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Title/Style of Cause: Vladimiro Roca Antunez, Rene Gomez Manzano, Marta Beatriz Roque Cabello and Felix Bonne Carcasses v. Cuba
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
Dated: 14 October 2004
Citation: Roca Antúnez v. Cuba, Petition 12.127, Inter-Am. C.H.R., Report No. 56/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: the Cuban Committee for Human Rights and the Working Group for Internal Dissidence
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I. SUMMARY

1. On March 25, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by the Cuban Committee for Human Rights (Comité Cubano Pro Derechos Humanos) and the Working Group for Internal Dissidence (hereinafter “the petitioners”) claiming the international responsibility of Cuba (hereinafter “the State” or “the Cuban State”) for the illegal arrest of Vladimiro Roca Antúnez, Rene Gómez Manzano, Marta Beatriz Roque Cabello, and Félix Bonne Carcassés, (hereinafter “the alleged victims”) in violation of their right to freedom of expression. The petitioners argue that the events that gave rise to the petition are in violation of Articles I, IV, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration” or “the Declaration”).

2. The petitioners claim that the alleged victims were detained by police on July 16, 1997 and were only brought before a judge on March 4, 1999, when the Court for Crimes against State Security, which is part of the People’s Provincial Court of Havana, found them guilty of other acts against state security, involving the crime of sedition. Marta Beatriz Roque Cabello was sentenced to three and a half years imprisonment, René Gómez Manzano and Felix Bonne Carcassés were sentenced to four years, and Vladimiro Roca Antúnez was sentenced to five. The conviction was based on written statements from the alleged victims in which they were supposedly attempting to provoke social disorder in order to destabilize the Cuban State. The petitioners also claim that the alleged victims were maltreated while in prison.

3. The State made no response to requests from the Commission for information.

4. Having studied the arguments from the parties concerning fact and law, as well as the evidence provided, and without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible under the terms of Articles I, IV, XXV, and XXVI of the American Declaration. The Commission also decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The petition was received by the Commission on March 25, 1999 and transmitted to the State on March 30, 1999. By note on August 25, 1999, the petitioners requested a hearing in the next session of the Commission in order to discuss the case in hand. On August 31, 1999, the IACHR informed both parties that the hearing would be held on September 30, 1999. The hearing, at which the petitioners were present, was held on September 30, 1999 as part of the 104th regular session of the Commission. On October 14, 1999, the petitioners presented additional information, which was transmitted to the State on May 2, 2000.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. The petitioners claim that in August 1996, Félix Antonio Bonne Carcassés, René de Jesús Gómez Manzano, Vladimiro Roca Antúnez, and Marta Beatriz Roque Cabello formed the Working Group for Internal Dissidence, the aim of which was to study the socio-economic situation in Cuba. The petitioners said that they produced a document called "Program for Transition [Plataforma para la Transición]," which proposed holding an international forum to provide support for peaceful transition to democracy in Cuba. The petitioners also said that this platform had been adopted by the European Union and other countries since it laid down the minimum points needed for peaceful transition in Cuba.

7. The petitioners state that in the first six months of 1997, the Working Group for Internal Dissidence published three more documents. On April 12 of the same year they published a document called "Letter to Foreign Investors", in which they called on entrepreneurs to practice equality and cooperation in labor relations. On April 18, 1997 they published a document called "Call to Exile", which suggested that that, when remitting their money, Cubans living outside Cuba should strongly urge those receiving the money in Cuba to join the peaceful struggle. On May 15, 1997, the Group published a document titled "Electoral Abstention" in which they urged fellow Cubans to make use of their right not to vote.

8. The petitioners claim that on May 5, 1997 during an international press conference, the Working Group for Internal Dissidence launched the first issue of "Boletín" which, they say, contained articles of a socio-economic nature. They say that on June 27, 1997, the Working Group presented its special bulletin called "La Patria es de Todos" (Our Country belongs to us

All), in which they commented on the document produced by the Cuban government about the Fifth Congress of the Cuban Communist Party.

