ANALYZING THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS UNDER THREE THEORIES OF COMPLIANCE

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I. INTRODUCTION

The focus of this paper will only be on the reports of the Inter-American Commission on Human Rights (the Commission). In principle, the record of compliance with the Inter-American Court of Human Rights (the Court or the Inter-American Court) is higher than that with the reports of the Commission. It is true that the first case that the Court received, the well know Velasquez Rodriguez Case, lasted ten years to be over. The delay owed to the tardiness of the Government of Honduras to pay the damages that the Court had determined. But states do not dispute their duty to comply with the judgment of the Court. The situation is quite the opposite with the Commission's report.

In order to understand why states act in this way it is useful to refer to general theories of compliance. Then one can propose alternatives to increase the level of compliance with the reports issued by the Commission. I believe that the reports are not given serious consideration basically because to ignore them is cost free for states. Consequently in order to make them matter one must see what it is that governments are considering valuable and explore the possibility to make them an element of that "good".

Nowadays the actor of the inter-American system that is given most weight by states is the Inter-American Development Bank (IDB). This is so because the region is trying to play a role in the "global economy". In order to achieve that, it is going through mayor reforms in their political and economic structure. By providing funds, the IDB, has become an important actor of this process.

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Therefore if it took into consideration the reports of the Commission when giving a loan to a country either when assessing the level of risk of the investment or when deciding what projects it is willing to fund, states would take the reports of the Commission much more seriously than what they do now. By analyzing the projects that the IDB is funding in countries of which the Commission has issued country reports it seems that the IDB does not take into consideration those reports. Professor Franck has said that international law has reached a level of complexity and maturity that has made scholar and practitioners specialize in the different areas of international law.[1] I would add that international organizations have gone beyond specialization and have become compartmentalized from each other even inside a same regional system in such a way that they do not know (I would not like to think that they do not care) what the other is doing. I am of the opinion that this undermines their effectiveness in fulfilling their mandate.

II.
THEORIES OF COMPLIANCE

In the paper I will examine three different theories of compliance and their applicability to the inter-American system. The first of those theories is the one elaborated by Professor Franck, and his focus on fairness in international law and institutions. The second will bee the Managing Compliance model elaborated by the Chayeses. Finally, I will use Professor Koh's Transnational Legal Process. I believe that all three models can be used to justify the uses by the IDB of the reports of the Commission and to see what is missing in the inter-American system of human rights to make it more relevant in the political agenda of states. In my view these theories focus on different stages of the compliance process so they can be used to complement each other.

A. Professor Franck's Model

The focus of this model is on the morality of international law. The basic proposition is that if international law is fair states will be more willing to comply. He considers that fairness has two aspects; a procedural and substantive one. "The fairness of international law, ...will be judged, first by the degree to which the rules satisfy the participant's expectations of justifiable distribution of costs and benefits, and secondly by the extent to which the rules are made and applied in accordance with what the

1. Franck Thomas, *Fairness in international law and institutions*, Oxford, New York, 1995, pages 4-7.

participants perceive as right process".[2] Considering the purposes of this paper it is more relevant to focus on the procedural fairness or the legitimacy of international law.

Professor Franck proposes that in order for a rule, in this case a report, to satisfy this requirement of legitimacy it must have been produced and applied in accordance with a rights process. It is reasonable to ask where can one find this "right process". In our case it is to be found in, as it will be explained in the next part of this paper, in the American Convention on Human Rights, the Statute of the Commission and its Regulations. This is where the participants (states, NGOs, victims, among other) must look to know what they can expect of the Commission. As we will see these instruments are insufficient therefore the Commission has developed a set of standards to decide when to issue a report, contributing to the procedural fairness of the process.

An important element of this paradigm is the concept of community. A community is need in order to assert a common goal and for the rules to have a meaning. It will be the community that will set up the standards to be a member of it, it will provide the process through which the common goal should be achieved. The Inter-American system is such a community. It was the OAS state members that created the Commission and that every year review the reports it issues at the General Assembly.

In the case under analysis the sense of community built before a formal setting was created. The common past, the role of the Catholic Church and the process of independence from Spain created links and a sense of community and fraternity between the future members of the OAS.[3] But a community satisfying the requirements set out by Professor Franck namely "...a social system of continuing interaction and transaction".[4] that creates the rules that will govern their behavior and allows them to identify the members from the non members, was created when the OAS Charter was adopted in 1948.[5] Or in 1890 if one considers the First International Conference of American States as the origin of the OAS.

