First Contentious Cases Before the Inter-American Court of Human Rights

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RECENT DEVELOPMENTS IN INTERNATIONAL ORGANIZATIONS

FIRST CONTENTIOUS CASES BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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INTRODUCTION

In 1982, the Inter-American Commission on Human Rights (Commission)\(^1\) considered three cases concerning individuals who disappeared while allegedly in the custody of the Honduran government.\(^2\) After reviewing the cases and failing to obtain any information about the location of the individuals, the Commission brought the cases before the Inter-American Court of Human Rights (Court)\(^3\) and re-

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3. See Convention, supra note 1, art. 33 (establishing the Inter-American Court of Human Rights); infra notes 10-21 and accompanying text (discussing the powers and
quested the Court to determine whether the Honduran government had violated the American Convention on Human Rights. These are the first contentious cases before the Inter-American Court of Human Rights and will significantly test the effectiveness of the Inter-American system to protect human rights.

This article analyzes the Court's preliminary rulings on the cases and considers the effect these rulings will have on future controversies before the Court. Part I discusses the creation of the Inter-American Court of Human Rights. Part II addresses the procedural history of the cases and their submission to the Court. Part III reviews the Court's decision on the preliminary objections raised by the Honduran government. Parts IV and V conclude with an examination of the implications these three cases will have on Court procedure and on the adjudication of human rights violations.

I. THE INTER-AMERICAN COURT OF HUMAN RIGHTS

rights that state parties are obligated to honor. To enforce its provisions, the Convention created the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Commission is quasi-judicial group that receives and reviews complaints concerning governmental human rights violations. The Court is empowered to hear contentious cases involving allegations that a state party has violated the Convention and is authorized to issue advisory opinions at the request of either the Commission or member states of the Organization of American States (OAS).

A. ADVISORY OPINIONS

Since its inception, the Court has issued several advisory opinions.

[Notes and references are omitted for brevity.]

10. Convention, supra note 1, art. 62(3). State parties to the case must recognize the Court's jurisdiction either by special declaration or special agreement. Id.

11. See id. art. 64(1) (contending that member states of the OAS may consult the Court regarding the interpretation of the Convention or any treaty concerning the protection of human rights in the American states). The Court can also provide OAS member states with opinions regarding the compatibility of their domestic laws with any international human rights treaty. Id. art. 64(2). In addition, some organs of the OAS may consult the Court in matters "within their spheres of competence." Id. art. 64(1). The Court has interpreted this phrase to require the organ to show that it has a legitimate institutional interest in the issue. Effect of Reservations, supra note 6, at 41.

In contrast to the jurisdictional requirements for adjudicatory opinions, the Convention does not require states to recognize the jurisdiction of the Court for advisory opinions, even if the Court issues an advisory opinion affecting that state. The opinions are not binding authority. A government may, however, find an advisory opinion difficult to ignore because the political costs of non-compliance are significant. Unlike adjudicatory opinions, advisory opinions are limited to interpretations of Convention provisions and do not provide individuals redress for human rights violations.

B. ADJUDICATORY OPINIONS

Either the Commission or a state party to the Convention may bring contentious cases before the Court. In either case, the states involved in the proceeding, whether as plaintiffs or defendants, must consent to the jurisdiction of the Court. To consent, a state must ratify the Convention and submit a declaration to the Secretary General of the OAS stating that it recognizes the jurisdiction of the Court on matters relating to the interpretation or application of the Convention. A state may recognize the Court’s adjudicatory jurisdiction unconditionally, for
specific cases, or on the condition of reciprocity. As of early 1988, Argentina, Colombia, Costa Rica, Ecuador, Honduras, Peru, Uruguay, and Venezuela have accepted the adjudicatory jurisdiction of the Court.

Only the Commission or state parties to the Convention can refer a case to the Court, therefore, the Convention requires individual petitioners to submit their cases to the Commission before the Court can hear the case. Any person or group may bring a complaint before the Commission. The Commission then decides whether to accept the case based on criteria provided in the Convention. Specifically, the complaint must contain, inter alia, the signature and identification of the petitioner, a statement of the facts, timeliness, and the exhaustion of domestic remedies. Moreover, the Convention requires the petitioner to declare that he or she has not submitted the matter to any other international proceeding and file the petition within six months of the final judgment in the domestic forum.

