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Inaugural Moot Court Successful

by Farah Pervez

The first Inter-American Moot Court Competition was held at WCL from May 28 - June 1, 1996. The hypothetical case argued by the participants, entitled *Olivera v. The Republic of Marelle*,* included major issues which have been addressed by prior decisions of the Inter-American system and other sub-issues for which there is little applicable case law.



Nicolas Espejo Yaksic (left) and his co-counsel Alvaro Jana Linetsky (not shown) took first place in the competition. Eddy Manzo (right) won Best Oralist.



File photos

ual rights and freedoms if: 1) there is a war, public danger, or other emergency situation that threatens the independence or security of the country; 2) the emergency measures adopted by the state are enacted only to the extent necessary, and for the time required, as dictated by the situation; and 3) the state availing itself of the right of suspension immediately gives

other States parties notice of the suspension, the reasons for it, and the date on which the suspension will end. The issue in controversy was whether the state of emergency declared by the government of Marelle complied with these requirements.

The petitioner argued that an ongoing internal conflict alone is an insuffi-

cient basis for such a broad declaration of a state of emergency. The State maintained that Article 27(1) leaves a margin of discretion to the national authorities to decide the parameters of a national emergency, and that the State's actions were within those parameters.

Disappearance of Horacio Olivera

There were several issues concerning the disappearance of Horacio Olivera. The first question was whether the facts of Mr. Olivera's disappearance constituted a violation of his rights under the Convention. A disappearance occurs under the Convention when a person acting under color of state authority detains an individual and impedes his or her ability to obtain applicable legal remedies.

Petitioner argued that the circumstances surrounding Olivera's disappearance meet this definition. Olivera was abducted against his will and restrained by ten armed men. No information about his where-

abouts was provided to his family by the government. The State argued that upon notification of the abduction, government officials conducted an investigation into the matter and found that the abduction did not constitute extrajudicial arrest and detention, but was simply a criminal act committed by private individuals, because the government did not authorize the action.

A second issue raised by the disappearance of Olivera was whether he was targeted for disappearance as a consequence of his political views and activities, in violation of the rights of freedom of thought and expression, guaranteed by Article 13 of the American Convention. Petitioner argued that Olivera was targeted because he opposed the current regime. The government had a pattern of sponsoring persecution in order to intimidate those people who spoke out or acted against it. The State argued that Olivera was not a target of intimidation because he was able to actively participate in a legally recognized political party and stand for election. The State also contended that there was no pattern of state-sponsored persecution, and the incident was an isolated criminal act committed by private individuals.

Freedom of Expression

The final issue in controversy was whether Marelle's legislation denied Sybille Olivera (Horacio Olivera's wife) her right to freedom of expression, as guaranteed by Article 13 of the



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The Honor Panel, consisting of distinguished practitioners, hears the arguments in the Final Round of the competition.

Convention. The Article 13 right to freedom of expression is a derogable right if done in accordance with Article 27.

International State Responsibility

In this case the petitioner, Mr. Horacio Olivera, was abducted by several individuals, two of whom were members of the military. The key argument for Olivera was that the State of Marelle violated its duty "to respect and ensure the rights and freedoms" of all people, as mandated by Article 1.1 of the American Convention on Human Rights (Convention). Article 1.1 obligates a party to the Convention to respect and ensure its citizens all rights and freedoms recognized by the Convention. Acts which give rise to violations include those committed by or with the authorization of state agents.

The advocates for the petitioner argued state-sponsored abduction generates international state responsibility. The State argued that although the two men may have been agents for the State of Marelle, they were not acting in that capacity when they allegedly participated in the abduction of Mr. Olivera.

State of Emergency

Article 27 of the American Convention allows a state to suspend its obligation to protect certain individ-

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government. Coming in the early months of the peace, this transfer could have been a harbinger of reconciliation in the best spirit of Dayton. Instead, heeding the calls of Karadžić, Serbs

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abandoned these neighborhoods rather than live with returning Muslims — and torched their homes as they left.

More recently, negotiated out of public office but not political influence, Karadžić derailed the possibility of a credible voter registration process — causing the postponement of municipal elections originally slated for mid-September (although national elections went forward despite the same anomalies). Humanitarian aid programs administered in Serb-held areas of Bosnia by Karadžić's wife, for example, were flagrantly manipulated to secure a Serb victory that would ratify the results of ethnic cleansing. To qualify for aid packages, displaced Serbs reportedly had to agree to register in certain key locations.

