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ACTION WHA-00

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	VC-00	TEDE-00	INR-00	IO-00	L-00	VCE-00	AC-01
	DCP-01	NSAE-00	OIC-02	OMB-01	DHS-00	OPIC-01	PA-00
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 FM AMEMBASSY MEXICO  
 TO SECSTATE WASHDC 8355  
 INFO AMEMBASSY BUENOS AIRES  
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 CIA WASHDC  
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 DEPT OF JUSTICE WASHDC  
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UNCLAS MEXICO 004885

DEPT FOR WHA/MEX, WHA/BSC AND DRL  
 NSC FOR BROCK

E.O. 12958: N/A  
 TAGS: PHUM, KJUS, KAWC, PREL, MX, AR, SP  
 SUBJECT: MEXICAN SUPREME COURT HANDS DOWN LANDMARK DECISION  
 ON EXTRADITION OF RICARDO CAVALLO FOR CRIMES AGAINST  
 HUMANITY

REF: MEXICO 3506

1. (U) On June 10, the Mexican Supreme court handed down a decision to extradite Ricardo Miguel Cavallo, an Argentine national, to stand trial in Spain for the crimes of genocide and terrorism committed in Argentina against Spanish nationals during the period 1976 to 1983.

2. (U) Cavallo, a former military officer, is accused of perpetrating human rights violations, including torture, and crimes against humanity at the infamous Escuela Superior de Mecanica de la Armada (ESMA) during the period of the military dictatorship in Argentina. Under Argentine laws 23.521 Obediencia Debida (Due Obedience or obeying orders, i.e. the Nuremburg defense) and 23.292 Punto Final (Full Stop), amnesty was granted for political crimes committed up to December 10, 1983.

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: DONNA M DIPAOLLO  
 DATE/CASE ID: 20 MAY 2009 200806608

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3. (U) Cavallo was in the Mexico on behalf of his company, Talsud, which had won a government contract. He was recognized during an interview and later arrested by Mexican Interpol on August 24, 2000 in Cancun, attempting to depart the country. On September 12, Spanish judge Baltazar Garzon, famous for his extradition case against Chilean dictator Augusto Pinochet, requested that the Mexican government extradite Cavallo to Spain to stand trial on charges of genocide, terrorism and torture. The Spanish government made a formal extradition request in October 2000.

A split decision on two counts  
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4. (U) In a unanimous decision, the Supreme Court granted an injunction (&amp;par8) on the charge of torture, determining that under Mexican law, the statute of limitations had run out. (Note: Under international extradition law, the statute of limitations of both the requested and requesting countries must be satisfied. End note) In a 7-4 decision the court denied an injunction on the charge of genocide and in a 10-1 decision, it denied an injunction on the charge of terrorism. The judges found that in this case, neither charge could be considered a &political crime8, since both crimes were committed against groups and not the state.

5. (U) Justice Humberto Roman Palacio, in his arguments stated that the court could not pass judgement on the crimes attributed to Cavallo, but rather, its function was to determine if the crimes satisfied the legal requirements to grant extradition. Roman Palacios argued that Cavallo,s extradition could not proceed, because the Spanish court that requested Cavallo,s extradition based its request ex-post facto on a July 1985 law that entered into effect after the commission of Cavallo,s crimes from 1976 to 1983. (This would mean that the law would be applied retroactively.)

6. (U) Justice Juan Silva Mesa countered that both the extradition treaty between Spain and Mexico and diverse international treaties (on UN Convention on Genocide, treaties related to terrorism, etc.) were constitutionally valid. Silva Mesa said that analyzing Spain,s jurisdiction and the competence of its courts in this case would violate the sovereignty of the Spanish state, because the extradition treaty between the two countries did not provide for this evaluation.

The Decision ) not quite what it seems  
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7. (U) While human rights organizations are hailing the Court,s decision, the ruling is on the propriety of extraditing Cavallo to stand trial on the charges and not on the crimes themselves. In sum, the Court upheld the legal basis for Cavallo,s extradition to Spain. Cavallo,s innocence or guilt will be addressed in Spanish courts.

8. (U) The next step in the process is for the Mexican Secretariat of Foreign Relations (SRE), Attorney General,s office (PGR) and Cavallo to be notified of the decision. According to press reporting and SRE Undersecretary Enrique Berruga, Cavallo will be turned over to Spanish authorities in 10 days time for trial. If found guilty in the Spanish lower court, Cavallo can appeal to the Spanish Supreme Court, to the higher Constitutional Court of Spain, and ultimately could ask that his case be considered by the European Human Rights Court in Strasbourg, France.

9. (U) Comment: The Supreme Court decision is precedent setting in its international aspect: it would be the first time a citizen from one country is extradited from Mexico to stand trial in a third country for crimes committed outside of the country prosecuting the crime. Adding to the case,s uniqueness is the fact that Cavallo is not wanted in Argentina for the crimes for which he will be tried in Spain.

10. (U) Given the Court,s decision on the charge of torture and the statute of limitations, it will be interesting to see how the ruling affects domestic cases. The Supreme Court already has one case on its docket (reftel) in which it will have to decide on the definition of genocide and terrorism as it applies domestically under constitutional law in the case of Miguel Nazar Haro and Luis de la Barreda, both accused of torture and &disappearing8 (reftel) leftists during the so-called &Dirty War8 in Mexico during the 60,s, 70,s and 80,s. The Special Prosecutor on human rights abuses in the 60,s and 70,s has asked, through the SRE, that the Embassy rush over copies of de-classified cables on the events where Nassar and de la Barreda supposedly committed crimes against humanity. It could be, and we shall try to confirm, that the Special Prosecutor wants to strike while the iron is hot.

Garza

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