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Title/Style of Cause: Victor Saldano v. Argentina  
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Decided by: Chairman: Professor Robert K. Goldman;  
First Vice-Chairman: Dr. Helio Bicudo;  
Second-Vice Chairman: Dean Claudio Grossman;  
Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.  
Dated: 11 March 1999  
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## I. SUMMARY

1. On June 23, 1998, Lidia Guerrero (hereinafter "the petitioner") filed a petition with the Inter-American Commission on Human Rights (hereinafter "the IACHR" or "the Commission") against the Argentine Republic (hereinafter the "Argentine State" or "Argentina") because of alleged violation of the American Declaration on the Rights and Duties of Man (hereinafter "the Declaration" or the "American Declaration") and the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") to the detriment of Victor Saldaño, son of the petitioner (hereinafter "the alleged victim").

2. The alleged victim, an Argentine citizen, was sentenced to death by the courts of the United States of America (hereinafter "the United States") and remains detained in the prison at Huntsville, Texas. The petitioner contends that during the trial the rights enshrined in Articles I, II, XVIII, XXIV, and XXVI of the American Declaration were violated and she alleges that the failure of the Argentine State to present an interstate complaint under Articles 44 and 45 of the American Convention against the United States renders it responsible for violation of said articles of the Declaration, as well as rights similarly protected in Articles 4, 8, 25, and 1(1) of the American Convention.

3. The Commission concluded that, according to the provisions of Article 47(c) of the American Convention, it lacks jurisdiction to process the petition submitted against the Argentine State and thus rejected the petition in limine litis. First, it found that the claim presented refers to an individual who is not subject to the jurisdiction of the Argentine State under the terms of Article 1(1) of the American Convention. Second, the Commission concluded that, under the circumstances presented, the Argentine State had no obligation whatsoever under the Convention to lodge an interstate complaint against the United States. Further, even had it

presented such a complaint, the Commission would not be competent to admit it in accordance with Article 45 of the American Convention.

## II. PROCESSING BY THE COMMISSION

4. In this instance, the Commission has not begun to process an individual case nor has it forwarded the petition to the accused State as prescribed in its Regulations and in accordance with established practice for processing individual cases. The Commission has deemed it necessary to determine first whether the petition satisfies the requirements established in Article 47 of the American Convention.

## III. THE COMPLAINT LODGED BY THE PETITIONER

5. The petitioner states that she went to the Ministry of Foreign Relations of the Argentine Republic on March 20, 1998, to request that the State denounce the United States before the Inter-American Commission for violation of the norms established in Articles I, II, XVIII, XXIV, and XXVI of the American Declaration in connection with the criminal proceeding conducted against Victor Saldaño under foreign jurisdiction.

6. The petitioner based her request on the allegation that the judicial protection supposedly denied Mr. Saldaño in a foreign country transgressed the supranational legality of human rights to the detriment of an Argentine citizen. She maintained that this was an instance to which Article 1(1) of the Convention applies. That Article obliges States Parties, in this case the Argentine State, to guarantee the basic human rights of its citizens. She added that the obligation to present a communication of this nature was particularly important in a case involving application of the death penalty.

7. The petitioner requested that the State lodge an interstate communication in accordance with the regulations governing the processing of cases before the Commission or that, at a minimum, it provide the information needed for this body to proceed to open a case *motu proprio*. On April 20, 1998, she submitted a request to expedite her claim. The petition indicates that the State did not respond to this request even though the period established by law for deciding urgent matters had expired.

8. The petitioner alleges that the submittal of this request and the lapsing of the period established by law without the State's having ruled on the issue posed satisfies the requirement for admissibility established in Article 46(1)(a) of the Convention relative to exhausting remedies under domestic law.

9. She maintains, alternatively, that her petition falls within the exception established in Article 46(2)(a) of the Convention due to the fact that domestic legislation does not contemplate mechanisms to guarantee the right to life of an Argentine citizen condemned to death in a foreign country. She also alludes to the absence of a legal remedy or, as she chooses to call it, a "specific legal due process" governing the presentation of interstate complaints against other member States of the system when the violation does not originate with the Argentine State but abroad.