Above all, Srebrenica, where thousands of Muslims were slaughtered by Serb forces last summer, stands as a tragic monument to the folly of letting

Mladić and Karadžić remain at large. The largest massacre in Europe since World War II, this happened under the supervision of men who had *already* been indicted by the Tribunal. That it occurred before the Dayton accords were signed and IFOR was deployed to assure compliance does not affect the grim reality that an odious crime could have been avoided if any semblance of the rule of law had been enforceable only last year. Far more than symbolism is at stake in allowing these alleged war criminals to remain at large.

An attempt to capture Mladić and Karadžić would, to be sure, entail risks (as do most attempts to arrest serial murderers, but we would scarcely expect our police to decline the attempt on that account). But by loudly broadcasting its resolve *not* to arrest these men, the United States has emboldened them to threaten violence in the event such an attempt is made.

Even so — and equally important — those risks may not be as great as is generally perceived. This perception, like the U.S. policy which it reflects, ignores the more complicated reality that has been unfolding in Bosnia.

For one thing, it assumes that Bosnian Serb attitudes toward the Tribunal are implacably hostile, and monolithically so. In fact, however, Bosnian Serbs are now extending unprecedented cooperation to the Tribunal. Throughout the summer of 1996, the Tribunal was allowed to exhume mass graves in the vicinity of Srebrenica — within Serb-held territory. In late July 1996, prose-

cutors in The Hague met with a delegation of Bosnian Serbs to work out the terms of future cooperation. Serb officials agreed, among other things, to allow investigators to interview Bosnian Serbs who are potential witnesses in cases investigated by the Tribunal, a process that began this summer.

In light of Karadžić's continuing chokehold on Bosnian Serb political life, it is doubtful whether this cooperation could have proceeded without his authorization. This is significant, particularly since some aspects of the new cooperation by Bosnian Serbs with the Tribunal — notably including the excavations of mass graves near Srebrenica — will strengthen the prosecution's case against Karadžić himself.

These developments present opportunities that U.S. policy should exploit rather than undermine. Conversely, any course short of arresting men like Karadžić, Kordić and Mladić — in particular, holding trials *in absentia* — will do little to diminish their lethal influence on Bosnia's peace prospects.

During a recent visit to Bosnia, I met many Serbs who sought to distance themselves from their indicted leaders. Manifestly referring to Karadžić, one man said: "The President could be anybody. What is important is the people." By refusing to make the arrest of Karadžić and Mladić a priority, the United States has made it far more difficult for Serbs like this man to move forward into a truly democratic future — one in which their choices are not indicted war criminals or their acolytes. ☹

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Petitioner argued that the declared state of emergency did not comply with the requirements of Article 27, and therefore, the right to freedom of expression should not have been suspended. The State argued that Article 13 is inapplicable because even though Sybille Olivera was convicted after the state of emergency was lifted, the crime took place during the time of the state of emergency.

Other sub-issues that were considered were whether the liability imposed on Mrs. Olivera's speech complied with the requirements of Article 13(2); whether Marelle was justified in pun-

ishing Mrs. Olivera's speech for constituting an "incitement to lawless violence" according to Article 13(5), and whether the language used to describe the crime of "apology of terrorism" was so imprecise as to constitute a violation of Article 9 of the Convention.

Awards

After months of preparation and research, and five days of opening arguments, judge's questions, rebuttals and surrebuttals, two teams advanced to advocate their positions in front of the Honor Panel of Judges. The final round of the competition came down to the Universidad Diego Portales (Chile) and the University of Maryland. When the

decision came in, Nicolas Espejo Yaksic and Alvaro Jana Linetsky from Diego Portales won first place. The Best Oralist award went to Ms. Eddy Manzo from the Universidad Central de Venezuela. Two U.S. schools, Hamline University (State) represented by Colleen Beebe and Claudia Saavedra, and DePaul University (Petitioner) represented by Christine Kleiser and Derek Strain, won the Best Memorial awards. ☹

** For the full text of the 1996 hypothetical, see the Inter-American Human Rights Moot Court Competition Internet site at <http://www.wcl.american.edu/pub/humright/home.htm>*