

**Inaugural Inter-American Human Rights Moot Court Competition
Hypothetical Case**

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Sybille Olivera v. Marelle²

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1. The Republic of Marelle is a member state of the Organization of American States and since January 1, 1989, has been a party to the American Convention on Human Rights. In the instrument of ratification to the Convention, Marelle declared that it would recognize as binding the jurisdiction of the Inter-American Court on Human Rights, following Article 62 of the Convention. In addition, on December 4, 1991, Marelle ratified the Inter-American Convention to Prevent and Sanction Torture and on February 1, 1996 ratified the Inter-American Convention on the Forced Disappearance of Persons. Marelle is a party to the Geneva Conventions of 1949.
2. During the mid 1980's, a state of political violence prevailed in Marelle. The political violence arose from the actions of various armed groups: those who were fighting to overthrow the constitutionally elected government and the state's counterinsurgency campaign to stop them.
3. Paramilitary groups associated with private sectors (primarily mineral concessionaires with extraction operations in Marelle's well known mines) who had logistical support from the Armed Forces of Marelle implemented a policy of persecution against union, student and political leaders of groups considered leftist. These activities added to the escalating violence.
4. The paramilitary groups formed when Law 12.466 was implemented. Law 12.466 authorized the organization of self-defense groups in zones affected by insurgent activity when the Armed Forces presence was insufficient. The objective of Law 12.466 was to protect the lives, security and the property of the inhabitants of the zones in conflict as a complement to the security force activities.
5. However, in the first few years of the 1990's, the self-defense groups became "executors of private justice" whose activities were outside the control of the civil authorities of Marelle.
6. The political violence affected several regions of Marelle; however the zone corresponding to the Department of Traveler was the hardest hit. Two armed groups in particular operated in that region. They were known as "Patria Gris (PG)" [Gray Homeland] and "Frente de Lucha Por una Marelle Gris (FLMG)" [Marelle Gray Front]. Several self-defense groups later became paramilitary groups. The most important of those groups were "Aliados Contra los Grises (ACG)" [Alliance Against Grays], "Guerra a los Opositores Grises (GOG)" [War on Gray Opposition] and "Alianza Anti-Gris de Marelle (AAM)" [Marelle Anti-Gray Alliance]. Because of the special circumstances of the zone, the armed forces personnel grew incrementally until it numbered 15,000 at the end of 1992.
7. Between the 12th and the 15th of June, 1994, PG launched an important offensive in Traveler, mainly in the capital city of La Talita. The activities caused at least 300 deaths of non-combatant civilians. Many casualties were sustained among the security forces and the insurgents.
8. Also on the 12th of June, the Government declared a state of emergency to repress the rebel activities in the entire territory of Marelle, and decreed a 24 hour curfew during the fighting. Once the offensive was under control, the Government implemented a curfew between 7:00 pm and 6:00 am; this measure remained in effect until August 15, 1994.
9. Immediately after the active fighting ended, the Government implemented emergency laws - Decree 30 - amending the prevailing penal code and classifying terrorism, criminal conspiracy to commit terrorism, and apology³ as crimes. Special tribunals composed of the judiciary of Marelle

were created to hear cases against individuals under investigation for committing crimes against national security. Procedural rules were established for processing those cases.

10. A significant number of extrajudicial executions of leaders and members of “Unidos Actuemos” [United Action] were reported toward the end of June, 1994, a result of the paramilitary violence in Traveler. Unidos Actuemos is a legally recognized, legitimate political party in Marelle which is thought by some to be the political arm of the Patria Gris military group. Several massacres were also perpetrated in the zone. Members of union associations and student organizations were the primary victims.

11. The Congress of Marelle repealed Law 12.466 and adopted Law 14.122 in an attempt to stop the uncontrollable violence of the paramilitary groups. Law 14.122 declared as illegal the existing self-defense groups and made the organizing of new self-defense groups criminal. Known members of paramilitary groups operating in Traveler were detained and subjected to judicial proceedings under Law 14.122.

