



United States Department of State

*United States Permanent Mission to the  
Organization of American States*

*Washington, D.C. 20520*

April 24, 2019

Dr. Paulo Abrão  
Executive Secretary  
Inter-American Commission on Human Rights  
Organization of American States  
Washington, D.C. 20006

**Re: René Schneider, P-1075-06  
Further Observations of the United States**

Dear Dr. Abrão:

The United States Government has the honor of submitting to the Inter-American Commission on Human Rights ("Commission") further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of Mr. Schneider dated June 19, 2017. Please find enclosed the United States' observations. We trust this information is useful to the Commission and thank the Commission for its attention to this matter.

Please accept renewed assurances of my highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Trujillo'.

Carlos Trujillo  
Ambassador

**RENÉ SCHNEIDER, P-1075-06**  
**FURTHER OBSERVATIONS OF THE UNITED STATES**

We appreciate the opportunity to provide further observations on the communications forwarded to the United States in the above-referenced matter, including the submission on behalf of General Schneider dated November 15, 2017.

The United States recalls its submission of July 16, 2014, in this matter. In that submission, the United States explained that the Petition is inadmissible and does not demonstrate a failure of the United States to live up to any commitment under the American Declaration. Although the Commission subsequently invoked Article 36(3) of the Rules of Procedure (“the Rules”) to defer a decision on the admissibility of the Petition,<sup>1</sup> the United States reiterates the positions of the July 2014 submission and respectfully requests again that the Commission find the Petition inadmissible.

For the reasons explained below, the Petition remains inadmissible under Article 34 of the Rules because the Petition does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules.

**I. Petitioner’s New Admissibility Arguments are Out of Order**

In its letter dated June 19, 2017, the Commission requested that the Petitioner submit “additional observations on the *merits* of the case.”<sup>2</sup> Although Petitioner has characterized his November 2017 submission as “Observations Concerning the Admissibility and Merits of the Matter on Rene Schneider” (hereinafter, “Additional Observations”),<sup>3</sup> the Commission did not invite Petitioner to present further admissibility arguments. Nothing in the Rules permits Petitioner, at this stage, to introduce new admissibility arguments beyond those in the Petition. Moreover, the Commission’s stated purpose in invoking Article 36(3) of the Rules to defer an admissibility decision is to reduce its procedural backlog.<sup>4</sup> However, allowing Petitioner to introduce new admissibility arguments at this stage would undermine the stated purpose of such joinder because it requires additional submissions on the admissibility of Petitioner’s claims at the merits phase of a proceeding. Allowing Petitioner to expand the scope of the Petition by introducing new admissibility arguments at this stage undermines the Commission’s procedures and challenges the integrity of the Commission’s practice of joining the admissibility and merits consideration of a petition.

**II. The Petition is Inadmissible *Ratione Loci***

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<sup>1</sup> Letter from the IACHR to the United States of June 19, 2017, 2017.

<sup>2</sup> Letter from the IACHR to Rene Schneider of June 19, 2017 (emphasis added).

<sup>3</sup> Additional Observations at 1.

<sup>4</sup> See Letter from the IACHR to Rene Schneider of June 19, 2017.

In the event that the Commission declines to reject Petitioner's new admissibility arguments introduced at the merits phase of this matter, the United States addresses those arguments here. Specifically, the Commission lacks competence *ratione loci* to consider the Petition because the alleged conduct occurred beyond the jurisdiction of the United States.

A. The Applicability of the American Declaration is Defined by Jurisdiction

As an initial matter, the applicability of the American Declaration is limited by the jurisdiction of the State. The scope of the commitments undertaken by OAS Member States through the American Declaration is clear from the preamble of the instrument:

The affirmation of essential human rights by the American States together with the guarantees given by *the internal regimes of the states establish the initial system of protection* considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly *strengthen that system* in the international field as conditions become more favorable,<sup>5</sup>

The focus of the American Declaration is to strengthen the internal regimes of States through the incorporation of regional standards set forth in the Declaration. The United States undertook a political commitment to do precisely that, and nothing in the text of the American Declaration suggests that OAS member States intended for their commitments under the instrument to apply beyond their respective jurisdictions.

The Commission considers it appropriate to interpret provisions of the American Declaration in light of relevant provisions of the American Convention on Human Rights.<sup>6</sup> Although the United States is not a party to the American Convention, Article 1 of the Convention contains a clear jurisdictional provision that mirrors the applicability of the American Declaration:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to *ensure to all persons subject to their jurisdiction* the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.<sup>7</sup>

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<sup>5</sup> American Declaration, Preamble, para. 4 (emphasis added).