21. Id. art. 62(2). El Salvador and Guatemala have accepted the jurisdiction of the Court on a case by case basis. Wash. Post, Jan. 21, 1988, at A28, col. 2.


23. Convention, supra note 1, art. 61(1).

24. Id. art. 44; see Norris, Bringing Human Rights Petitions Before the Inter-American Court, 20 SANTA CLARA L. REV. 733, 738 (1980) (discussing the initiation of a proceeding before the Commission). This procedural aspect is unique to the Inter-American system. For example, the European Commission on Human Rights may examine individual complaints only with respect to states that have accepted the right of individual petition under the Convention. Boyle, Practice and Procedure on Individual Applications under the European Convention on Human Rights, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 133, 136 (H. Hannum ed. 1986).

25. See Convention, supra note 1, art. 46 (providing the criteria for admission to the Commission); infra notes 26-27 and accompanying text (discussing the criteria for admission). If the Commission considers the petition admissible, it will request information from the government and a transcript of relevant portions of the petition. Id. art. 48(1)(a).

26. Regulations of the Inter-American Commission on Human Rights, art. 32, reprinted in OAS HANDBOOK, supra note 1, at 126 [hereinafter IACHR Regulations]; Norris, The Individual Petition Procedure of the Inter-American System for the Protection of Human Rights, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, supra note 24, at 108, 114-15. The statement of facts should describe the events leading to the complaint. Id. at 114. Norris notes that it is important to establish the connection between the alleged act and the responsible government, particularly in the case of disappearances where government action is not apparent. Id. at 115. If the complaint does not, on its face, show the responsibility of the government, either because of acts taken or a failure to act, the complainant should assert why he or she thinks the government is responsible. Id. The Commission cannot review violations attributable to private persons unless these persons are acting under color of authority or are immune from punishment. Id.

27. Convention, supra note 1, art. 46(1)(b), (e).
When a case is found to be admissible, the Commission seeks to establish the facts. This process generally involves receiving oral and written statements, and may include conducting an in loco investigation. The Commission may also explore the possibility of a friendly settlement of the dispute, either on its own initiative or at the request of a party. If the parties cannot reach an agreement, the Commission prepares a report stating the facts and its conclusions as well as any suggested proposals and recommendations. Within three months of the date the report is issued, the Commission or the state involved may refer the case to the Court.

II. FACTUAL AND PROCEDURAL HISTORY OF THE PRESENT CASES

The first cases before the Court concern the disappearance of individuals who allegedly were under the custody of the Honduran government. In all three cases, relatives of the missing persons initiated the proceedings. The first case, Caso Fairén Garbi y Solís Corrales, involves a Costa Rican couple, Fairén Garbi and Solís Corrales, who dis-

28. Id. art. 48(1)(d). After the Commission admits the petition, it reviews and verifies the facts contained in the petition. Id. If proper, the Commission must conduct an investigation and request states to furnish information. Id. When the Commission requests information, the parties concerned must present oral and written statements. Id. art. 48(1)(e).
29. Id. art. 43(1)(f).
30. Id. art. 50.
31. Id. art. 51(1). If the matter is not submitted to the court and remains unsettled after the three month period, the Commission may prepare a final opinion on the matter. Id.
32. Caso Fairén Garbi y Solís Corrales, No. 7951, para. 16 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Godínez Cruz, No. 8097, para. 15 (Inter-Am. Ct. H.R., June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Velásquez Rodríguez, No. 7920, para. 15 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). Prosecution witnesses suggested that a secret Honduran military intelligence unit and death squad killed the missing individuals. Wash. Post, Jan. 21, 1988, at A28, col. 1. According to a June, 1984 report on disappearances in Honduras prepared by the Committee for the Defense of Human Rights in Honduras, 109 cases have occurred since 1980 involving persons who disappeared after security forces arrested them. AMERICAS WATCH, HUMAN RIGHTS IN CENTRAL AMERICA: A REPORT ON EL SALVADOR, GUATEMALA, HONDURAS AND NICARAGUA, 12 (1984). During the same period there were 162 cases of persons who disappeared after being arrested, but were later found in police custody or released. Id. At the trial before the Inter-American Court of Human Rights, a former member of the Honduran army testified that a secret unit created by the Honduran government tortured and murdered more than 130 individuals between 1981 and 1984. Manuel, supra note 2, at 224.
33. Mendez, supra note 5, at 3; cf. Convention, supra note 1, art. 44 (allowing any person, groups of persons, or recognized nongovernmental entity to submit a complaint to the Court).
appeared while driving through Honduras en route to Mexico. When the Commission requested information about the disappearances, the Honduran government claimed, respectively, that the couple never entered Honduras, that only Corrales had entered Honduras, and that the couple had entered and left the country. The Honduran government offered unreliable and conflicting evidence to support these assertions. The Commission determined that the evidence failed to sufficiently contradict the petitioner's claims. Thus, in accordance with article 42 of the Commission's regulations, the Commission presumed the truth of the facts stated in the petition.

