

REVISTA IIDH

INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS
INSTITUT INTER-AMÉRICAIN DES DROITS DE L'HOMME
INSTITUTO INTERAMERICANO DE DIREITOS HUMANOS
INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS



21

IIDH

Enero - Junio 1995

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Revista
341.481

Revista IIDH/Instituto Interamericano de Derechos
Humanos. —Nº1 (Enero/junio 1985)-.-
—San José, C.R.: El Instituto, 1985-
v.; 23 cm.

Semestral

ISSN 1015-5074

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Diagramación, montaje electrónico de artes finales e impresión litográfica:
MARS Editores, S.A.

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PRESENTACIÓN

Tenemos el agrado de presentarles la edición Número 21 de la Revista IIDH, que comprende el período enero-junio de 1995. En esta edición, como iniciamos en la anterior les presentamos junto con la sección de doctrina, un informe sobre las principales actividades del Instituto Interamericano de Derechos Humanos, y de los órganos de supervisión internacional de los derechos humanos durante el período.

Esta edición contó con el copatrocinio de la Comisión de la Unión Europea.

Los Editores

DOCTRINA

THE FUTURE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

*David J. Padilla**

In thinking about today's conference on the Inter-American System for the protection and promotion of human rights, and specifically the future of the system, I reflected on what I consider to be the principal problem facing us, namely: We try to do too much in too little time.

More hearings, more on site visits, more contentious cases in the Court, more reports, etc. But the solution is not to undertake fewer activities and to do them better as has been suggested, for instance, in making a trade off between *in situ* investigations and preparing individual cases reports.¹

The correct response in my view is to do what we are currently doing, and then some, but to do it better. With this goal in mind I propose a reform which I think is indispensable for the next century.

The member states of the Organization of American States should create a full time Commission composed of persons dedicated exclusively to Commission business. This is the trend in Europe² and each of our periods of sessions demonstrates why this is the direction in which the Commission must move.

* This views expressed in this article are the author's own.

1 On site visits are provided for in the American Convention on Human Rights. (Article 48) and are further regulated in the Commission's Rules of Procedure (Article 44). To date the Commission has conducted over 60 on site visits in 18 OAS member States during its 36 year history. *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/II.82 doc. 6 rev. 1 July 1, 1992.

2 Protocol N° 11 to the European Convention on Human Rights, October 9, 1993.

The part time model which served the Americas well for the first 35 years is no longer adequate. Two fortnights of meetings per year with a few days tacked on for hearings are not sufficient to satisfy the demands and expectations of OAS member governments, NGOs and victims.³ Adding another week in the interim between regular meetings will not pick up the slack. No amount of contortions to take into account the Permanent Council's rules of procedure,⁴ the General Assembly's rules of procedure,⁵ or the commissioners own personal and professional commitments under the current modus operandi, will enable the Commission to meet its treaty based obligations.

Of course a better use of Commission time would help. The Secretariat could also be improved. Nor would more resources hurt. But at the end of the day, the Commission's time would still be insufficient.

Simply increasing the number or length of meetings is not a solution either. It may be a necessary palliative until the real problem is addressed, but as currently configured this prospect is seriously limited since Commission members' primary professional commitments are to their individual careers.

This is not a reproach. It is a statement of the current temporal reality.

Along with the creation of a full time Commission, a concomitant reform should be adopted. The holding of any government employment in any branch should constitute an incompatibility for Commission membership.⁶

This recommendation is not intended to criticize present or past members. On the contrary, in my experience Commission members on the whole have been remarkably independent of government influence even when employed in some capacity by their own governments. Rather, this reform goes primarily to appearances. It is not seemly that an independent Com-

3 Inter-American Commission on Human Rights. Rules of Procedure, Article 15. See *Basic Documents*.

4 Rules of Procedure of the Permanent Council of the OAS, OEA/Ser.6C.P./doc. 1112/80 rev. 1, 22 August 1984.

5 Rules of Procedure of the General Assembly of the OAS. OEA/Ser.P/1, rev. 9, 17 December 1990.

6 See *Basic Documents*: Statute of the Inter-American Commission on Human Rights, Articles 3, 8 and 10. Also Rules of Procedure of the Inter-American Commission, Article 4.

mission have several of its members working for governments whose conduct, from time to time, is the subject of Commission consideration.