10. With regard to the substantive allegations, the petitioner maintains that the failure of the Argentine State to denounce before the Commission the alleged violations of the American Declaration by the United States under the terms of Articles 44 and 45 constitutes a violation of its obligation to guarantee the rights protected under the Convention as established in Article 1(1). She considers that in this case the principle *pro homine* constitutes the mandatory hermeneutic rule and that in doubt Article 45 of the Convention should be applied.

11. She also alleges that the failure to present the above mentioned interstate complaint constitutes a violation of the right to life (Article 4(6)), the right to a fair trial (Article 8), the right to judicial protection (Article 25), and the obligation to respect and guarantee the rights protected under the Convention (Article (1)(1)) as well as the right to life, liberty, and personal security (Article I), equality before the law (Article II), a fair trial (Article XVIII), the right of petition (Article XXIV), and the right to due process of law (Article XXVI) enshrined in the American Declaration.

#### IV. ANALYSIS

12. Before proceeding to open a case regarding the alleged violations of the American Convention by the Argentine State, the Commission must determine whether it has jurisdiction to examine the claim presented by the petitioner. The petitioner's basic argument is that by its failure to bring a complaint before this body against the United States for alleged violations of Victor Saldaño's human rights, Argentina is responsible for violations of the right to life (Article 4(6)), right to a fair trial (Article 8), right to judicial protection (Article 25), and its obligations to respect and ensure those rights (Article(1)(1)) enshrined in the American Convention, as well as the right to life, liberty, and personal security (Article I), the right to equality before the law (Article II), the right to a fair trial (Article XVIII), the right to petition (Article XXIV), and the right to due process of law (Article XXVI) proclaimed in the American Declaration.

13. With respect to these claimed violations of the American Declaration, the Commission notes that once the American Convention entered into force for the Argentine State on September 5, 1984, the Convention and not the Declaration became the source of legal norms for application by the Commission[FN1] insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation.[FN2] In this case, the rights allegedly violated by the Argentine State under the Declaration are similarly guaranteed in the Convention and the alleged omission that gave rise to the claim of the petitioner occurred after Argentina manifested its consent to be bound by the American Convention. Therefore, the Commission will only refer to the alleged violations of the Convention and not of the Declaration.

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[FN1] The Inter-American Court of Human Rights in its Advisory Opinion OC-10/89, (Interpretation of the American Declaration of the Rights and Duties of Man within the framework of article 64 of the American Convention on Human Rights.) July 14, 1989, parr. 46, stated that "For the States Parties to the convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the convention itself.

[FN2] The Commission has established that it can find violations both of the Declaration and the Convention when there is a continuous situation, such as a denial of justice, which begins before and persists after the State concerned has ratified the American Convention. See: Inter-American Commission of Human Rights, Annual Report 1987-1988. Resolution 28/88 case 10.109 (Argentina), September 13, 1988.

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14. The Commission will proceed to examine whether the petition refers to events that might characterize violations of the American Convention. First, an analysis will be made as to whether the situation described could in anyway engage the responsibility of the Argentine State under Article 1 (1) of the Convention. Second, the Commission will address whether the presentation of interstate communications constitutes an enforceable obligation under the Convention, as is alleged.

A. Characterization of the alleged violation of the rights to life and access to justice (Articles 4, 8, and 25) in light of the obligations established in Article 1(1) of the Convention

15. Before proceeding to examine the alleged violations of judicial guarantees and the right to life, the Commission must determine whether the victim is subject to the jurisdiction of the Argentine State as required by Article 1(1) of the Convention. This provision establishes:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

16. Accordingly, States Parties have undertaken to respect and ensure the substantive guarantees enshrined in the Convention in favour of persons "subject to their jurisdiction." As implicitly established by the case law of the Commission and the Inter-American Court, this protection must extend to all human beings present within their national territory, irrespective of their nationality or status[FN3].

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[FN3] Inter-Am.Ct of Human Rights , Advisory Opinion OC-2/82 "Effect of reservations on the entering into effect of the American Convention on Human Rights," paragraph 33.

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17. The Commission does not believe, however, that the term "jurisdiction" in the sense of Article 1(1) is limited to or merely coextensive with national territory. Rather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state's own territory. This position finds support in the decisions of European Court and Commission of Human Rights which have interpreted the scope and meaning of Article 1 of the European Convention for the Protection of Human Rights and Fundamental Duties

(European Convention). Article 1 of that instrument, on which Article 1(1) of the American Convention was largely patterned, stipulates that the high contracting parties "shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention." (emphasis added).