According to Franck the community itself must have satisfied the legitimacy. Franck is proposing a model for international law in general. He believes that there is such a thing as an international community,

2. *Id.* Page 7.
3. In relation with the independence of Latin America see, Paz Octavio, *El laberinto de la soledad*, Fondo de Cultura Económica, Mexico, 1972. It can be argued that since the members of the OAS are not only composed by Latin American countries but also by the Caribbean countries that this sense of community was not formally established before the creation of OAS, this is not the place to get engaged in such a debate.
4. *Op cit. Supra* note 1, page 10.
5. Charter of the Organization of American States, in 33 I.L.M 981 (1994).

without disputing or accepting this view, it seems that this model can perfectly be applied for a less ambitious task as the one set out in this paper. It seems easier to determine that the Inter-American system is a community. Accepting this is relevant for the paper since the IDB can be seen as part of this community therefore the principles set forth by it should guide the work of the institution. The principles that the community has chosen to live by.

In the Inter-American System from the very beginning human rights was among those principles.[6] The OAS as part of the international community will also be governed by the principles set forth by the international community.

The four indicators of legitimacy

A fundamental and useful aspect of the model proposed by Professor Franck is the four indicators of legitimacy. He presents them as indicators for primary rules. Even though it is true that the reports of the Commission are not primary rules, the sources from where the Commission derives its power to issue such reports are primary rules. But also the four indicators of legitimacy can be applied to the reports. These factors are determinacy, symbolic validation, coherence and adherence.

a) Determinacy

It is "...the ability of a text to convey a clear message".[7] As he explains "|r|ules which have a readily accessible message and which say what they expect of those who are addressed are more likely to have a real impact on conduct".[8]

If the addressees of the rule do not know what is expected from them, first, it is harder to figure out when the rule has been violated. Second, after it has been concluded that there has been a violation of the norm it is more difficult and even unfair to hold the violators responsible for their action (or omission). This has a negative effect not only for the particular case but for the rule in general, since it is seen as unfair, it undermines the general perception by the community of the its value and convenience. Just as in criminal law the prohibition of ex post

6. *Id.* Preamble "Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man";
7. *Supra* note 1, page 30.
8. *Id.* Pages 30-31.

facto laws[9] is seen as a principle of fairness, an element of due process, a similar criterion of fairness should be incorporated when holding responsible a state for a violations of the international obligations it has assumed.[10] Finally, indeterminacy gives more space to the violator to justify it non compliance.

b) Symbolic Validation

This indicator of legitimacy focuses on the fact the rules are "backed up" by the rest of the community. "A rule is symbolically validated when it has attributes..., which signal its significant part in the overall system of social order".[11] In our case the fact that the reports of the Commission are presented in the General Assembly of the OAS, that it is an official document of the OAS, that in the reports it has a seal, that the Commission functions on the basis of the regular budget of the organization, etc., contributes to the legitimacy of the Commission's report in the eyes of the rest of the community (OAS). This makes the findings of the Commission transcend it and become findings of the OAS. According to Franck "[t]he objective of symbolic validation is to emphasize those cultural-anthropological aspects of rules which, in all societies, tend to give them a *gravitas* not found in *ad hoc* or opportunistic exercises of authority".[12] One can ask if these rituals are enough to endorse by the whole community of what has been done by one of its organs, the answer will depend on the nature of the rituals. In the case of the OAS there is not much time devoted to the reports of the OAS, the relevance of the reports in the whole of the General Assembly is rather marginal compared to other issues that are addressed. However, some of the benefits described by Professor Franck are accomplished by the mere fact that they are presented at the General Assembly, as it was said previously by that simple act the report becomes an official document of the OAS.

c) Coherence

For a rule to be coherent, under this model, it must treat similar cases in the same way and it must be consistent with other rules of the system. This will avoid internal contradiction and accusations of discriminatory creation, application or interpretation of the norms.

9. See the International Covenant on Civil and Political Rights, article 15, in Center for the study of human rights, *Twenty five human rights documents*, Columbia University, 1994, page 21.
10. This is not to say that a violation of such a principle would be a violations of human rights, it is clear that a states does not posses human rights.
11. *Supra* note 1, page 34.
12. *Id.* Page 37.