<sup>6</sup> See, e.g., IACHR, Report of the Situation of Human Rights Asylum Seekers within the Canadian Refugee Determination System, Doc. OEA/Ser.L/V/11.106, Doc. 40 rev., para. 38 (February 28, 2000) (“While the Commission clearly does not apply the American Convention in relation to member States that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration.”).

<sup>7</sup> See American Convention, Art. 1 (emphasis added). See also Art. 2 (obligating States to give “Domestic legal Effects” to the rights contained in the Convention as necessary).

This limitation to the application of the Convention is relevant in the present context because it reinforces the limited, jurisdictionally-bound application of human rights commitments undertaken through the American Declaration. Moreover, the Commission has been consistent in its limited application of the American Declaration extraterritorially only to situations in which the State, according to the Commission, exercises jurisdiction.<sup>8</sup>

Petitioner cites a number of prior reports by the Commission addressing the extraterritorial application of the American Declaration.<sup>9</sup> In each of those instances, the applicability of the American Declaration was conditioned on the Commission's finding of the respective State's exercise of jurisdiction.<sup>10</sup> As such, these reports reinforce the limited applicability of the American Declaration to the jurisdiction of the State and do not support the proposition that the American Declaration generates commitments or obligations beyond the jurisdiction of the State. Nothing in the American Declaration, the American Convention, or the prior reports of the Commission support the proposition that commitments and obligations in the Inter-American system apply extra-jurisdictionally as Petitioners suggest.

While Petitioner notes that "obligations of several international human rights instruments, including those in the International Covenant on Civil and Political Rights, apply extraterritorially,"<sup>11</sup> whether a particular instrument applies extraterritorially and beyond the jurisdiction of a State party is entirely dependent upon the text of that instrument. Whether or not commitments by States under the ICCPR may apply extraterritorially simply has no bearing on the scope of an OAS member State's commitments under the American Declaration.

Although the jurisprudence of the European Court of Human Rights is entirely beyond the scope of the Commission's competence, it should be noted that Petitioner's selective citations to the Court's jurisdictional reasoning in the *Al-Skeini* case are profoundly misleading.<sup>12</sup> In *Al-Skeini*, the Court grounded the applicability of the relevant instrument on the State's exercise of jurisdiction in a given territory, i.e., the exercise of "executive or judicial functions on the

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<sup>8</sup> See, e.g., El-Masri, Report No. 21/16 (Admissibility), para. 26 ("the Inter-American Commission is competent *ratione loci* to take cognizance of the petition inasmuch as it alleges violations of rights protected by the American Declaration said to have occurred *within the jurisdiction of the United States*" (emphasis added)).

<sup>9</sup> Additional Observations at 15-17.

<sup>10</sup> See Ameziane, Inter-Am. Comm'n H.R., Report No. 17/12, paras 29-35 ("In these cases, the inquiry turns on whether the alleged victim was subject to the authority and control of the acting State. . . . [T]he U.S. exercised total and exclusive de facto control over this prison and the individuals detained there."); see also Detainees in Guantanamo Bay, Cuba Request for Precautionary Measures, Inter-Am. Comm'n H.R. (March 13, 2002), paras. 33, 35 (holding that the Commission was competent *ratione loci* to take cognizance of the petition because the United States exercised jurisdiction in Guantanamo Bay); Coard, Inter-Am. Comm'n H.R., Report No. 109/99, para. 37 (holding that the United States exercised jurisdiction in Grenada).

<sup>11</sup> Additional Observations at 17-18.

<sup>12</sup> *Id.* at 19-20.

territory of another State.”<sup>13</sup> The Court found that, because the United Kingdom “assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government,” such authority and control was sufficient to establish “a jurisdictional link” for purposes of the Convention.<sup>14</sup> The Court’s assessment in that case of whether or not the United Kingdom could be in breach of its obligations under the European Convention was predicated upon an initial finding that the United Kingdom exercised jurisdiction over the relevant territory (and, accordingly, that the Convention applied in the first instance). In this regard, the approach to extraterritoriality by the ECtHR is consistent with the jurisdictional application of the American Declaration and the American Convention, as consistently applied by the Commission.

#### B. No Breach in the Absence of an Applicable Commitment under the American Declaration

It is axiomatic that the existence of an obligation must be established prior to establishing a breach of such obligation; in the absence of an obligation, there can be no breach or responsibility arising therefrom.<sup>15</sup> Because the American Declaration does not apply beyond the jurisdiction of the State, and because the United States did not exercise jurisdiction in Chile, the United States could not have violated its commitments under the American Declaration with respect to General Schneider as Petitioner alleges.