12. On July 2, 1994, the Government of Marelle notified the Secretary General of the OAS of the state of emergency in Marelle. The diplomatic note stated that acts of violence by terrorist bands operating in Traveler with the goal of destabilizing democratic institutions had endangered personal security and the lives of the civilian population. The Government of Marelle had adopted the reported measures out of necessity. The Government reported that the state of emergency would prevail for four months. Additionally, the Government indicated that constitutional guarantees had been suspended as provided for in Article 50 of the Constitution of Marelle. Textually, Article 50 states: “In case of an internal emergency or an external war, which endangers the security of Marelle, legitimately constituted authorities may declare a state of emergency and suspend constitutional guarantees.”

13. In July, 1994, at least fifteen judicial functionaries, including judges, prosecutors and other auxiliary officials who handled security crimes cases, were assassinated.

14. On August 1st of that same year a presidential decree amended the emergency legislation and established judicial, prosecutorial and auxiliary personnel anonymity⁴ for national security crime cases.

15. Horacio Olivera and his wife Sybille were sociology professors at Marelle National University. They had lived in La Talita since the beginning of 1990 and taught at the National University Traveler campus. Both were active and recognized Unidos Actuemos members. Horacio Olivera was a Congressional candidate on the Unidos Actuemos ticket in the 1991 national elections in Marelle.

16. On August 10, 1994, the leadership of Unidos Actuemos, La Talita section, met at their party offices to discuss the public position they would adopt regarding the offensive by Patria Gris in the previous several months and to evaluate the Marelle Government actions related to the paramilitary violence. Horacio Olivera attended the meeting.

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Anonymity (“Faceless Judges”): The identity of the judiciary and others associated with the processing of the cases are suppressed. Usually the prosecutors and judges are behind one way mirrors during the proceedings.

17. At 9:00 that night, while the leadership of the Unidos Actuemos were meeting, a group of ten heavily armed individuals broke into the party offices. Seven selected members of the leadership were blindfolded and removed to a blue van. The van did not have license plates. Horacio Olivera was one of the members taken. The whereabouts of those individuals are unknown.

18. The following day, Mrs. Olivera brought a motion for a writ of habeas corpus in the Second District Court of La Talita. It was dismissed on August 15, 1994 because the Court could not establish where Mr. Olivera was being detained.

19. Mrs. Olivera also reported her husband's disappearance to Section III of the National Police at their headquarters in La Talita. The National Police remitted the case for criminal investigation to the First District Court. Witnesses who had participated in the meeting on the evening the leaders from Unidos Actuemos were kidnaped were summoned to testify. According to the court record, several witnesses indicated that some of the kidnappers worked for Mr. Roque Amador, a known local member of the Alianza Anti-Gris de Marelle. Several of the witnesses also testified that at least two of the kidnappers were members of the Sixth Battalion, headquartered in La Talita. The investigation established that the van used on the night of the kidnaping was owned by Mr. Amador.

20. On September 15, 1994, Military Court 5 initiated disciplinary proceedings against the two soldiers under investigation for the kidnaping of Unidos Actuemos leaders after the Armed Forces were informed of their alleged participation.

21. On September 20th, the First District Court handling the kidnaping case issued an arrest order for Mr. Roque Amador, the members of the Sixth Battalion and other individuals identified by the witnesses; the order was executed the following day.

22. After interrogating the detainees, the Court charged them and placed them in custody pending trial. The court also determined that the members of the Sixth Battalion came under the jurisdiction of the Court. The Court concluded from the evidence that their actions fell outside the "act of service" exception. Consequently they were excluded from the jurisdiction of the military court. That same day Sybille Olivera became a civil party to the process.

23. Between October 1st and 3rd, 1994, the Third National Meeting of Political Science was held in La Talita. Sybille Olivera participated in the last day of the conference on the panel entitled "The Control of Violence in a Democratic State." During her presentation, Mrs. Olivera argued that democracy, as a system, was ineffective in resolving the social injustice existing in the poor countries of the Third World and served only the imperialist interests of developed countries. She indicated that the Marelle democratic system maintained the oligarchy in power while excluding de facto the majority of the population. In her opinion, given the social and economic circumstances of the country, the only way to redress the existing injustice was through armed struggle.