This has been a major deficit in the inter-American system. There a many important issues that are not solved by the primary rules and allow room for such a critique.[13] Some of the criticisms are an excuse used by governments once they have been called to account for their responsibility on the violation of human rights recognized in the Convention,[14] but others are well founded and should been taken seriously by the Commission.

"The legitimacy of rules is augmented when they incorporate principles of general application. General application requires not only that likes are treated alike, but also that the principles of allocation and exclusion underlying a rule are in general use, so connecting the rule to the skein of the law".[15] The Commission must develop a consistent jurisprudence when interpreting the norms of the Convention, both the substantive one and the one that govern the procedural issues, until now this has not been the case.[16]

d) Adherence

This is "the vertical nexus between a single primary rule of obligation ...and a pyramid of secondary rules governing the creation, interpretation, and application of such rules by the community. The legitimacy of each primary rule depends in part on its relation (adherence) to these secondary rules of process. Primary rules unconnected to secondary rules tend to be mere *ad hoc* reciprocal arrangements".[17] There will be more compliance if the rule is the product of the institutional framework and legal apparatus that the community has given to itself.

Implicit in the concept of community, is the idea of rules of recognition that give the measurement of validity to the whole system of rules. They must "preexist" the agreements in which the community has engaged.

13. For criticisms of the lack of clear rules see González Felipe, "Informe sobre Países. Protección y Promoción" also Méndez, Juan, "Una aproximación crítica a la interpretación vigente de los artículos 50 y 51" both in Méndez Juan and Cox, Francisco (ed.) *El futuro del sitema interamericano de protección de los derechos humanos*, IIDH, San José, Costa Rica,1998.
14. This was the case of Mexico when the Commission found that it had violated certain rights protected by the Convention. See Inter-American Commission on Human Rights, Annual Report 1997, Case Number11.520, Report Number 49/97, paragraph 88, Washington D.C. 1998.
15. *Supra* note 1, page 41.
16. Recently the Commission has started to develop the practice to include admissibility reports. This is a step in the right direction since it will give uniformity to such rules. Nevertheless there is still contradictions between the reports. The Commission has addressed this issue by appointing a person to assist the Executive Secretary in this task.
17. *Id.* Page 41.

Another concept that is proposed by Professor Franck and that is relevant for the purposes of this paper is the one of "Process Determinacy" this is "the institutional method for applying rules which, when it is seen to be principled and impartial, increases public confidence in the fairness of the norms being interpreted and applied. ...To achieve fairness through process, the process itself must be seen to be fair. In effect, this means that the process is recognized as legitimate: that is, instituted and operating in accordance with agreed rules".[18] This is fully applicable to the situation of the Commission. It must be seen as fair in order to "pull compliance" from states and in order to be consider seriously by other actors of the inter-American system, such as the IDB. It can not be seen to be biased against certain countries, or that it does not apply the rules in an impartial, fair and uniform way.

B. The Chayeses Model

If one compares this model with the previous one, it seems to me that it is has a more pragmatic approach. Nevertheless, it also relies on certain aspects of the fairness analysis. I would say that the fairness requirement would be in the previous stage, the Chayeses model assumes certain degree of fairness in the whole system. There is also a similarity in the concept of the new sovereignty with the idea of a community and all the implications that follow that assumption. In effect, when exposing their concept of sovereignty they say "...sovereignty no longer consists in the freedom of states to act independently, in their perceived self-interest, but in membership in reasonably good standing in the regimes that make up the substance of international life. To be a player, the state must submit to the pressures that international regulations impose. Its behavior in any single episode is likely to affect future relationships not only within the particular regime involved but in many other as well, and perhaps its position within the international system as a whole".[19] While I personally believe this is a useful concept it seems like the Chayeses are not using this concept in a prescriptive way but rather in a descriptive way. This does not seem to be so true in the case of the inter-American system. Trinidad and Tobago denounced the Convention just before the last General Assembly everybody believed that it would be highly criticized for this decision but nothing happened only one Minister of Foreign Affairs made an indirect reference to the issue.[20] Another example is the refusal

18. *Id.* Page 173.

19. Abram Chayes and Antonia Handler Chayes, *The New Sovereignty. Compliance with international regulatory agreements*, Harvard, Cambridge, 1995, page 27.