18. The European Commission addressed this issue in the interstate complaint Cyprus lodged against Turkey following Turkey's invasion of that island. In that complaint, Cyprus charged Turkey with violations of the European Convention in that part of Cypriot territory invaded by Turkish armed forces. For its part, Turkey claimed that under Article 1 of the European Convention the Commission's competence is limited to the examination of acts allegedly committed by a state party in its own national territory and that its responsibility could not be engaged under the Convention since it had not extended its jurisdiction to any part of Cyprus. The Commission rejected this argument stating:

In Article 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone "within their jurisdiction" (in the French text: "relevant de leur jurisdiction"). The Commission finds that this term is not, as submitted by the respondent Government, equivalent to or limited to the national territory of the High contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this article, and from the purpose of the Convention as a whole, that the High contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad... (emphasis added).

19. This understanding of jurisdiction--and therefore responsibility for compliance with international obligations--as a notion linked to authority and effective control, and not merely to territorial boundaries, has been confirmed and elaborated on in other cases decided by the European Commission and Court.[FN4]

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[FN4] European Court H.R. *Loizidou v Turkey* A 310 paragraphs 56-64 (1995). European Commission HR X v UK No. 7547/76, 12 DR73 (1977); *Bertrand Russel Peace Foundation Ltd. V UK* No. 7597/76, 14DR 117 at 124 (1978); *Mrs. W v UK* No. 9348/81, 32 DR 190 (1983).

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20. This Commission also recognizes that the nationals of a state party to the American Convention are subject to that state's jurisdiction in certain respects when domiciled abroad or otherwise temporarily outside their country or State and that a state party must accord them, when abroad, the exercise of certain convention based rights. For example, a state party is obliged to accord such persons, based on their nationality, the right to enter the country of which they are citizens (Article 22(5)) and the right not to be arbitrarily deprived of one's nationality or of the right to change it (Article 20(3)). Thus, the capricious refusal of a state party's consular official to grant or renew a passport to one of that state's nationals residing abroad, which prevents him from returning to his country, might well engage that state party's responsibility for violation of the American Convention.

21. The petitioner maintains in her complaint that the alleged violations of the rights of Mr. Saldaño "do not originate with an Argentine authority but with a foreign State." Likewise, she indicates that the criminal proceeding, in the context of which the violations are said to have occurred, "was carried out in the United States." This admission confirms that the relevant events--the arrest, trial, and sentencing of the alleged victim--took place entirely within the territory of another State and were carried out by the local authorities and organs of that foreign State. The Commission wishes to point out that the petitioner has not adduced any proof whatsoever that tends to establish that the Argentine State has in any way exercised its authority or control either over the person of Mr. Saldaño, prior or subsequent to his arrest in the United States, or over the local officials in the United States involved in the criminal proceeding taken against him.

22. The Commission also finds the petitioner's reliance on the bond of nationality between the Argentine State and Mr. Saldaño insufficient to sustain her legal claims. The mere fact that the alleged victim is a national of Argentina cannot, in and of itself, engage that state's responsibility for the allegedly wrongful acts of agents of another state performed wholly within their own national territory. The Commission wishes to emphasize that neither the drafting history of the American Convention, nor the decisions of the Inter-American Court or this body, supports the proposition that state parties to the Convention assumed an obligation to protect their nationals against violations committed abroad by another state. In addition, the petitioner has failed to show any act or omission by Argentine authorities that implicate that state in the alleged violations arising out of Mr. Saldaño's prosecution in the United States so as to subject him to Argentina's jurisdiction within the meaning of Article 1(1) of the American Convention.

23. The Commission concludes that the claims filed refer to the alleged violation of the rights of a person who is not subject to Argentine jurisdiction under the terms of Article 1(1). As has been recognized by the petitioner herself, the alleged violation of Articles 4, 8, and 25 of the American Convention are not the consequence of acts or omissions of the organs or agents of that State.

B. The alleged obligation of the State to present an interstate complaint according to Articles 44 and 45 of the American Convention

24. The petitioner maintains that the Argentine State has an obligation to present a complaint against the United States for violation of the guarantees of due process and judicial protection of its citizen, Victor Saldaño, since these violations supposedly "have infringed the supranational legality of human rights." The petitioner believes that the failure of the Argentine State to do so constitutes a violation of Articles 44 and 45 of the American Convention.

