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REPORT No. 100/14
PETITION 11.082
REPORT ON INADMISSIBILITY

INTERNATIONAL ABDUCTIONS
UNITED STATES

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United States, November 7, 2014.



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INADMISSIBILITY REPORT
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NOVEMBER 7, 2014

I. SUMMARY

1. On September 30, 1992, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition filed by the American Association of Jurists (hereinafter “los petitioners”) against the United States (hereinafter “the United States” or “the State”). The petition was filed initially in relation to Humberto Álvarez Machaín and other persons victims of international abduction by the United States (hereinafter “the alleged victims”).

2. The petitioners complain of the alleged practice of the government of the United States of abducting persons in foreign territory. They indicate that said practice has been validated by a decision of the United States Supreme Court issued in the case of Humberto Álvarez Machaín. During the processing of the petition they indicated that the object of the petition was not the specific situation of Mr. Álvarez Machaín, but that of other unidentified persons as well as applicable general principles. In this respect, they indicated that the object of the petition is “validation by the highest court of the United States of the generalized practice of abductions by the Government in the territory of third countries.” They ask the IACHR to intercede vis-à-vis the Government of the United States with a view to ensuring that such incidents do not recur. For its part, the State indicates, among other arguments, that the petition is inadmissible due to the lack of competence of the IACHR to take cognizance of the instant petition, given the lack of standing of the petitioners and the abstract nature of the petition. In addition, the State denies the existence of a practice of international abductions and further argues duplication of procedure.

3. After analyzing the information available and verifying compliance with the admissibility requirements enshrined in Articles 31 to 34 of its Rules of Procedure, the Inter-American Commission concludes that it is not competent to decide on the claim filed by petitioners, as it is an abstract action that does not identify specific victims; nor does it present specific facts related to a particular person or persons. Accordingly, the IACHR decides to find the case inadmissible; to forward the report to the parties; and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE IACHR

4. The IACHR received the petition on September 30, 1992. By note of December 1, 1992, the IACHR forwarded the pertinent parts to the State, and asked it to provide the information it deemed appropriate within 90 days. The response was received on February 3, 1993, and duly forwarded to the petitioners.

4. The Inter-American Commission received additional information from the petitioners on April 30, 1993, June 26, 1997, and February 18, 1999; and from the State on August 31, 1995 and November 12, 1997. All the communications were forwarded to the other party in timely fashion. In addition, on October 9, 1998, in the context of its 100th regular period of sessions, the IACHR held a public hearing on the admissibility of the instant petition.

5. On April 14, 2009, the IACHR requested updated information from the petitioners. The response was received on May 12, 2009. On October 1, 2009, a new communication was received from the

¹ Commissioner James L. Cavallaro, a citizen of the United States, did not participate in the deliberations or decision in the instant petition, in keeping with Article 17(2)(a) of the Commission’s Rules of Procedure. Commissioner Felipe González did not participate in the deliberations or decision in the instant petition, in keeping with Article 17(2)(b) of the Commission’s Rules of Procedure.

petitioners. Finally, the IACHR requested additional information from the petitioners on April 11, 2011. In that communication the Commission indicated, *inter alia*, that:

On May 12, 2009, the IACHR received a communication from the petitioner organization indicating that “at no time [did they] assume the representation of Mr. Álvarez Machaín, with whom [they] never [had] any contact whatsoever,” “that [they] are unaware of the fate of the other victims of the aberrant practice,” and that the main objective of the complaint “is for the IACHR to make an appeal to the United States for the Executive Branch to commit to abandoning the practice of abductions, and to forward to Congress a bill to prohibit it.” In addition, in a communication received on October 1, 2009, the petitioners mention the “risk to each inhabitant of the planet represented by the policy of abductions practiced by the government of the United States.”

In this respect, in order to be able to make a decision on the admissibility of the instant petition, I ask that you identify the alleged victims in your claim, or otherwise provide objective criteria that make it possible to determine a defined group of alleged victims.

6. The response was received on June 10, 2011.²

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. In the original petition the petitioners stated that in 1985 an agent of the Drug Enforcement Administration (DEA) was abducted in Mexican territory and later murdered. They indicated that the case was tried by Mexican courts, which imposed severe penalties on those responsible. Five years later, Doctor Humberto Álvarez Machaín, a Mexican citizen, was charged with having assisted the captors in keeping the agent alive while he was being subjected to torture. On April 2, 1990, Mr. Álvarez Machaín was abducted from his home in Guadalajara by U.S. officials and taken in a private airplane to Texas, United States, where his arrest for presumed participation in the crime was formalized.

