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Julio A. Sanchez

Anita Sinha

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# A LONG ROAD OR DEAD END?: JUSTICE FOR A CHILEAN GENERAL

by *Julio A. Sanchez and Anita  
Sinha\**

The proliferation of U.S. intervention in many Latin American countries during the twentieth century generated a penchant to uphold principles of non-intervention and sovereign equality of states.<sup>1</sup> This was one of the driving principles that created the Organization of American States (OAS). In its charter, the OAS emphasized that “the true significance of [regional] American solidarity and good neighborliness can only mean the consolidation on the continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.”<sup>2</sup> This foundational objective of the Inter-American Commission on Human Rights obligates the adjudication of Chilean General René Schneider’s petition.

Over fifty years ago, on the morning of October 22, 1970, armed men attempted to kidnap General René Schneider, commander-in-chief of the Chilean army. The kidnappers were dissident Chilean

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\* *Julio Sanchez is a third-year law student in American University Washington College of Law’s International Human Rights Law Clinic (AUWCL IHRLC). Anita Sinha is an Associate Professor of Law and the Director of AUWCL IHRLC. The authors currently represent General Schneider’s family before the Inter-American Commission on Human Rights. Michael E. Tigar, AUWCL Emeritus Professor of Law, and Ali Beydoun, former director of the AUWCL UNROW Human Rights Impaction Litigation Clinic, filed the initial petition for the Schneider family with the Commission, and continue to serve in an advisory role.*

<sup>1</sup> Robert K. Goldman “*History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights.*” 31 *HUM. RTS. Q.* 856, 863 (2009).

<sup>2</sup> *Id.* at 859.

military officers, hired, paid, and armed by the U.S. Central Intelligence Agency (CIA) at the direction of then-National Security Advisor Henry Kissinger. Kissinger believed that “neutralizing” General Schneider would pave the path to a military coup that would prevent Salvador Allende from taking office as President of Chile.<sup>3</sup> The would-be kidnappers shot General Schneider, and he died three days later from his injuries. Three years later, General Augusto Pinochet successfully led a military coup to oust the democratically elected president Allende.

Throughout the last century, the foreign policy of interventionism has motivated U.S. conduct in Latin America. The declaration of the Monroe doctrine<sup>4</sup> and the following Roosevelt Corollary paved the path for the U.S. government to interfere in the internal affairs of Latin America for over a century.<sup>5</sup> Early examples include engineering Panamanian independence from Colombia to facilitate U.S. control of the Panama Canal, and occupying the port of Veracruz to influence the Mexican revolution.<sup>6</sup> During the 1980s, in the context of a “Second Cold War,” the United States supported right-wing authoritarian governments throughout the region. More recently, the United States repeatedly has attempted to orchestrate regime change in Venezuela and has pressured Mexico and Central American states to implement

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<sup>3</sup> Petition for Writ of Certiorari at 2, *Schneider v. Kissinger*, 547 U.S. 1069 (2005) (No. 05-753).

<sup>4</sup> Monroe Doctrine, 1823, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1801-1829/Monroe> (last visited Feb. 10, 2021).

<sup>5</sup> See also U.S. Dept. of State, *Roosevelt Corollary to the Monroe Doctrine, 1904*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1899-1913/roosevelt-and-monroe-doctrine> (last visited Mar. 1, 2021).

<sup>6</sup> See *Before Venezuela, US Had Long Involvement in Latin America*, ASSOCIATED PRESS (Jan. 25, 2019), <https://apnews.com/article/2ded14659982426c9b2552827734be83>.

policies that effectively prevent migrants from entering the United States.<sup>7</sup>

It was the anxiety fueled by the Cold War after World War II that motivated the U.S. government's interest in targeting the left-leaning government in Chile, sparking the events that led to General Schneider's death.<sup>8</sup> Under the direction of Kissinger, the U.S. government encouraged and initiated a two-pronged strategy to destabilize Chile.<sup>9</sup> The first was to sabotage the Chilean economy with sanctions,<sup>10</sup> and the second was to facilitate the removal of President Allende through a CIA-assisted military coup d'état. Kissinger believed that it was necessary to remove General Schneider, who was the commander-in-chief of Chile's armed services, to actualize a successful coup.<sup>11</sup> The CIA, under the direction of Kissinger, provided material support to several armed groups with the goal of removing General Schneider. It finally succeeding on its third kidnapping attempt.<sup>12</sup>

Domestic courts failed to hold the U.S. government accountable for its role in the assassination of General Schneider. In 2004, General Schneider's family sued Kissinger for his involvement, but the U.S. District Court declined to hear the case based on the political question doctrine.<sup>13</sup> General Schneider's counsel appealed, but the Court of Appeals for the District of Columbia Circuit affirmed the decision to dismiss the case.<sup>14</sup> The family appealed to the U.S.