At present governments wishing to nominate candidates for Commission election face a dilemma. They can offer retirees who have free time and independence but sometimes lack the stamina to perform some of the more demanding tasks faced by Commission members, such as on-site visits. They can nominate younger candidates who are academicians and generally enjoy greater scheduling flexibility than practicing lawyers. Or they can offer government officials who will be granted the leave time necessary to engage in the whole range of Commission activities.

Last year the Commission held six weeks of regular meetings.⁷ It also carried out seven on site visits and three protocolary visits to various member states. Commission members and staff lawyers also made nine appearances before the Inter-American Court of Human Rights. In addition, Commission members took depositions both at headquarters and abroad, met with U. N. and observer government officials, conducted a series of activities in connection with its anniversary, and participated in various academic events throughout the Americas.⁸

The upshot of this sustained burst of energy, however, has not been the easing of demands on the Commission's scarcest resource—its time. On the contrary, success generates renewed demand and heightened expectations. Thus, the Commission is pursuing more complex friendly settlement negotiations at present than at any point in its history. It is also litigating more contentious cases and requests for precautionary measures than at any other time. All of this is good, but in my view we are approaching a point of saturation and perhaps diminishing returns.

During the last period of sessions, thirteen working days in total, literally half of the Commission's time was consumed in hearings. The Commission did not have sufficient time to adequately deliberate on those hearings and evaluate the myriad of requests, recommendations, petitions and motions before it.

During the same meeting the Commission adopted a 400 page annual report, a 100 page country report,⁹ several individual case reports and a

7 Annual Report of the Inter-American Commission on Human Rights for 1994. OEA/Ser.L/V/II.88, doc. 9 rev., February 17, 1995. See Chapter 2.

8 *Ibid.* págs. 9-36.

9 Report on the Human Rights Situation in Haiti, OEA/Ser.L/V/II 88, doc. 10 rev., February 8, 1995.

quantum of miscellaneous but vital ordinary work. At the same meeting, however, a number of draft individual case reports and one country report were put over and an extraordinary session was scheduled for next week. The number of items pending in that session make me doubtful about accomplishing the entire agenda.

With a new administration in the General Secretariat, it is encouraging that new resources are on the way.¹⁰ New posts are being advertised and in due course will be filled by competitive selection. In the meantime the Secretary General has made new appointments and approved new contracts to enlarge the Commission's staff. These developments, while welcome, and indeed overdue, also promise to substantially augment the work of individual commissioners.

Simply trying to conscientiously read and critique staff work has come to take up an enormous amount of the members' time while away from headquarters. With the addition of more staff and the members' correct insistence on timely presentation of more individual case reports, demands on their time will inexorably increase.

Since 1990 the Commission's published product has increased five fold.¹¹ The number of cases brought to the Court has, and I think, will continue to grow. In many countries, the bar has learned to use the Commission as was the Convention framers' intent. Canada and Argentina come to mind to name only two.

For its part the Commission has designated country and thematic rapporteurs, incorporated a foundation to augment its resources,¹² and raised money by special contributions from member and non-member states alike. It has utilized conference calls, electronic transfers of texts, faxes and E mail. All of these efforts reflect the genuine commitment of members to their high responsibilities. Yet they are limited and essentially palliative.

10 Secretary General César Gaviria notified the Commission in March of this year that he had reassigned \$300,000 in additional resources to the Commission for fiscal year 1995. This brings the Commission's total budget to approximately \$2 million, less than 2% of the overall OAS budget.

11 If one simply counts pages of reports published by the Commission in 1989 and compares it with Commission output in 1994, the increase is staggering. With the increase of contentious cases, advisory opinion requests and special measures petitions also presented to the Inter-American Court, the total output of the Commission clearly has achieved impressive proportions.

12 The Inter-American Human Rights Foundation was incorporated in the District of Columbia in December 1994.

The member states of the Council of Europe are fusing that organization's Commission and Court. Judges in Europe will earn approximately \$180,000 per annum and will devote themselves exclusively to court work.¹³

I do not recommend a fusion of Commission and Court in the Inter-American System although an enhanced role for the victim in litigation is a topic that deserves further consideration. That is the subject of another presentation.

For purposes of my remarks today, I submit that if the Commission's work on behalf of human rights is to be taken to the next level, it must move away from its status as a part time body and be allowed to devote itself full time to what are full time challenges.

13 Source: The Secretariat of the European Commission on Human Rights.

DOCTRINA

DESARROLLO DEL ALTO COMISIONADO DE LAS NACIONES UNIDAS PARA LOS DERECHOS HUMANOS

José AYALA LARA

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