8. The petitioners further state that the District Court, after concluding that DEA agents were responsible for the abduction, dismissed the charges against the alleged victim on the basis that Mr. Álvarez Machaín had been abducted in violation of the extradition treaty between the United States and Mexico, and ordered that he be repatriated. The decision was upheld by the Court of Appeals. They note, however, that on June 15, 1992, the United States Supreme Court overturned the decision by a majority and held that the extradition treaty does not specifically prohibit abduction. The petitioners assert that the minority of the Supreme Court had characterized the decision as “monstrous;” and that the court ruling had also stirred indignation in all sensitive sectors of the United States. Further, the petitioners make reference to other alleged examples of international abductions.

9. The petitioners indicate that, based on that decision by the highest court of the United States, the personal liberty and all human rights of the inhabitants of Latin America and the Caribbean are subject to the discretion of the force of a powerful state. They argue that in that regard said practice of abductions in third countries by the United States administration, validated by the above-referenced decision of the Supreme Court, violates the rights to equality before the law, inviolability of the home, justice, protection from arbitrary detention, and the right to due process, provided for respectively in Articles II, IX, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”).

² The three communications mentioned in this paragraph were received in Spanish. In keeping with the procedures of the Commission, by note of September 17, 2009, the IACHR asked the petitioners for translations to English, the official language of the respondent State, of the communications received in 2009 so as to be able to forward the pertinent parts to the Government of the United States. As of the date of preparation of this report, the translations had not yet been received, which is why none of these communications was forwarded to the State.

10. In order to obtain reparation for the violations already committed and to prevent the consummation of new violations in the future, in their first communication the petitioners ask the IACHR to request the Government of the United States to immediately return Mr. Álvarez Machaín and all other persons victims of international abductions by the United States to their respective countries; to request that such events shall not be repeated in the future under any circumstance; to submit to the U.S. Congress a law prohibiting under the severest penalty any official or citizen of the United States from engaging in international abductions; and to indemnify the victims of such illegal acts for any damages suffered.

11. In communications subsequent to the filing of the original petition, and in response to the argument regarding the lack of standing of the American Association of Jurists to file a petition on behalf of Mr. Álvarez Machaín, the petitioners stated that the United States seeks to reduce the object of the complaint to an individual case. They indicate in this regard that the object of the petition is not the individual case of Mr. Álvarez Machaín, but that the petition “refers to the validation by the highest court of the United States of the generalized practice of abductions in the territory of third countries by the Government.” They note in that regard that the fact that the decision of the Supreme Court was issued in the case of Álvarez Machaín should not be confused with the object of the complaint, which “substantially is aimed at avoiding the potential danger of the Government continuing that aberrant practice, relying on that decision.”³ In that communication, the petitioners highlight the parts of the original petition that refer to the more general aspects, such as the concern over the alleged practice of international abductions and the fact that the petition transcends the specific case of Mr. Álvarez Machaín.

12. The petitioners note that the United States cannot deny the standing of the American Association of Jurists. In this respect, they argue that the relationship with the alleged victim is irrelevant since, according to Article 23 of the Inter-American Commission’s Rules of Procedure, any person, group of persons, or non-governmental organization may file a petition with the IACHR in the name of third persons without their consent. They indicate moreover that the procedure before the Inter-American Commission cannot be compared to that of other international bodies, since there are clear rules that regulate that situation.

13. Finally, in response to the request for information by the IACHR, mentioned *supra*,⁴ the petitioners indicate that “at no time [did they] assume the representation of Mr. Álvarez Machaín, with whom [they] never [had] any contact whatsoever, and based on what [they] know, he was able to exercise his right to defense with legal counsel, was acquitted by the U.S. court that tried him, and had filed an action for the corresponding compensation;” and that the key objective of the complaint “is for the IACHR to make an appeal to the United States for the Executive Branch to commit to abandoning the practice of abductions, and to forward to Congress a bill to prohibit it, to avoid any judicial interpretation similar to the one used by the majority in the decision of the Supreme Court” in the case of Álvarez Machaín.

B. Position of the State

14. According to the State, the petition is inadmissible because the IACHR is not competent to hear the matter, given the petitioners’ lack of standing and the abstract nature of the petition. Moreover, according to the State, the fact that Mr. Álvarez Machaín was acquitted and returned to his country renders moot the petitioner’s request that he be allowed to return to his country.