20. Personal interview with Juan Méndez, Director of the Inter-American Institute of Human Rights.

of Mexico to accept the reports of the Commission when its is condemned,[21] this clear confrontation against the Commission has had no negative effect against Mexico in the region. I would insist in the problem of compartmentalization of the inter-American system, making the fact that an action of a state in front of one international organization may affect its position in another is very unlikely.[22]

Other authors have suggested that the success of the a supranational system will depend on the level of homogeneity and the level of democracy of the region where the organs performs its jurisdiction.[23] This could be one of the preconditions of the new sovereignty. A more homogenate community will have a more important impact in the behavior of its members and the deviant actor will be "shamed".

The inter-American system satisfies this precondition, specially now that most of its governments have been elected. Yet the governments have suggested that the Commission should transform its mandate to a more promotional function, since these governments do not want to be criticized and believe that they alone can take care of their problems. The citizens of these countries do not share this view, of 800 cases before the Commission 70% are concerning violations of the right to life and physical integrity.[24]

The Chayeses propose a set of solutions to on how to deal with deviant actors and obtain that they comply with their obligations. Many of these solution to "manage compliance" are already incorporated in the inter-American system of protection of human rights and have not worked.[25]

Nevertheless it is useful to have this model in mind when analyzing the work of the Commission and how it can become more relevant in the day

21. See Inter-American Commission of Human Rights, Annual Report 1996, Case Number 11.430, Report Number 43/96, Washington D.C., 1997.
22. For this aspect Professor Koh's model of transnational process is particularly useful. This should be a major role of such transnational actors as human rights NGOs.
23. See Helfer Laurance and Slaughter Anne-Marie, *Toward a theory of effective supranational adjudication*, 107 Yale Law Journal 273, 332 and 335, 1997.
24. See *supra* note 13, page 77.
25. It is hard to determine the level of effect of the inter-American system of human rights in the region. There is no clear indicator of success. One element that might suggest a certain level of success is the incorporation by many countries of the region of treaties of human rights with constitutional hierarchy. See Dulitzky, Ariel, "Los tratados de derechos humanos en el constitucionalismo iberoamericano", in Buergenthal, Thomas and Antônio Cançado Trindade, (ed.), *Estudios especializados de derechos humanos*, Vol. I, IIDH, San José, 1996. Also you may see Levit Janet Koven, *The constitutionalization of human rights in Argentina: Problem or Promise?*, materials of Colloquium on constitutionalism in comparative perspective, Prof. Henkin and Dorf, Session 13. (on file with author).

to day life of many people of the region. Also the fact the it explains why states do not comply with obligations can also be helpful in applying it to the inter-American system of protection of human rights. Though I believe that a "clear cut" answer can not be given for the situation of human rights in the region under the jurisdiction of the Commission. I am of the opinion that the violations are due to social, political and cultural factors that vary from country to country. It is dangerous to oversimplify the situation by giving one answer to such a complex situation. The Chayeses model has a strong bureaucratic focus and this may be only one aspect of the problem.

The Chayeses assume that states have a tendency to comply. They reject the answer provided by the realists that states will comply only when it is in their benefit. They give three basic reason why states comply with their international obligations.

a) Efficiency

They say that the process of taking decisions is costly. So when a state has taken a decision regarding a specific issue they do not want to revisit the issue again and again assessing the costs and benefit of that decision so it is more efficient to comply with the rule. "...[B]ureaucratic organizations operate according to routines and standard operating procedures, often specified by authoritative rules and regulations".[26] A treaty would provide this rules system, so there will be a tendency to comply with it.

This is different in human rights treaties, such as the Convention. It is hard to say that a state has decided the issue of human rights when it ratifies the Convention. At best it undertakes the obligation not to violate the rights respect and ensure the enjoyment of those rights and it creates an organ to overview the how states are complying. It is not an instrument that provides a "solution" on how to protect and respect those rights. It is in this aspect that the reports of the Commission may be a useful instrument for states.

b) Interest

It is assumed that the parties interest were satisfied in the treaty process, based on its consensual nature. They recognize that not all of the aspirations of a state will be reflected in the final product of the process of negotiation. "From the point of view of the particular interest of any state, the outcome may fall short of the ideal. But if the agreement is well designed –sensible, comprehensible, and with a