9. The petitioners state that, at the time the documents were published, the alleged victims received threats from Cuban state security agents. They also state that on May 15, 1997, at 9:45 in the morning, Vladimiro Roca Antúnez was arrested and taken to a Police Unit where, they allege, he was threatened because of his activities in opposition to the government.

10. They claim that on July 15, 1997, the alleged victims were arrested in a [security] operation at four in the morning and were taken to Villa Marista, the State Security headquarters. They claim that only on July 30, fourteen days after their arrest were the families of the alleged victims allowed to visit Villa Marista. They also allege that only on August 22, 1997, thirty-six days after their arrest were the alleged victims allowed access to fresh air.

11. They state that between October 23 and October 30, 1997, the alleged victims were transferred to harsh regime jails. They say that on July 30, 1998, the families of the alleged victims presented appeals for habeas corpus in the court for crimes against state security, and that on July 31, 1998, they received the response that the procedure was inadmissible and the remedy rejected. On September 24, 1998, the prosecution's provisional accusatory conclusions were published, in which they were accused of other acts against state security, involving the crime of sedition, as laid down in Articles 125 and 100 of the Cuban Criminal Code.

ARTICLE 125. Sanctions shall be applied in line with the rules established in Articles 12 and 49[FN1] covering preparatory acts against whoever:

- a) having resolved to commit any of the crimes defined under this heading, should propose to another or other persons that they should participate in its execution;
- b) should agree with one or more persons to carry out one of the crimes defined under this heading, and they resolve to commit it;
- c) incites another or other persons, either by word or in writing, publicly or privately, to carry out any of the crimes defined under this heading. If following the incitement, the crime is committed, the instigator shall be punished as the active party of the crime committed.

ARTICLE 100. Any persons who riotously and having either expressly or tacitly agreed to disrupt the socialist order, and do so using violence; or disrupt the holding of elections or referenda, or obstruct compliance with any judgment, legal disposition or measure laid down by the government, or by a civil or military authority in the exercise of their respective functions, or refuse to obey them, or make demands, or refuse to carry out their duties, shall be punished as follows:

- a) with ten to twenty years imprisonment or death, if the crime is committed in a situation of war or affects State security, or if it occurs during a serious disturbance of the social peace or in a military zone, with the use of firearms or violence;
- b) with ten to twenty years imprisonment, if the crime is committed without use of arms or violence and if one of the other circumstances defined in the preceding paragraph exists, or if

arms or violence has been used and the crime is committed outside a military zone in time of peace;

c) by one to eight years imprisonment in other cases.

[FN1]. Article 12 states that “Preparatory acts include drawing up a plan, acquiring or adapting the means or instruments, the meeting, association or carrying out of any other activity unequivocally aimed at committing the crime” and that “only crimes against State security are punished, as are crimes defined in the Special Section of the Code for which punishment is specified.” Article 49 states that “in order for the punishment to be commensurate with the preparations and attempt made, how close the guilty person got to carrying out or completing the crime, and the reasons for it not being consummated shall be taken into account.”

12. The petitioners state that on October 14, 1998, the families of the alleged victims presented another appeal of habeas corpus before the Supreme People’s Court in the city of Havana, which was rejected outright because “their imprisonment was in compliance with a provisional arrest warrant”.

13. They say that on March 1st, 1998, the trial of the accused was held, they allege, behind closed doors. The judgment of March 4, 1999 by the Court for Crimes against State Security of the People’s Provincial Court of Havana found that the alleged victims set up the Working Group for Internal Dissidence with the objective of “endangering the safety of the Cuban State by carrying out subversive acts within Cuba through non-violence to destabilize the internal order, social discipline and the obedience due to the rules currently in force in the country.” The court also stated that in order to achieve this objective, the alleged victims:

(...) took it upon themselves to draft, produce, approve, print, distribute, and disseminate various documents, the content of which exhorted and incited different social sectors in and outside the country to provoke social disorder by boycotting the elections called for the year one thousand, nine hundred and ninety-seven, and by not obeying the laws regulating foreign investment and economic contracts, behavior designed to undermine the stability of the Cuban State.