15. With respect to the petitioners’ alleged lack of standing, it states that the petition has not been filed by Mr. Álvarez Machaín or by a person or organization authorized by him, and that the American Association of Jurists is a group established in Argentina, with no nexus with Mexico, and without any tie to the alleged victim. The United States interprets the Rules of Procedure of the IACHR to require that a petition be based on the existence of demonstrable good faith or a legally binding relationship between the alleged victim and the petitioner. The State indicates that neither of these two elements has been shown in the

³ Communication from the petitioners received May 14, 1993, p. 1.

⁴ See paragraph 6 of this report.

instant case.

16. The State recognizes that situations may arise in which an individual is unable to file a complaint in his or her own name, and that in such situations one could authorize the filing of the petition by a third person. It indicates that nonetheless this is not the case, since Mr. Álvarez Machaín is fully capable of filing a petition. In addition, the State underscores that standing is a fundamental aspect for striking a balance between the authority of the representation and the justice inherent in demanding that a Government answer a complaint for violations of human rights. In this respect, the State cites cases from the U.N. Human Rights Committee and asks that the IACHR act accordingly.

17. The State argues that the lack of competence of the IACHR is also due to the fact that the petition is too abstract and speculative, since the petitioners seek the immediate return to their respective countries of an indeterminate number of unidentified persons said to be victims of international abduction by the United States. It indicates that the petition is in the nature of an *actio popularis* and that the petitioners, on attributing to themselves the role of “representatives of the liberty and human rights of all the inhabitants of Latin America and the Caribbean,” are acting as *parens patriae* of the hemisphere.

18. The State also argues duplication of procedure, since the facts of the instant petition were previously alleged before the United Nations Working Group on Arbitrary Detention. It indicates in this respect that on November 6, 1992, the United States Mission to ECOSOC in Geneva received a note from the presiding rapporteur of that group regarding the arrest of Álvarez Machaín. According to the State, the rights allegedly violated are substantially the same and, at the moment the first response by the State to the instant petition was sent, the complaint was still pending resolution.

19. Finally, with respect to the merits, the State argues that Mr. Álvarez Machaín was released from the custody of the United States on December 14, 1992, after being acquitted in federal court. It further notes that Mr. Álvarez Machaín resides freely in Mexico. For this reason, the State is of the view that the request made by the petitioners for the alleged victim to return to his country is no longer relevant. It further indicates that the petitioners misinterpreted the decision of the United States Supreme Court in the case of Álvarez Machaín, and that the government of the United States does not have a policy of abducting persons in foreign territory.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

20. As regards the State, the Inter-American Commission notes that the United States is subject to the obligations set forth through the American Declaration according to the OAS Charter, the Statute of the IACHR at Article 20, and its Rules of Procedure at Article 51. The United States has been a member of the Organization of American States since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter,⁵ and it has been subject to the jurisdiction of the IACHR since 1959, the year this organ was established.

21. As regards competence *ratione personae*, the State argued that the Inter-American Commission is not competent to examine the instant petition, for two reasons. First, it argues the alleged lack of standing of the American Association of Jurists which, according to the State, has no connection whatsoever with Mr. Álvarez Machaín. Second, it notes that the instant petition is too abstract and speculative since it refers to an indeterminate number of unidentified persons, as a result of which the petition would be in the nature of an *actio popularis*.

22. For their part, the petitioners argue, with respect to the first point, that the connection between the petitioner organization and the alleged victim is irrelevant for submitting a petition to the inter-

⁵ See also I/A Court HR, 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, OC-10/89, July 14, 1989, para. 45.

American human rights system. As regards the second point, the petitioners argue that the object of the petition transcends the case of Mr. Álvarez Machaín. They indicate in this regard that the fact that the Supreme Court's decision was issued in that case should not be confused with the object of the complaint, which is to keep the Government of the United States from continuing the alleged practice of international abductions.

23. With respect to the alleged lack of standing of the American Association of Jurists, the IACHR recalls what is established in Article 23 of its Rules of Procedure:

Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man [...].

24. In this respect, the IACHR has considered that, “unlike other systems for the protection of human rights, the Inter-American System enables different types of petitioners to lodge petitions [on behalf of] victims [...] without demanding, as does the European system or the United Nations Committee on Human Rights, that they themselves are victims as such, and therefore have a personal interest, either directly or indirectly in the adjudication of a petition.”⁶ The Inter-American Commission has concluded, therefore, that in its Rules of Procedure there is no “requirement for alleged victims to bring petitions on their own behalf or for petitioners to secure a particular mandate or authority for so doing.”⁷ Therefore, with respect to this point, the IACHR decides that the American Association of Jurists does have standing to file a petition with the IACHR in favor of third persons without any need to show a tie with them.