25. In the first place, it is appropriate to clarify that Article 44 of the Convention refers to the right of an individual, group of persons, or a non-governmental entity to file petitions referring to violations of the Convention by States Parties. The Commission deems that this provision is not applicable to this situation since it does not refer to the presentation of interstate communications. Therefore, it will not be taken into consideration by the Commission in its analysis.

26. With regard to the alleged violation of Article 45 of the Convention, which refers to consent (recognition of competence) and the processing of interstate communications, it is appropriate to resolve whether or not the conditions that would entitle the Argentine State to present a communication regarding the alleged violations are satisfied, and whether an obligation to file such a complaint actually exists.

27. Article 45 establishes textually the following conditions for handling interstates communications:

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.
2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.
3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.
4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member States of that Organization.

28. The second paragraph of this provision clearly establishes that the Commission can only admit and examine a communication of this kind in cases in which both States involved--the State filing the complaint and the State against which it is lodged--are parties to the Convention and have expressly declared that they recognize the competence of the Commission to examine this kind of complaint.[FN5]

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[FN5] The Argentine State has made said declaration for an indefinite period of time and with the condition of strict reciprocity in its instrument of ratification of the Convention.

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29. It should be noted that Article 2(g) of the Vienna Convention on The Law of Treaties defines the concept of "State Party" as a State that has given its consent to be bound by a treaty and for which the treaty in question is in force. Even supposing that the Argentine State had lodged such a complaint[FN6] against the United States, the Commission would have to verify that the requirement of Article 45(2) had been met before it could admit that complaint. In this regard, the United States has not ratified or otherwise manifested its consent to be bound by the American Convention and, therefore, it is not a party to this Treaty. Consequently, the United States could neither file an interstate complaint against, nor be the object of such a complaint by, a state party to the Convention. Thus even if Argentina had lodged such a complaint against the United States, the Commission would not be competent to admit it.

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[FN6] The Commission notes that to date the Argentine State has not filed any complaint whatsoever regarding the violations allegedly committed in the jurisdiction of the United States.

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30. The Commission must also point out that even if the United States were a Party to the Convention and had accepted the competence of the Commission to receive interstate communications, the exercise by Argentina of the prerogative to lodge such a complaint, under the circumstances analyzed, does not constitute an obligation required by the Convention. It is simply a question left to the discretion of the States Parties. Indeed, the wording of Article 45(1) refers to acceptance of the competence of the Commission in terms that denote the faculty and not the obligation to formalize such acceptance. The Convention does not establish any positive obligation whatsoever to present communications against other States Parties nor does it stipulate the right of persons protected by the Convention to demand that States Parties exercise said prerogative.

31. The Commission therefore concludes that, under these circumstances, the Argentine State has no obligation under the American Convention to present an interstate complaint against the United States, and had Argentina done so, the Commission would lack competence to admit it.

## V. CONCLUSIONS

32. The Commission concludes that the claim filed refers to the alleged violation of the rights of an individual who is not subject to the jurisdiction of the Argentine State under the terms of Article 1(1). As the petitioner herself has admitted, the alleged violations of Articles 4, 8, and 25 of the American Convention and similar articles in the American Declaration are not the result of acts or omissions by organs or agents of that State.

33. The Commission concludes that under Article 45 no binding obligation exists for States Parties to the Convention to present communications against other States Parties. The Commission points out that, in any case, it lacks competence to admit a communication presented by a State Party against the United States.

34. Article 47(c) of the Convention establishes that the Commission must consider inadmissible any petition filed under Articles 44 or 45 when the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order.

35. The statement of the facts and legal grounds presented by the petitioner in her complaint manifestly demonstrate that the Commission lacks competence to begin processing the same as a case according to the norms of the American Convention. Therefore, the complaint filed by the petitioner on June 23, 1998, must be considered inadmissible in limine litis in accordance with Article 47(c) of the Convention.

Based on the arguments of fact and of law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible.
2. To notify the petitioner of this decision.
3. To publish this decision and include it in the Annual Report for the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights (IACHR), in the city of Washington, D.C. on the 11th day of the month of March 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejia, and Carlos Ayala Corao.