The second case, Caso Godinez Cruz, involves a professor who disappeared in July, 1982. One witness saw men in military uniforms arrest Cruz while he was on his way to work. Another witness claims he saw Cruz in the Central Penitentiary in Tegucigalpa. The Commission requested information about the disappearance of Cruz from the Honduran government, but the government failed to provide any evi-

35. Res. No. 5/85, Case No. 7951 (Honduras), March 5, 1985, reprinted in ANNUAL REPORT, supra note 22, at 85-100. In addition to a lack of cooperation in response to Commission requests, the government of Honduras also ignored requests from Costa Rica to permit a second autopsy on the body of a young man found 20 kilometers from Tegucigalpa, where witnesses claim they saw the couple. Id. at 90. Physical traits in forensic photographs indicated that the photo may have been of Garbi. Id.
36. Id. at 98. When the Honduran government claimed the couple had entered and left Honduras, it submitted as proof a typed voucher. Id. Travelers usually fill these vouchers out by hand. Id. at 98-99. In addition, the vouchers were submitted three months after inquiries into the couple's whereabouts had begun. Id. Moreover, the Nicaraguan government produced a "migratory control voucher" filled out in Garbi's handwriting. Id. at 93.
37. Caso Fairén Garbi y Solís Corrales, No. 7951, paras. 25-29 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). The Commission noted that the Honduran government had not conducted an investigation and also concluded that the procedural objections of the Honduran government lacked any legal support. Id.
38. Id. para. 20(1). Article 42 of the Commission's regulations provides: The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of article 31, paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion. IACHR Regulations, supra note 26, at 131.
40. Id. para. 22.
41. Id.
42. Id. para. 17. The Commission sent pertinent excerpts of the complaint to the Honduran government and requested relevant information in November, 1982. Id.
The third case, *Caso Velásquez Rodriguez*, involves the apprehension, without an arrest warrant, of a local student. Witnesses testified that members of the Honduran military forces arrested and detained Rodríguez. The complaint charges that police and security forces tortured Rodríguez at three different facilities in an effort to obtain his confession to alleged political crimes. Honduran authorities denied that Rodríguez was detained. Upon a request for information, the Honduran government again failed to supply substantive evidence refuting the allegations. The Commission again presumed the truth of the facts alleged in the petition.

The Commission submitted these three cases to the Court in April, 1986. The complaint alleged that in each case, Honduras had violated the individuals' rights to life, personal integrity, and personal freedom as protected in the Convention. The complaint further requested the Honduran government to indemnify the injured parties.

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44. *Id.* para. 15.
45. *Id.*
46. *Id.* para. 24. The Commission declared that the Honduran government had not provided enough information. *Id.*
47. *Id.*
48. *Id.* para. 29. The Court had personal jurisdiction because Honduras had previously consented to its jurisdiction. *Id.; cf. Convention*, supra note 1, art. 62 (requiring parties to consent to the jurisdiction of the Court).
49. Convention, *supra* note 1, art. 4. Article 4 provides that every person has the right to have his or her life respected, and thus not be subject to arbitrary deprivation of life. *Id.* art. 4(1). The Convention also limits use of the death penalty to the most serious crimes and requires a final judgment rendered by a competent court. *Id.* art. 4(2). In addition, the Convention prohibits capital punishment for political offenses or related common crimes, or its imposition on those under 18 or over 70 years of age. *Id.* art. 4(4), (5). The Convention also guarantees every person condemned to death a right to apply for amnesty, pardon, or commutation of sentence. *Id.* art. 4(6).
50. *Id.* art. 5. Article 5 protects the physical, mental, and moral integrity of every individual. *Id.* art. 5(1). Article 5 also prohibits torture, and cruel and inhuman punishment or treatment. *Id.* art. 5(2). In addition, social rehabilitation is required for imprisoned individuals. *Id.* art. 5(6).
51. *Id.* art. 7. Article 7 protects against arbitrary deprivations of liberty, and provides that anyone detained is entitled to know the charges against him or her. *Id.* art. 7(2), (4). The Convention also calls for prompt and effective judicial redress. *Id.* art. 7(5).
53. *Caso Fairen Garbi y Solís Corrales*, No. 7951, para. 2 (Inter-Am. Ct. H.R.
The Honduran government replied with a series of preliminary exceptions that the Court decided in June, 1987.