14. The above judgment found the alleged victims guilty of other acts against state security, involving the crime of sedition. Marta Beatriz Roque Cabello was sentenced to three and a half years in prison, René Gómez Manzano and Félix Bonne Carcassés to four years, and Vladimiro Roca Antúnez to five years. René Gómez Manzano was also prohibited from practicing law for five years, based on Article 39(1) of the Cuban Criminal Code, which permits a court to prohibit the practice of a profession, post, or trade “in cases in which the agent commits a crime by abusing his position or by negligence in the exercise of his duties.”

15. The petitioners claim that for the crime of sedition to exist as described in the Cuban Criminal Code there has to be violence or hostility, in other words, they claim that violence is an indissoluble element of the crime. In this context, the petitioners maintain that the crime of sedition cannot be imputed to political opponents who have never employed violence of any kind, nor incited other persons to use violent methods.

16. The petitioners argue that the alleged victims were exercising their legitimate rights to freedom of expression and to participate in the political life of their country, honestly expressing their opinions. They claim that the alleged victims' conviction is tantamount to criminalization of their rights to freedom of expression.

17. The petitioners claim that there was a lack of impartiality and independence on the part of the judiciary. They claim that the trial was held behind closed doors, that although the alleged victims had lawyers, they were unable to communicate privately with them because they were always under observation. They argue that the defense team was not given the necessary documents in sufficient time and only moments before the oral hearing. They claim that by prohibiting René Gómez Manzano from practicing law the court imposed a punishment that had not been requested by the prosecution; that evidence was used that had not been supplied at the appropriate time by the parties, and that facts were taken as proved that were not consistent with the evidence.

18. On March 23, 1998, an appeal for reversal of the judgment was taken to the court for Crimes against State Security in the Supreme Court. The judgment handed down on February 9, 2000, rejected the appeal.

19. The petitioners claim that while Marta Beatriz Roque Cabello was imprisoned in the Manto Negro prison, she was sharing a cell with women detained for common crimes such as murder, or attempted murder. They say that her cell companions threatened her life when a letter was published about life in the Cuban prison system. They say that the conditions in which Ms. Roque Cabello was held deteriorated when she was transferred for health reasons to the Carlos J Finlay military hospital. They say that she was held in a cell measuring 3m x 4m, which she shared with other people; that the lighting was very bad because the windows were sealed with a metal sheet and there was therefore no natural light. They also claim that light was provided by a white fluorescent tube that was constantly on. Finally, they say that the food was insufficient and that she remained in the bed in the cell all the time.

20. With regard to Marta Beatriz Roque Cabello's health, they say that in October 1997 she found some lumps in her breasts which they say became infected after treatment from prison personnel, and according to the petitioners this gave rise to mammary displasia. They also state that she suffered stomach and kidney problems following a hunger strike that lasted 52 days and during which she lost more than 9 kilos.

21. Regarding the health of the other alleged victims, during the hearing held on September 30, 1999 with the IACHR, the petitioners reported that Félix Bonne Carcassés was asthmatic and diabetic and was detained in a small damp cell where he was forced to remain standing for much of the time and was allowed no time for exercise. They also stated that he had been denied medical assistance when he had health problems. Regarding Vladimiro Roca Antúnez, they say that he was detained alongside common criminals but was then transferred to solitary confinement where he remained for a long time.

22. We were informed that on May 12, 2000, Félix Bonne Carcassés was released, that on May 15, 2000 Marta Beatriz Roque Cabello[FN2] was released, and that on May 23, 2000 René Gómez Manzano was released. All were released on parole. We were also informed that Vladimiro Roca Antúnez was released on May 6, 2002.

[FN2]. Marta Beatriz Roque Cabello was re-arrested in April 2003, along with 74 other dissidents, and sentenced to 20 years' prison. Marta Beatriz Roque Cabello had only been in prison for little over fifteen months when she was released on July 22, 2004, presumably because of her serious health problems. The second imprisonment of Marta Beatriz Cabello and the other 74 persons is the object of a petition to the IACHR.

