

**LEGAL OPINION OF THE INTER-AMERICAN
JURIDICAL COMMITTEE ON THE RESOLUTION
CP/RES.586 (909/92) OF THE PERMANENT
COUNCIL OF THE ORGANIZATION OF AMERICAN
STATES ABOUT THE DECISION ISSUED BY THE
SUPREME COURT OF THE UNITED STATES OF
AMERICA IN THE CASE US VS. ÁLVAREZ
MACHAIN**

EXPLANATION OF VOTE BY DR. SEYMOUR J. RUBIN

I have abstained from voting on approval or disapproval of the Report of the Committee on the above-cited matter. My reasons are as follows:

1. I have expressed my strong views during the course of the extensive discussion of this matter in the Committee to the effect that,

a) the Committee does not have jurisdiction to issue an opinion on the basis of a resolution on the legality or not of a judgment issued by the Supreme Judicial Authority of one of the member States;

b) I am firmly of the opinion that the acts committed by agents of the United States Drug Enforcement Administration were a clear violation of Internatinal Law;

2. Clearly, whatever the language used in the resolution of the Permanent Council, the Committee is being asked to issue an opinion directly as to the validity of a decision of the Supreme Court of the United States. In doing so, the Committee would be assuming the role of a judicial court or an arbitral tribunal. The Committee has no jurisdiction to act in this way. To make such a decision would require the Committee to provide a procedure for the hearing of arguments

and the filing of briefs, in other words, to give the parties in interest the kind of opportunity which due process requires in a judicial or arbitral procedure. Therefore in this case and following the arguments which I have previously expressed to the Juridical Committee when it sought to make a decision as to the merits of the controverted case, I have consistently, in statements which are on record, made the points that the Inter-American Juridical Committee cannot take action of this sort. However one reads articles 104 and 105 of the Charter, they make it clear that the Juridical Committee is to take cognizance of juridical —not judicial— matters. My position on this point has been made clear over the years and I am equally convinced here —as I was in cases involving legal claims to the Panama Canal Zone, to the Falkland (Malvinas) Islands, and to the dispute of territory of Belize—, that the Committee should not take up this aspect of the resolution of the Permanent Council.

3. I am however equally convinced that the intrusion of agents of the United States of America into Mexico to kidnap and to bring back to the United States Dr. Alvarez Machain was an illegal act, illegal under all standards of International Law. I have also stated this on record.

4. Therefore in so far as the report under consideration by the Committee purports to decide —whether by binding opinion or not— that a specific decision of the Supreme Court of the United States is wrong or “internationally illegal”, I believe that the Committee has no competence or jurisdiction under its statute —that is, the OAS Charter. On the merits, as I have said, my own opinion is that an act violative of International Law has been committed.

5. Finally, the argument has been made in the Committee that the Committee as an organ of the OAS has a duty to respond to requests made to it by the Permanent Council. In a sense, I agree that the Committee does have an obligation to reply. But the request of the Permanent Council cannot confer upon the Committee an authority which is not conferred on either the Permanent Council or the Committee by the Charter of the OAS. The proper reply to the Permanent Council should be an analysis of International Law considerations which are raised by the case at hand, but not an

opinion, advisory or otherwise, with respect to the correctness of a ruling of the Supreme Tribunal of one of the member States.

It is my belief that for the Committee to do this would be itself and intrusion prohibited by the Charter of the OAS.

6. In summary, therefore, I believe that there has been a clear violation of International Law. But I do not believe that the Committee has a right to apply that conclusion to specifics of the case at hand. It is the nearly unanimous view of jurists the world over that a violation of International Law has taken place, I would hope that the matter will be corrected as soon as possible. I note that the United States has already indicated that it would take no further action of this sort. That should be stated. There are several possible ways of doing this. While the restitution of Alvarez Machin to Mexico is one such way, other cases, such as the Eichmann case in Argentina, indicate that there are other ways of handling a matter of this sort. I believe that this is a special case, and that its consequences for international law will be limited.

Seymour J. Rubin

Rio de Janeiro, August 15, 1992.