June 26, 1987) (decision on preliminary exceptions, Spanish version) (discussing the Commission's submission to the Court); Caso Godínez Cruz, No. 8097, para. 2 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same); Caso Velásquez Rodríguez, No. 7920, para. 2 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same). The Court may award injunctive-type relief, thus ordering the violation of the Convention to cease. See Convention, supra note 1, art. 63(1) (describing the types of relief available to the Court). In addition, the Court can order the state to provide the injured party with fair compensation to remedy the violation. Id. The Court also has the power to grant preliminary injunctions to avoid irreparable injury. Id. art. 63(2).


Article 50 requires the Commission to write a final report stating the facts and its conclusion and submit the report to the parties involved if a settlement is not reached. Convention supra note 1, art. 50. Article 51 allows three months from the time the parties receive the report to refer the case to the Court. Id. art. 51. At the end of this period, the Commission can write an opinion on the case and suggest a course of action for the state to correct the situation. Id. If the government concerned does not take sufficient action, the Commission can then publish its report. Id.


III. DECISION ON THE PRELIMINARY EXCEPTIONS

The decision on the preliminary exceptions had a significant impact on defining the powers of both the Commission and the Court. The Honduran government first argued that the Court did not have jurisdiction because the Convention requires the Commission to first seek a friendly settlement between the parties. The Court ruled that seeking a settlement remained entirely within the discretion of the Commission and was not a procedural obligation. The Court excluded the possibility of reaching a friendly settlement in these three cases because the Honduran government had continuously denied that it had committed any wrongful acts.

Second, the Honduran government challenged the Commission’s failure to conduct in loco investigations or hold preliminary hearings.66

Corrales, No. 7951, paras. 33-35 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Godínez Cruz, No. 8097, paras. 31-33 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Velásquez Rodríguez, No. 7920, paras. 28-30 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). The Court ruled that because the Convention grants it total jurisdiction over all matters related to a case, it had the power to verify compliance with the rules of procedure; thus, the Court has plenary power to consider and review in full acts and decisions of the Commission. Caso Fairén Garbi y Solís Corrales, No. 7951, paras. 33-35 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Godínez Cruz, No. 8097, paras. 31-33 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). The Court ruled that when a country denies having committed an alleged act, it is difficult to reach a friendly agreement; Caso Godínez Cruz, No. 8097, para. 49 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same); Caso Velásquez Rodríguez, No. 7920, para. 46 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same). The Court also ruled that the rights violated in these cases — the rights to life, integrity, and personal freedom — are not susceptible to restitution through a friendly settlement. Caso Velásquez Rodríguez, No. 7920, para. 43 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version).

Corrales, No. 7951, paras. 33-35 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Godínez Cruz, No. 8097, paras. 31-33 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Velásquez Rodríguez, No. 7920, paras. 28-30 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). The Court ruled that because the Convention grants it total jurisdiction over all matters related to a case, it had the power to verify compliance with the rules of procedure; thus, the Court has plenary power to consider and review in full acts and decisions of the Commission. Caso Fairén Garbi y Solís Corrales, No. 7951, paras. 33-35 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version); Caso Godínez Cruz, No. 8097, paras. 31-33 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version). The Court ruled that when a country denies having committed an alleged act, it is difficult to reach a friendly agreement; Caso Godínez Cruz, No. 8097, para. 49 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same); Caso Velásquez Rodríguez, No. 7920, para. 46 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same). The Court also ruled that the rights violated in these cases — the rights to life, integrity, and personal freedom — are not susceptible to restitution through a friendly settlement. Caso Velásquez Rodríguez, No. 7920, para. 43 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version).
The Court ruled that these investigatory measures also remained within the discretion of the Commission.\footnote{Caso Fairén Garbi y Solís Corrales, No. 7951, para. 52 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version).} Although parties can request a preliminary hearing, the parties here made no request.\footnote{Caso Fairén Garbi y Solís Corrales, No. 7951, para. 95 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version).}