B. The State

23. To date, the Cuban State has not replied to any requests for information from the Commission in spite of having been duly notified.

IV. ANALYSIS

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*.

24. Cuba has been a state party to the Organization of American States (hereinafter the "OAS") since July 16, 1952, when it deposited its instrument of ratification of the OAS Charter. The Commission claims that the Cuban state is "legally responsible before the IACHR for matters concerning human rights", given that "it is party to the international instruments that were initially established throughout the American Hemisphere to protect human rights," and because Resolution VI of the Eighth Meeting of Consultation[FN3] excluded the Cuban government, not State, from participating in the inter-American system[FN4]. IACHR stated that:

(...) It has always been the view that the purpose of the Organization of American States in excluding Cuba from the inter-American system was not to leave the Cuban people without protection. The exclusion of this government from the regional system in no way implies that it may cease to fulfill its international obligations with regards to human rights.[FN5]

[FN3].The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of Ministers of Foreign Affairs to provide a Consultation instrument for the application of the Inter-American Treaty on Reciprocal Assistance, Punta del Este, Uruguay, 22-31 January, 1962, Meeting Documents, Organization of American States, OAS/Ser.F/II.8doc.68, pages 17-19.

[FN4].IACHR, 2002 Annual Report, Chapter IV, Cuba, paragraphs 3-7. See also IACHR 2001 Annual Report, Chapter IV, Cuba, paragraphs 3-7. IACHR Report on the Human Rights Situation in Cuba, Seventh Report, 1983, paragraphs 16-46.

[FN5].IACHR, Annual Report 2001, Chapter IV, Cuba, paragraph 7.

25. The competence of the Commission derives from the terms of the OAS Charter, its Statutes and its Rules of Procedure. According to the Charter, all the States members commit themselves to respect the fundamental rights of individuals that, in the case of States that are not party to the Convention, are those established in the American Declaration which constitutes a guide for international obligations.[FN6] Its statutes charge the Commission to pay particular attention to the observance of the human rights recognized in Articles I (right to life, liberty and personal security), II (right to equality before law), III (right to religious freedom and worship), IV (right to freedom of investigation, opinion, expression and dissemination), VIII (right to a fair trial), XXV (right of protection from arbitrary arrest), XXVI (right to due process of law) of the Declaration while exercising its jurisdiction in relation to member states that are not parties.[FN7] Finally, according to Article 49 of the Rules of Procedure of the Commission, the Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration on Human Rights (hereinafter the “American Declaration”).[FN8] Consequently, the IACHR has competence *ratione materiae* because the petition contains a denunciation of violations of human rights recognized by the American Declaration.[FN9]

[FN6]. Inter-American Court of Human Rights, Consultative Opinion CO-10/89, July 14, 1989, Interpretation of the American Declaration on Human Rights, Ser.A No. 10, paragraphs 43-46.

[FN7]. IACHR Statute, Article 20 (a)

[FN8]. See IACHR, Gran Cacique Michael Mitchell, Report 74/03, Petition No 790/01, Canada, October 22, 2003. IACHR, Franz Britton, Aka Collie Wills, Report 80/01, Case 12,264, Guyana, October 10, 2001, IACHR, Radyo Koulibwi, Case 11,870, Santa Lucia, October 10, 2001, IACHR, Indigenous Mayan Communities and their Members, Report 78/00, Case 12,053, Belize, October 5, 2000. IACHR Gary T. Graham, currently known as Shaka Sankofa, Report No. 97/03, Case 11,193, United States, December 29, 2003. IACHR, Statehood Solidarity Committee, Report No. 98/03, Case 11,204, United States, December 29, 2003.

[FN9]. See IACHR, Armando Alejandro Jr., Carlos Costa, Mario de la Peña and Pablo Morales, Report No. 86/99, Case 11,589, Cuba, September 29, 1999, IACHR, Victims of the Tugboat[remolcador] “13 de Marzo”, Report No 47/96, Case 11,436, Cuba, October 16, 1996.