24. Mrs. Olivera was arrested by three members of the security police and transported to the National Intelligence Department, La Talita section on October 4, 1994 at 10:00 am. She was interrogated by security agents about her ties with the armed group Patria Gris as well as her party activities in Unidos Actuemos during the first day of her detention. Mrs. Olivera had asked to communicate with her family and a lawyer immediately after her arrest. The request had been denied.

25. At noon on October 7th, Mrs. Olivera was taken before Special Tribunal 10 with jurisdiction in La Talita. She was informed at the hearing that she was being investigated for apology of terrorism, a crime under the penal code as modified by the state of emergency legislation. The legislation stated:
“One who publicly, through written or oral means, commits apology of terrorism will be sentenced to three to five years. This sentence can be increased by one year when the person who committed the apology is a university professor.”
26. Mrs. Olivera was charged and held in custody pending trial after being interrogated by the Tribunal in the presence of appointed counsel. Mrs. Olivera contacted her attorney and family that afternoon.
27. On October 12, 1994, the Government of Marelle lifted the state of emergency. The same day the Government notified the Secretary General of the OAS that the state of emergency had been terminated and that constitutional guarantees were restored.
28. The following day, the Congress of Marelle adopted Law 15.134 permanently enacting the state of emergency legislation, in particular those sections pertaining to special jurisdiction, the criminal classification of terrorism and related crimes, and applicable procedural rules.
29. Law 15.134 confirmed the portion of Decree 30 which provided for an oral proceeding before a special tribunal composed of three justices. The procedural rules allowed a limited motion of appeal of the tribunal’s decision. The Supreme Court of Justice of Marelle heard the appeals. The appeal was limited in scope; the Supreme Court review was restricted to due process questions.
30. On November 5th , 1994, Military Tribunal 5 held that the participation of the two members of the Sixth Battalion in the events culminating in the disappearance of the leaders of Unidos Actuemos constituted grounds for disciplinary procedure under the Regulations of the Armed Forces. The two servicemen were dishonorably discharged, the maximum penalty under the Regulations. The decision was confirmed by the Supreme Council of the Armed Forces.
31. The hearing for Sybille Olivera began on January 5, 1995. The identities of the members of the Special Tribunal were suppressed due to the procedures in effect, as was the identity of the prosecutor who brought the charges. On January 30th Mrs. Olivera was sentenced to four years in prison.
32. Mrs. Olivera brought an appeal to the Supreme Court on February 25, 1995, which was flatly denied. The Supreme Court determined that it was not competent to review whether *mens rea* existed in the conduct of Mrs. Olivera, whether the evidence had been correctly weighed nor whether there was error in the application of the criminal laws.
33. On April 1, 1995, the individuals accused of the kidnaping and disappearance of the Unidos Actuemos leaders were released. Procedural rules dictated that a person can not be detained pending trial for more than six months.
34. On April 7, 1995, Sybille Olivera filed a petition before the Inter-American Commission on Human Rights. Mrs. Olivera claimed that she and her husband were victims of human rights violations under the terms of the American Convention. Specifically, she claimed that the alleged acts constituted violations of articles 4, 5, 7, 8, 9, 13, 25, 27 and 1 of the Convention.
35. On February 1, 1996, the Commission adopted its preliminary report in accordance with Article 50 of the Convention. On February 6th the Commission referred the report to the Government

of Marelle. The sixty day period given to the Government of Marelle to adopt the Commission recommendations lapsed without action. The Commission decided to refer the case to the Inter-American Court on Human Rights.

36. On February 5, 1996, the attorneys for Mrs. Olivera were named as legal advisors to the Inter-American Commission on Human Rights to assist the Commission in the presentation of her case to the Inter-American Court.