The final objection of the Honduran government was joined for consideration with the merits. The government argued that the Commission must wait until domestic remedies are exhausted before admitting a case to the Court.\footnote{Caso Godínez Cruz, No. 8097, para. 89 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version).} Although exhaustion is required, the Convention does allow for several exceptions. In particular, exhaustion is not required under the following circumstances: 1) when the domestic legislation does not afford due process protection of the violated rights, 2) when the domestic forum denies access to remedies, or 3) when the domestic court delays in rendering a judgment.\footnote{Convention, supra note 1, art. 46(2).} In joining this issue to the trial on the merits, the Court explained that when the Commission argues that a nation does not have an available legal process to protect...
the rights of individuals, it is, in essence, alleging a new violation of the Convention.\textsuperscript{64}

IV. EFFECT OF PRELIMINARY DECISION ON FUTURE CASES

These preliminary rulings established the procedural standards for bringing a case before the Court and the Commission and, therefore, will necessarily affect future cases. Interpreting the Convention to grant the Commission broad discretion in deciding whether to pursue a friendly settlement, conduct extensive investigations, or hold preliminary hearings\textsuperscript{65} strengthens the Commission's control over a case. This control will allow the Commission to expedite the process of either settling a case or bringing it before the Court.\textsuperscript{66} Thus, nations accused of violating the Convention may no longer rely on these procedural objections to frustrate the judicial process.\textsuperscript{67} This grant of discretion will also facilitate the submission of cases to the Court and will provide victims of human rights violations with more expedient and effective


\textsuperscript{65} See supra notes 56-64 and accompanying text (discussing the Commission's discretion in reviewing cases).


\textit{[T]he American States in drafting it [the Convention] did not wish to accept the establishment of a swift and effective jurisdictional system but rather they hobbled it by interposing the impediment of the Commission, by establishing a veritable obstacle course that is almost insurmountable, on the long and arduous road that the basic rights of the individual are forced to travel.}

\textit{Id.}

\textsuperscript{67} See Remarks of Professor Claudio Grossman, \textit{supra} note 66 (stating that the effect of the decision is to prevent defendants from using "required" procedures as a shield).
redress.  

Similarly, in affirming its power to examine the availability or the exhaustion of a nation's domestic remedies, the Court's interpretation of the Convention implicitly requires the reform of legal systems that do not adequately protect against human rights violations. To honor its obligations under the Convention, a nation will have to provide domestic remedies that include legislation favoring the protection of human rights and a judiciary that enforces these laws.

Requiring the availability of effective domestic remedies may ultimately prove to have the greatest impact on improving human rights protection within the Inter-American system. If domestic law incorporates the protections expressed in the Convention, and the courts and government of the nation concerned honor the law, individuals will have standing to enforce their rights independently without having to comply with the procedural requirements of bringing a case to the Commission. Moreover, individuals would not be limited by the fact that only a few nations have accepted the adjudicatory jurisdiction of the Court. Thus, the enactment and effective enforcement of domestic laws that protect human rights would discourage governments and

68. See id. (noting that in its decision the Court took steps toward adopting more flexible measures for the Inter-American system). But see supra note 66 (noting the opinion of Judge Escalante that the Inter-American system does not promote the swift adjudication of alleged human rights violations).


70. See Caso Fairén Garbi y Solís Corrales, No. 7951, para. 94 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (noting that examining the availability of domestic remedies requires looking at the judicial system in its entirety to determine whether the remedies exist in law and whether they are respected); Caso Godínez Cruz, No. 8097, para. 96 (Inter-Am. Ct. H.R. June 26, 1987) (decision on preliminary exceptions, Spanish version) (same); Caso Velásquez Rodríguez, No. 7920, para. 94 (Inter-Am. Ct. H.R. June 26, 1987) (same).

