of Martín Javier Roca Casas and the subsequent refusal to administer justice, are public acts perpetrated by State agents, which means that the Peruvian State violated the rights of the victim contemplated in Article 1.1. in relation to violations of Articles 4, 5, 7, and 25 of the Convention.

109. The second obligation envisaged in Article 1.1 is to ensure free and full exercise of the rights and freedoms recognized in the Convention. Here Court jurisprudence establishes that:

This obligation implies the duty of 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 in the Convention. (Velásquez Rodríguez Case. Op.cit., para. 166).

110. In the event of a "forced disappearance", the State is duty-bound to establish the fate and current circumstances of the victim, punish those responsible, and compensate the victim's relatives.

111. In the case we are dealing with, the Peruvian State has proceeded to decree two general amnesty laws. The first, Law No. 26479, grants "general amnesty to military, police or civilian personnel (...) denounced, investigated, accused, tried or condemned for military common offenses before civilian or military courts, (...) for all occurrences derived from, or originating in, or as a consequence of efforts to combat terrorism, and that may have been committed individually or in a group between May 1980 and the promulgation of this law, that is June 15,

1995 (article 1 of Law No. 26479). The second law extends the scope of application by referring to "all occurrences derived from, or originating in, or as a consequence of efforts to combat terrorism, committed individually or in a group between May 1980 and June 14, 1995, regardless of whether the military, police, or civilian personnel involved is currently denounced, investigated, subject to criminal proceedings, or condemned. All judicial cases being processed or executed are shelved definitively..."(Article 3 of Law No. 26492).

112. The international community, furthermore, has recognized that as a crime against humanity forced disappearance cannot be amnestied. This was established in Article 18, paragraph 1, of the United Nations Declaration on the Protection of All Persons from Forced Disappearance: "... the authors or presumed authors of forced disappearances shall not benefit from any special amnesty law or similar measures designed to exonerate them from any kind of criminal proceedings or punishment." [FN6]

[FN6] Resolution 47/133 adopted without a vote by the General Assembly of the United Nations on December 18, 1992.

113. The jurisprudence of the Commission has clearly established that by sanctioning and promulgating amnesty laws and decrees, a State rules out "every juridical possibility of continuing criminal cases designed to prove the crimes denounced; identify those responsible, their accomplices and accessories; and impose the corresponding criminal sanctions." [FN7]Petitioners, relatives, or victims of violations of human rights are thereby thwarted in exercising their right to an impartial and thorough judicial inquiry into what happened and the fate and whereabouts of the victim.

[FN7] IACHR, Report No. 28/92, Cases Nos. 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311 (Argentina) of October 8, 1992, para. 32. INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS, (1992) p. 755.

114. One of the effects of amnesty decrees "is to undercut the right of the victim to bring criminal charges against those responsible for violating human rights." Consequently, amnesty laws directly prevent exercise of the right to prompt and effective recourse to judicial guarantees and they violate the obligation of the State to guarantee free and full exercise of the rights recognized in the Convention. [FN8]

[FN8] IACHR, Reports No. 28/92 (Argentina) (supra nota 7), 29/92, Cases Nos. 10.029, 10.036, 10.145, 10.305, 10372, 10.373, 10.374 and 10.375 (Uruguay) y 26/92, Case 10.287 (El Salvador) in INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS, (1992). Vol. 1, pp. 740 et seq., 885 et seq., y 827 et seq..

115. Furthermore, Amnesty Law No. 26479 declares that the acts or offenses covered by this amnesty, as well as the definitive stays and acquittals, are not subject to investigation, judicial inquiry, or indictment and all judicial cases being processed or executed are to be definitively filed; and the Law of Interpretation extends the scope of the law to prevent investigation even of acts that have not been denounced. This is totally incompatible with the State's obligation to make reparations for the consequences of the act or situation constituting a transgression of its international human rights commitments.

116. It is a generally accepted principle that a State's failure to comply with a commitment implies an obligation to make reparation (Chorzow Factory Compensations. PCIJ Ser. A, No. 17, p. 29). Responsibility is a necessary corollary of a right. All international rights involve state responsibility. If the obligation in question is not satisfied, responsibility implies an obligation to make adequate compensation. Thus reparation is an indispensable complement in cases of failure to apply a convention or international commitment.

117. In the Inter-American human rights system, the applicable provision regarding reparation for human rights violations is Article 63.1 of the American Convention, which reads 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.

118. As the Inter-American Court of Human Rights has stated: "... this article codifies a rule of customary law which, moreover, is one of the fundamental principles of current international law, as has been recognized by this Court." (Aloeboetoe et al. Case. Reparations (Article 63(1) of the American Convention on Human Rights.) Judgment of September 10, 1993, Serie C No. 15, para. 43).

119. The obligations arising from the duty to make reparations for the violation of human rights, as the Inter-American Court on Human Rights has stated: "... shall not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law." (Aloeboetoe et al. Case. Reparations. (Article 63(1) of the American Convention on Human Rights), para. 44.

120. In view of the above, the Commission finds that the Peruvian State has violated Martín Javier Roca Casas' right to effective judicial recourse (Article 25 of the Convention), as well as its general commitment to respect and ensure human rights, contained in Article 1.1 of the Convention.

121. On the basis of the considerations set forth in this report, the Commission confirms the following conclusions and recommendations:

VI. CONCLUSIONS

i. That Peruvian Navy personnel proceeded to detain Martín Javier Rocas Casas in clandestine fashion, which means that the Peruvian State is responsible for violation of the right to life (Article 4), the right to humane treatment (Article 5), personal liberty (Article 7) and to due process and effective judicial protection (Article 25), as well as the general obligation to respect and ensure the exercise of these rights set forth in article 1.1 of the American Convention on Human Rights.

VII. RECOMMENDATIONS

i. That the Peruvian State, by means of the competent authorities, reopen the case in order to carry out a serious, impartial and effective investigation of the facts in order to establish the whereabouts of Martín Javier Roca Casas, and to identify those responsible for his forced disappearance, and through appropriate criminal proceedings, to punish the persons responsible for these acts.

ii. That the Peruvian State render without force any domestic measure, whether legislative or of another nature, that impedes the investigation, trial, and punishment of those responsible for the detention and disappearance of Martín Javier Roca Casas. And that, as a consequence, the Peruvian State repeal, annul or definitively render without force the Amnesty Laws Nos. 26479 and 26492.

iii. That the Peruvian State proceed to pay the corresponding compensation to the relatives of the victims for the violation of Martín Roca Casas' human rights; compensation that should include payment for the suffering caused by not knowing the victim's whereabouts.

VII. PUBLICATION

122. On October 16, 1997, the Commission adopted Report No. 39/97, its article 51 report on the case and transmitted it to the State of Peru on November 4, 1997. The Commission requested Peru to adopt reparatory measures in this case within a period of two months from the date of transmittal, in order for it to decide on the publication of the report.

123. The Peruvian State replied to the Commission by Note 7-5-M-460 dated December 29, 1997 in which the Government stated that it reaffirmed its conclusions set forth in Note No. 7-5-M/329 of September 12, 1997 and which it reiterated during the Hearing held on October 9, 1997. The Commission considered this case again during its 98th regular session and on February 19, 1998 it took the decision to publish this Report.

124. In virtue of the fact that the Peruvian State responded expressing its decision to not comply with the recommendations issued by the Commission for the reasons expressed therein, and in conformity with articles 51.3 of the American Convention and 48 of its Regulations, the Commission decides to reiterate the conclusion and recommendations in chapters V and VI supra, to make public the present report and to include it in its Annual Report.