<sup>7</sup> Tony Wood, *A Year On, Juan Guaidó's Attempt at Regime Change in Venezuela Has Stalled*, THE GUARDIAN (Jan. 23, 2020), <https://www.theguardian.com/commentisfree/2020/jan/23/juan-guaido-regime-change-venezuela-chavismo-maduro>; James Fredrick, *How Mexico Beefs Up Immigration Enforcement to Meet Trump's Terms*, NPR (July 13, 2019), <https://www.npr.org/2019/07/13/740009105/how-mexico-beefs-up-immigration-enforcement-to-meet-trumps-terms>.

<sup>8</sup> The U.S backed several authoritarian military regimes across the region. See, e.g., *Before Venezuela, US Had Long Involvement in Latin America*, *supra* note 6.

<sup>9</sup> *Schneider v. Kissinger*, 310 F. Supp. 2d 251, 255 (D.D.C. 2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 256.

<sup>13</sup> *Id.* at 270 (holding that the case constituted a political matter best handled by the other branches of government).

<sup>14</sup> *Schneider v. Kissinger*, 412 F.3d 190, 201 (D.C. Cir. 2005).

Supreme Court, but the court denied *certiorari*.<sup>15</sup> The outcome of the domestic litigation on behalf of General Schneider highlights not only the unwillingness of the United States to take responsibility for human rights violations it orchestrated in Chile and elsewhere in Latin America, but it also exposes the structural and procedural barriers to achieving justice and receiving redress for such violations.

Undeterred by the U.S. domestic system, General Schneider's family turned to the Inter-American Commission on Human Rights ("the Commission"). The Schneider family petitioned the Commission in October 2006, asking that it hold the U.S. government accountable for its involvement in the extrajudicial killing of General Schneider. The petition alleges that the government's actions violated international human rights law, citing specific provisions of both the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights ("the American Convention").<sup>16</sup>

The U.S. government took nearly eight years to respond and denied all allegations. Counsel for General Schneider's family swiftly filed a response to the government's submission, emphasizing that it is impossible to assess the violations against General Schneider without recognizing the United States' entrenched support of the perpetrators. Throughout the nearly fifteen years since the family filed the petition, counsel for the family have tried to create

<sup>15</sup> *Schneider v. Kissinger*, 547 U.S. 1069 (2006).

<sup>16</sup> See generally Organization of American States (OAS), American Declaration of the Rights and Duties of Man, OEA/Ser.L./V.11.23, doc. 21, rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L./V. II.82, doc. 6, rev. 1; American Convention on Human Rights "Pact of San Jose, Costa Rica," art. 25, November 22, 1969, 1144 U.N.T.S. 123. The Chilean Government, and through extension the United States, violated Articles I, IV, XVII, XVIII, XXII, and XXV of the Declaration. In addition to the Declaration, General Schneider, through his counsel, also alleged that the United States violated Articles 4 (Right to Life), 5 (Right to Humane treatment), 7 (Right to Personal Liberty), 13 (Freedom of Thought and Expression), and 16 (Freedom of Association) of the American Convention on Human Rights).

movement through the Commission's process, including by requesting admissibility hearings.<sup>17</sup> They have requested six admissibility hearings, none of which the Commission granted.<sup>18</sup>

A challenge facing the Commission in cases involving the United States is that the United States is not a signatory to the American Convention. As a result, bringing a case against the United States in the Inter-American system may be more symbolic than practical in yielding concrete results. This means that, while the United States may show up to a hearing or a working meeting, the U.S. government more often than not fails to comply with the Commission's recommendations. This does not mean that the Commission should not act on General Schneider's petition. To the contrary, given the context of the U.S. government's interventionist policies in the region, the Commission should make the adjudication of the General's petition a priority. The United States infringed upon the OAS' founding principles of nonintervention, sovereign equality of states, and defense of human rights in the region. If the OAS and the Commission are going to uphold these principles, it is incumbent on them to hold the United States accountable for General Schneider's assassination.

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<sup>17</sup> See generally Rules of Procedure of the Inter-American Commission on Human Rights (Approved October 13, 2009). An admissibility hearing is the first step in according to the rules of procedure of the Inter-American Commission on Human Rights before a case is brought before the Commission. *Id.*

<sup>18</sup> The family of René Schneider has a seventh hearing pending for the 178th session period.