26. Consequently, the Commission considers that it has competence *ratione loci* to examine the petition because it alleges violations in Cuban territory of rights protected by the framework of the American Declaration, and the Commission therefore has competence.

27. The Commission also possesses competence *ratione temporis* to examine the petition. The petition deals with events alleged to have taken place since 1997 when the obligations assumed by the State in accordance with the OAS Charter and the American Declaration were already in force.

28. The Commission also possesses competence *ratione personae* to examine the petition. The petitioners are authorized to present petitions to the IACHR by Article 23 of the Rules of

Procedure of the Commission. The petition defines alleged victims as individual persons whose human rights are enshrined in the American Declaration.

B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

29. Article 31(1) of the Rules of Procedure of the Commission establishes that in order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law.

30. In the present case, the petitioners claimed that the alleged victims pursued all domestic remedies at their disposal in Cuba. The State presented no preliminary objections or claimed non-exhaustion of remedies available in the domestic legal system. Consequently, the Inter-American Commission considers that the Cuban State in this petition has not claimed that all domestic legal remedies were not exhausted during the early stages of the procedure.

31. The Inter-American Court on many occasions has stated that “for a claim of non-exhaustion of remedies available in the domestic legal system to be valid, it must be presented in the early stages of a proceedings, and in its absence, it will be tacitly assumed that the interested State has waived its right to this mechanism.”[FN10]

[FN10].Inter-American Court of Human Rights, Case Velásquez Rodríguez, Preliminary Exceptions, Judgment June 26, 1987. Series C, No. 1, para. 88, cit. ICHR, Viviana Gallardo and others, Decision November 13, 1981, No. G 101/81, Series A, para. 26.

32. Therefore, the Commission considers that the Cuban State waived any claim of non-exhaustion of domestic legal remedies given that it was not presented at the first opportunity, that is, in its reply to the petition that gave rise to the proceedings. Consequently, the petitioners’ petition is admissible in accordance with Article 31 of the Rules of Procedure of the Commission.

2. Deadline for presentation of petitions

33. In the petition under review, the IACHR established the tacit waiving by the Cuban State of its right to claim the non-exhaustion of domestic legal remedies, with the result that Article 32 of the Rules of Procedure of the Commission is not applicable. However, the procedural requisites of exhaustion of domestic remedies and presentation within six months of the decision that exhausted the domestic remedies are independent. Therefore, the Inter-American Commission must determine whether the petition under study was presented within a reasonable period of time. In this case, the IACHR observes that the original petition was received on March 25, 1999. Therefore, the final decision of a domestic court was February 9, 2000. The IACHR therefore considers that the petition was presented within a reasonable period of time.

3. Duplication of procedures and res judicata

34. The file does not suggest that the matter that is the subject of denunciation by the alleged victims has previously been brought before the Commission or before any other inter-governmental organization of which Cuba may be a member. The State does not allege any supposed duplication of procedures. Therefore, the Commission finds no reasons to oppose the admissibility of the denunciations by the petitioners in accordance with Article 33 of its Rules of Procedure.

4. Description of the alleged facts

35. The Commission considers that prima facie the arrest, trial, and sentencing of the alleged victims for the crime of other acts against state security related to the crime of sedition, on the basis of the opinions expressed in the documents they wrote and published, in which they analyzed the economy, human rights, and democracy in Cuba, can be characterized as violating the Declaration in its Articles I, IV, XXV, and XXVI, possibly failing in the obligation to respect the rights to liberty, freedom of expression, and a fair trial. Furthermore, there is no evidence of lack of foundation in the claim presented.

V. CONCLUSIONS

36. The Commission concludes that it is competent to examine the present case and that in accordance with Articles 31 and 34 of its Rules of Procedures the petition is admissible.