26. *Supra* note 19, page 4.

practical eye to probable patterns of conduct and interaction– compliance problems and enforcement issues are likely to be manageable. If issues of noncompliance and enforcement are endemic, the real problem is likely to be that the negotiating process did not succeed in incorporating a broad enough range of the parties' interests, rather than willful disobedience".[27] But they also believe that negotiating a treaty "...is at its best a learning process in which not only national positions but also conception of national interest evolve and change".[28] Hence the treaty making process would have an effect on the formation of the national interest as well it would reflect the states interest.[29]

c) Norms

"The norm is itself a reason for action and thus becomes an independent basis for conforming behavior".[30] It is one more element to consider when making the decision whether to comply or not with the treaty.

Even with all these reasons to comply, breaches of international law occur. And it may be said that in the field of human rights more commonly than in other areas. So why is that? According to the Chayeses it is not because the state asses the cost and benefits of complying or not, or at least not most of the time.[31] For them there are three sources of non compliance.

a) Ambiguity and indeterminacy of treaty language

"The broader and more general the language, the wider the ambit of permissible interpretations to which it gives rise".[32] This might be the case of the Convention but only in relation with certain rights. This problem has been tried to be solved through interpretation and also relying on the history of constitutional interpretation of different countries. The problem of indeterminacy is inherent to the language of rights therefore some honest mistakes may occur but when the

27. *Id.* Page 7.
28. *Id.* Page 5.
29. Some have criticized theories that explain compliance with law on the basis that "members of the group accept in belief and embody in conduct the values the law express". The objection would be that it explains too much and to little. These theories believe that deviant conduct occurs because there is something missing but it can be argued that conflict or deviant behavior is part of social conduct. See Unger Mangabeira, Roberto, *Law in modern society*, Free Press, New York, 1977, page 31.
30. *Id.* Page 8.
31. See Id. Page 9.
32. *Id.* Page 11.

competent organ gives its view of the right interpretation this should be followed by the states. This becomes the proper understanding of the obligations of the states.[33]

b) Limitations on the capacity of parties to carry out their undertakings

The lack of the adequate resources to comply with the obligation is another source of non compliance. Many countries may be willing to live up to there international obligations but their reality main not be adequate for it. Here "soft law"[34] will play a critical role in the form of technical assistance. To comply "...requires scientific and technical judgment, bureaucratic capacity, and fiscal resources".[35] The Commission has not provided technical assistance to governments.[36] Nevertheless this can be no excuse since many organizations give training and technical assistance to governments on how to comply with the Convention.[37]

c) The temporal dimension of the social, economic, and political changes contemplated by regulatory treaties

To implement the changes that are wanted by the treaty regime requires time. This time factor is not recognized by the Convention.[38] In critical issues as human rights violations the international community must not allow that the need for time becomes a justification for the violation of human rights. If it did than many countries would be eager to raise that as an excuse and the individuals

33. This was the position of the Supreme Court of Argentina in the Giroldi case. Cited in Koven *supra* note 23, page 58.
34. On the importance of soft law see Szasz, Paul, "The general law making processes" in Joyner Christopher (ed.), *The United Nations and international law*, ASIL and Cambridge University Press, Great Britain, 1997, page 32.
35. *Supra* note 19, page 14.
36. Some steps are being taken to explore the possibilities to get involved in this area. See op. Cit. *Supra* note 13, page 110.
37. In the context of debates on the reform of the inter-American system of protection of human rights some have suggested that the Commission should start providing such a service. This is the position of Edmundo Vargas a former Executive Secretary of the Commission. See *Op. Cit. Supra* note 13, "Intervención del representante permanente de Chile durante la sesión ordinaria del Consejo Permanente de la OEA, page 45. For a different perspective see Farer, Thomas, "The future of the Inter-American Commission on Human Rights: promotion versus exposure, in *supra* note 13, pages 515 - 536. However the Commission has started to engage in such a practice. See Inter-American Commission, Annual Report 1997, Chapter IV, Washington D.C., 1998.
38. See American Convention on Human Rights, article 2 : "Where the excise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

would never get to see the benefits of the international law of human rights.