71. See Bilder, An Overview of International Human Rights Law, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE, supra note 24, at 13 (noting that the most effective way to protect human rights is through national legal systems). Bilder argues that domestic law containing remedies for violations of international human rights violations ensures compliance with international standards. Id.

72. See supra notes 18-27 and accompanying text (describing the procedures for gaining access to the Court); see also supra note 66 (noting the opinion of Judge Escalante that the Convention established a slow process in gaining redress for human rights violations).

73. See supra note 22 and accompanying text (listing the few nations that have accepted the Court's adjudicatory jurisdiction).
their agents from violating these rights.  

A. ALLOWING COUNSEL TO ADVISE THE COMMISSION

Another significant development in these three cases is the use of the petitioners' attorneys as advisors to the delegates of the Commission. The Court's Rules of Procedure allow delegates to seek the assistance of any person. This is the first instance where attorneys assisted the Commission in representing an individual before the Court. Because an individual cannot be a party, allowing an attorney to act as a representative expands the plaintiff's participation in the case.

V. PROJECTED EFFECTS OF THE CASES

The final decision in these cases and its aftermath will ultimately test the ability of the Inter-American system to protect human rights. In its rulings on the preliminary exceptions, the Court implicitly attributed an agent's alleged violations to the state. If a state government is found guilty of violating the Convention, the Court is likely to award money damages to the petitioners. The question arises whether the


75. See Mendez, supra note 5, at 3 (noting the use of petitioners' attorneys).

76. Rules of Procedure of the Inter-American Court of Human Rights, reprinted in OAS HANDBOOK, supra note 1, at 155.

77. Id. art. 21. The rules of procedure governing the European Court of Human Rights are similarly construed to allow an individual's attorney to assist delegates representing the European Commission on Human Rights. See Vargas, supra note 17, at 611 n.50 (comparing individual access to the Inter-American Court of Human Rights with that of the European Court of Human Rights).

78. Cf. Vargas, supra note 17, at 610-12 (noting the vagueness of the scope of an individual's participation before the Court).


80. See supra note 53 (discussing the remedies available to the Court); see also Manuel, supra note 2, at 225 (stating that the Court may require Honduras to pay damages to the victims' families).
Court will set a standard amount of recovery in each case. In setting monetary damages, the Court is likely to refrain from granting very liberal awards for fear that large damage awards would discourage other nations from accepting the Court's jurisdiction. Under the terms of the Convention, the Court may also direct the Honduran government to punish the perpetrators.

Another significant development will arise if the Court rules for the petitioners. Although the Honduran government appeared cooperative during the trial, human rights lawyers are skeptical about the government's commitment to the Court. Much of this skepticism stems from the fact that a number of witnesses for the petitioners have received death threats and two were killed. If the Honduran government chooses to ignore an unfavorable decision, both the authority of the Court and the ability of the Inter-American system to protect human rights will be severely undermined. The only available method of enforcement is political pressure from OAS member states and parties to the Convention. If these nations decline to apply adequate pressure, the system will become a facade.

A significant victory for the protection of human rights in the Inter-American system will occur if the Honduran government chooses to respect the decision of the Court. In the event of an unfavorable decision, Honduras should compensate the petitioners and amend its legal system to provide a remedy for forced disappearances. These actions would promote and encourage other states to respect the fundamental rights protected in the Convention.

81. See supra notes 69-70 and accompanying text (noting that a state party to the Convention must provide and enforce domestic remedies for violations of the rights contained in the Convention).

82. supra note 2, at 225.

83. See Wash. Post, Jan. 21, 1988, at A28, col. 1. Two of the sixteen witnesses in these cases were killed. Id. One, the vice-president of the Honduran Committee for the Defense of Human Rights, was assassinated while sitting in a car. Id. He was also the first witness to testify against Honduras, stating that governmental, military, and judicial authorities had ignored the disappearances. Id. Two other witnesses received death threats, while an army deserter, who gave secret testimony to a Honduran human rights group, died mysteriously. Id.

84. See Convention, supra note 1, art. 65 (allowing submission of the case to the OAS General Assembly). The Court's annual report to the General Assembly reflects the cases in which a nation has not complied with the judgments of the Court. Id. The General Assembly can then adopt any political measures it deems appropriate. Buergenthal, The Inter-American Court of Human Rights, supra note 14, at 241.