37. Based on the foregoing arguments of fact and law and without prejudging the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible in relation to the violations alleged of the rights protected under Articles I, IV, XXV, and XXVI of the American Declaration.
2. To notify the petitioners and the State of this decision.
3. To continue analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C. on the fourteenth day of October, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice -President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo and Florentín Meléndez.

Washington, D.C., October 19, 2004

Dissenting and reasoned vote

Petition 844/03

Admissibility

Freddy Gutiérrez

I hereby declare and explain my dissenting vote regarding the decision by the Inter-American Commission on Human Rights to admit petition 12.127, which refers to occurrences that apparently took place in the Republic of Cuba.

It is unconceivable that deeds expounded in an abstract, general, and vague manner, recounted by one side only and expressing a single, exclusive point of view, with no possibility, past or present, of being contested, for which the sources are dubious, and which are, one should add, taken from media that systematically oppose the right of the Republic of Cuba freely to determine its own destiny as well as its right not to accept outside interference, should induce the Commission to declare a case admissible without it meeting the requirements stipulated in the American Convention.

The legal basis on which the description of the deeds rests is flimsy and insubstantial, particularly since it invokes the American Declaration of 1948 and the Rules of Procedure of the IACHR. There is no universally accepted doctrine nor peaceful jurisprudence regarding the Declaration, given that, by definition, it involves adherence to certain values and general principles, which are important but contained in imperfect norms that establish no punishments, which therefore relativizes the greater or lesser commitment of states in accepting the enunciation of the rights enshrined therein. The Declaration has played an enormously valuable part in the history of civilization, and its contents have to concur with the American Convention, but it is not licit to use it circumstantially against a state that has even been denied the possibility of accounting for its departure from or approximation to the values it once ratified.

Moreover, as I have consistently stated, the operating Rules of Procedure of the Commission constitute by their nature a sub-legal act, which is binding upon the Commissioners in the performance of their tasks and functions, but which may never be construed as an international norm based on *pacta sunt servanda* and therefore to be applied obligatorily by the states parties to the American Convention. Indeed, it is inexplicable and incomprehensible in the interpretation of law that rules of procedure, resolutions, or instructions of a sub-legal nature could create duties, rights, and even punishments for states that have not agreed to their contents. It is necessary to emphasize that the states are parties to the American Convention and to the Commission's Statute, and are therefore bound by what they agreed to, but they cannot be bound by what they legitimately did not agree to. This is the case of the Rules of Procedure, the contents of which were not examined, discussed, or ratified by the member states of the hemispheric Organization. This applies with even greater force to the Republic of Cuba, which was not allowed to be a state party to the Convention, or to discuss the Statute, and has no inkling of the existence of Rules of Procedure that might, apparently, be the basis for some sanction against it.

Perhaps the most serious misapprehension is the failure to refer to the expulsion of the Republic of Cuba agreed upon by the Organization of American States in 1962. Since then, Cuba cannot validly nominate anyone to a position of responsibility within the hemispheric Organization, have either voice or vote, elect or be elected, or exercise any right at all. It is therefore an aberration in fact and in law to seek to scrutinize and even condemn the acts of one who has been denied the exercise of his basic powers, of the rights that are intrinsic to a people, and the rights that are also intrinsic to the man and women who constitute that people.

It is also contrary to any sound interpretation of the law to seek to initiate, pursue, and issue a condemnation of someone who cannot defend himself. It is contrary to the rules of due process contained in the American Convention, the pillar upon which the Commission stands, that the Republic of Cuba, which is not cognizant of the contents of any notification, cannot make itself heard, cannot argue in its defense, cannot contradict the statements of someone calling himself a party, and which has even been denied the right to be a counterparty, should be condemned. I should not omit the fact that this act of the Commission concerns admissibility or inadmissibility of a complaint. The necessary condition for admitting it or not is that the complaint exists or may exist, and in this case the Republic of Cuba cannot even be a complainant; ergo, there cannot strictly be a complaint in the instant case, nor any admission or rejection of admission.

The foregoing arguments explain my dissenting vote in the matter at hand.