Together with the previous problem addressed by the Chayeses is that circumstances change over time, so the treaty must adapt to the changes in time. Interestingly enough the Chayeses put human rights as an example of the difficulties to comply with treaty obligations because of this factor. "The effort to protect human rights by international agreement may be seen as an extreme case of the time lag between undertaking and performance. Human rights norms, despite their almost universal acceptance, are slow to establish themselves in places where they may clash with local customs, culture, and systems of government. Although the major human rights conventions have been widely ratified, compliance leaves much to be desired. It is apparent that some states have adhered to the conventions without any serious intention of abiding by them".[39] The Chayeses may be right in their comment but those countries that "take their time" to comply with human rights treaties will be violating international law and therefore will be responsible internationally.

The Convention recognizes that some rights, namely social, economic and cultural rights may take time to implement. In its 1997 annual report the Commission when reviewing the situation in Guatemala, recognized that some progress was made in relation with some civil and political rights but improvement was still need. This takes in account that Guatemala has recently end a internal conflict and that it might take time to before it can comply in an acceptable level to its obligations under the Convention.

The Chayeses believe that the answer for deviated behavior should not be sanctions. According to them they cost too much, countries are reluctant to use them, not many treaties incorporate them and it creates and adversarial atmosphere. Instead they propose managing compliance, persuading states to comply with their obligations.[40]

To the question of how to manage compliance they answer. First you must gather reliable information on how nations are behaving. We must always remember that behind the whole idea of managing compliance is the concept of the new sovereignty so, as in the perfect market, the system needs transparency So a reporting system is vital, or the capacity to receive information from different sources. This requirement is met by the Commission, it gathers its own information, it receives information from NGOs and states. The attitude of states has

39. *Supra* note 19, page 17.
40. See *Id.* Page 109.

changed at first states did not answer the requirements of the Commission now most of them do. As a matter of fact states have the chance to review and comment the reports of the Commission before they are published.

Another important element of the model is that a dispute settlement mechanisms be provided. This is also the case of the Convention. The other element is capacity building as it was previously stated, the Commission does not provide technical assistance to government in satisfying its obligations under the Convention. This could be an interesting field for the Commission to explore, however the lack of resources summed up with the capacity of other institutions that are providing this service suggests that the Commission should not extent its work to this area. Related to that argument one must consider that the Commission is not a permanent body, and that even though the Secretariat is it is consumed by processing individual claims and country reports.

Finally they call for the use of persuasion. Constant dialogue and contact with deviant parties is an instrument that should be exhausted. This has been the case in the inter-American system of protection of human rights. The Convention provides in the individual claims for a stage of friendly settlement.[41] The level of success of this procedures has varied from state to state. Some states react better for such a procedure but states that will not respect the final reports of the Commission have little incentive to take seriously this stage of the procedure. It will be used as a way to delay a final outcome. The Commission engages in a through dialogue with government officials when it is preparing a country report and it gives suggestions on how to solve some of the problems that the Commission sees in the country.

This is not to say that persuasion is useless in the inter-American system but if it is not backed up by some possibility of loosing something that is seen as valuable it will have little impact with the states that have a tendency to disregard international obligations of human rights.

When explaining why the process works the Chayeses say "...because modern states are bound in a tightly woven fabric of international agreements, organizations, and institutions that shape their relations with each other and penetrate deeply into their internal economics and politics. The integrity and reliability of this system are of overriding importance for most states, most of the time".[42] Unfortunately the examples of Mexico and Trinidad and Tobago show that the inter-

41. See *supra* note 33, article 48, 1,(f).
42. *Supra* note 19, page 26.

American system is not so integral as it is necessary. It also seems that in many states the inter-American system of human rights has not reached that level of importance required for the model to work.

Why is this so? I believe that a possible answer may be given by Professor Koh's model of Transnational Process and the incapacity of the different actors of the system to incorporate the norms into the value systems of the different countries under the jurisdiction of the Commission, thus making the Convention a significant element of the "decision machinery".

C. The Transnational Legal Process Model

Professor Koh defines this process as "...the complex process of institutional interaction whereby global norms are not just debated and interpreted, but ultimately internalized by domestic legal systems".[43] He criticizes the two previous theories because according to him neither try to explain the process by which those norms are incorporated to the value system of a state. While this may be true of Francks theory it seems less true in relation with the Chayeses approach since many of the "solutions" proposed do focus on this aspect even if they do not mention it with that name. Just to name one example the whole process of technical assistance would be one of the ways of internalizing the norms of the treaty.