25. As regards the second argument presented by the State, the IACHR notes that on April 11, 2011, it expressly asked the petitioners, with a view to being able to make a decision on the admissibility of the instant petition, “to identify the alleged victims in your claim, or otherwise provide objective criteria that make it possible to determine a defined group of alleged victims.” In its response to that request the petitioners reiterated what they had already expressed in their earlier communications.

26. The Inter-American Commission observes that in its various communications the petitioners reiterated that the object of the instant petition is not the individual case of Mr. Álvarez Machaín, who was able to exercise his right to defense and was acquitted by U.S. courts, but that the petition refers to the validation by the Supreme Court of an alleged practice of international abductions carried out by the Government of the United States, which is said to affect the rights of all the inhabitants of Latin America and the Caribbean. They add in that regard that the specific case in which that decision was issued should not be confused with the main objective of the complaint, which is the adoption of a law that prohibits that practice so as to ensure that there will be no more international abductions by the Government of the United States. They also make reference to the “risk to each inhabitant of the planet represented by the policy of abductions practiced by the government of the United States.”

27. Based on the information provided by the petitioners, the Inter-American Commission concludes that the instant petition must be found inadmissible as it constitutes an *actio popularis* filed in the name of an indeterminate group of persons. The fact that Article 26 of the IACHR's Rules of Procedure allows any person or group of persons or non-governmental organization to file a petition before the inter-American human rights system should not be interpreted as to allow abstract actions to be brought before the Commission. For a petition to be admissible, “there must be specific victims, individual and specific, and does not admit petitions carried out as “*actio popularis*” i.e. on behalf of the population of a country, a criterion

⁶ IACHR, Report No. 48/04, Petition 12.210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, para. 42.

⁷ IACHR, Report No. 121/06, Petition P-554-04, Admissibility, John Doe et al., Canada, October 27, 2006, para. 55.

which would be applicable in this case.”⁸ In that regard, the Commission may only proceed to adopt a decision on admissibility when a specific victim is identified.⁹

28. Moreover, the content of Article 26 of the IACHR’s Rules of Procedure has been interpreted so as to mean that competence *ratione personae* in the processing of individual petitions refers to facts that involve the rights of a specific person or persons.¹⁰ In that regard, the IACHR has considered that the petition must “allege concrete violations of the rights of specific individuals, whether separately or as part of a group, in order that the Commission can determine the nature and extent of the State’s responsibility for those violations as well as the appropriate reparations to be afforded to that victim or his or her next of kin.”¹¹

29. In the instant case, after reviewing the record several times, the Commission observes that, during the processing of the petition, the basic information on the case of Mr. Álvarez Machaín presented in the original petition was not supplemented by more developed information. When the Commission, in response to that situation, asked that the specific alleged victim or victims be identified, the petitioners confirmed that the relief sought in their petition was to obtain a pronouncement as a matter of principle, not a pronouncement on the situation of Mr. Álvarez Machaín. For this reason the IACHR changed the reference of the petition from “Humberto Álvarez Machaín” to “International abductions.” Nonetheless, as the Commission has indicated, the petition system applies to facts that have had a detrimental impact on the rights of certain persons; the IACHR has other mechanisms for making more general recommendations.

30. Accordingly, the Inter-American Commission considers that it lacks competence *ratione personae* to examine the instant petition.

V. CONCLUSIONS

31. Based on the foregoing arguments of fact and law, the Inter-American Commission concludes that the petition is inadmissible, since the IACHR is not competent *ratione personae* to decide on the claim submitted by the petitioners.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition inadmissible;
2. To notify the parties of this decision;
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 7th day of the month of November, 2014. (Signed): Tracy Robinson, President; Rose-Marie Antoine, First Vice-President; Rosa María Ortiz, and Paulo Vannuchi, Commissioners.

⁸ IACHR, Report No. 48/04, Petition 12,210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, para. 43.

⁹ See, *mutatis mutandi*, IACHR, Report No. 28/98, Case 11,625, Admissibility, María Eugenia Morales de Sierra, Guatemala, March 6, 1998, para. 31.

¹⁰ See, *mutatis mutandi*, IACHR, Report No. 48/04, Petition 12,210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, para. 44.

¹¹ IACHR, Report No. 104/05, Petition P-65-99, Inadmissibility, Víctor Nicolás Sánchez et al., United States (“Operation Gatekeeper”), October 27, 2005, para. 51.