Petitioner invokes a “responsibility to protect” theory to argue that the United States violated its commitments under the American Declaration.<sup>16</sup> Crucially, each of the reports that Petitioner cites in support of a “responsibility to protect” is predicated upon the exercise of territorial jurisdiction by the State in question, to which commitments and obligations under Inter-American instruments are inextricably linked. The *Ramos v. Guatemala* case concerned the failure of Guatemalan officials to protect an individual in Guatemala after threats to his life had been reported to Guatemalan authorities.<sup>17</sup> Similarly, the *López v. Honduras* case concerned the failure of a Honduran official to protect an individual in Honduras who had received death threats that had been reported to that Honduran official.<sup>18</sup> In each case, the responsibility of the

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<sup>13</sup> *Al-Skeini and Others v. the United Kingdom*, Eur. Ct. H.R. No. 55721/07, paras. 135, 138-140 (7 July 2011).

<sup>14</sup> *Id.* at para. 149.

<sup>15</sup> *See, e.g.*, The 2001 ILC Articles on Responsibility of States for Internationally Wrongful Acts, UN Doc A/56/10, 43, UN Doc A/RES/56/83, Annex, UN Doc A/CN.4/L.602/Rev.1, GAOR 56th Session Supp 10, 43, Pt.1 The Internationally Wrongful Act of a State, Ch.I General Principles.

<sup>16</sup> Additional Observations at 37-40.

<sup>17</sup> *See Ramos v. Guatemala*, Inter. Am. Comm’n H.R., Report No. 56/12, paras. 154-159 (Mar. 21, 2012).

<sup>18</sup> *See López v. Honduras*, Inter. Am. Comm’n H.R., Report No. 100/11 (July 22, 2011). *See also* *Luna López v. Honduras*, Inter. Am. Ct. H.R., Judgment, para. 117 (Oct. 10, 2013) (“The States have the obligation to guarantee the creation of the conditions required to prevent violations of this inalienable right. The observance of Article 4, in relation to Article 1(1) of the American Convention, not only presupposes that no person may be arbitrarily deprived of life (negative obligation), but also requires the State to adopt all appropriate measures to protect and preserve the right to life (positive

State was dependent upon its exercise of jurisdiction over the relevant territory and, in turn, the applicability of commitments and obligations under the applicable instruments to promote “the rights of all persons under its jurisdiction.”<sup>19</sup> In contrast to those cases, however, the United States owes no “responsibility to protect” under the American Declaration to individuals beyond the jurisdiction of the United States—including, in the present case, persons in Chile—because commitments under the American Declaration are limited to the bounds of a State’s jurisdiction.<sup>20</sup>

Petitioner’s attempt to construe obligations for OAS member States beyond their jurisdiction invites a breathtaking expansion of the scope and applicability of the American Declaration that proposes to create liability for every OAS member State for any individual in the hemisphere. For example, in cases of well-known human rights violations, Petitioner’s extra-jurisdictional “responsibility to protect” theory would have the effect of creating *ratione loci* competence over all OAS member States aware of the jeopardy of individuals beyond their jurisdiction where they fail to prevent such violations. Such an unbridled application of commitments and obligation in the Inter-American system is not only unworkable, but would require wide-spread intervention contrary to the sovereignty of OAS member States in order to comply with Inter-American human rights instruments. The Commission must decline this invitation to apply the American Declaration in an unprecedented and, indeed, dangerous manner, consistent with the plain language of the American Declaration, the American Convention, and prior reports of the Commission and judgments by the Inter-American Court.

To the extent that States undertake “due diligence” commitments or a “responsibility to protect” under Inter-American human rights instruments, these expectations are necessarily bound to the jurisdiction of the State. The jurisdiction of the State necessarily delimits the scope of the State’s commitments under the American Declaration. Accordingly, because the United States did not exercise jurisdiction in Chile, the commitments of the United States under the American Declaration could not apply in Chile and, as a result, the Petition is inadmissible *ratione loci*.

### III. Conclusion

For the foregoing reasons—as well as those presented in the July 2014, submission of the United States in this matter—the Petition remains inadmissible under Article 34 of the Rules because the Petition does not state facts that tend to establish a violation of the rights referred to

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obligation), in accordance with the obligation to guarantee the full and free exercise of the rights of all persons under its jurisdiction.” (emphasis added)).

<sup>19</sup> *Id.*

<sup>20</sup> As such, only Chile incurred commitments and obligations under Inter-American human rights instruments with respect to individuals within its jurisdiction, including in this case General Schneider. Accordingly, there is no “legal void in the protection of human rights that the American Declaration seeks to protect,” Additional Observations at 23.

in Article 27 of the Rules. Should the Commission nevertheless declare the Petition admissible and examine its merits, the United States urges it to find the Petition without merit and deny Petitioner's request for relief.