Regardless of the accuracy or not of the criticism of Professor Koh to the other models his is particularly useful for assessing the inter-American system of human rights. Since he recognizes the multiplicity of actors involved in the international process. By emphasizing the transnational aspect he reminds international lawyers that one of the main purposes of international law, specially human rights international law, is to change domestic realities. The most successful international human rights system would be the one that is no longer needed because the problems of human rights violations are solved internally in a satisfactory manner and in accordance with international standards.

The transnational legal process has three phases. First the transnational actors produce the international norm, at a second phase because of a series of interaction between different actors (national and/or transnational an/or international)[44] an interpretation is needed. So the actors

43. Koh Harold Hongju, Review essay: Why do nations obey international law?, 106 Yale L.J. 2599, 2602.

44. In my view some actors are national because they do not get involved with issues outside the boundaries of their country and are affected by international law only when it is incorporated. Some are transnational since they are involved in both "worlds" (the domestic and the international) and some international because they only get involved in domestic issues in as much as it is related with an international problem.

move to convince the other actors (national and/or transnational and or international) to accept as there own, the interpretation that they promote. The purpose is to make the other actors incorporate to its set of values (legal, moral, political, etc.,) such interpretation. Third a norm has been generated and it will guide their future relations. By this rather complex process these norms are being constantly internalized.

It is my perception that this is a rather helpful model for the human rights regime since it focuses in the different layers that one must have in mind to be effective in achieving compliance with human rights standards. As I said previously it reminds us that there are different actors involved and that each has her part to perform. Professor Koh is very aware of this use as he says "[i]n such an area (human rights) where enforcement mechanisms are weak, but core customary norms are clearly defined and often peremptory (jus cogenes), the best compliance strategies may not be "horizontal" regime management strategies, but rather, vertical strategies of interaction, interpretation, and internalization".[45]

If one has this model in mind to analyze the issue of compliance of the Commissions reports one sees that there is much to develop. First the actors that are involved are not all the needed. The number of NGOs using the system is rather small. Even though there are international NGOs and transnational NGOs that are starting to use it more, it is still not enough.

A critical aspect of the transnational legal process is the internalization of the norms. Koh proposes a distinction between social, political and legal internalization.[46] Social internalization is non existent or rather scarce in the inter-American system. This may vary if some special event occurs such as an important case for the country is being reviewed or there is a on site visit occurring. But it never reaches the level of widespread public awareness. Political internalization is also minor, I consider that the proposal put forward in this paper would largely focus in this section of internalization. It would make the political elite aware of the existence and importance of the Commission and of the inter-American system of human rights in general. Today the system is the concern of an epistemic community. Legally one must make some distinctions. As it was stated before many constitutions have incorporated the human rights treaties to their legal systems and have constitutionalized human rights. Concerning the reports of the Commission two countries have laws that give a right of action to victims of human rights violation to go before the national

45. *Supra* note 40, pages 2655 and 2656.
46. *Id.* page 2656.

courts to claim damages when it so ordered by the Commission.[47] If one sees the cases in which national tribunal refer to reports of the Commission it is rather rare, being Costa Rica and Argentina the positive exception.[48] From this quick review one sees that there is a need for more internalization of the reports of the Commission and the principles of the Convention. Transnational actors must become involved in the process and start referring to the reports of the Commission in order to internalize in all three aspects of it the norms of the Convention as interpreted by the Commission.

I have been making references to the Commission but I have not exposed the structure of the Commission, its history and its present. In the next part I intend to this.

III.
THE COMMISSION

A. Evolution

On April 30, 1948 in Bogota, Colombia, the states present in the ninth International Conference of American State adopted the Charter of the Organization of American States (the Charter).[49] Among the principles of the Organization they proclaim "...the fundamental rights of the individual without distinction as to race, nationality, creed, or sex".[50] However, just like the Charter of the United Nations, there was no specification of the rights of individuals. This was done in the same Conference by adopting the American Declaration of Rights and Duties of Man[51] (the Declaration).

Neither document created an organ that would be in charge of the promotion and protection of human rights in the region. This was delegated, by the Conference, to the Inter-American Juridical Committee. This organ was to draft a statute for an international tribunal in charge of protecting human rights in the region.[52] Different internal tensions and conflicts made that this statute was not drafted.

47. The two countries are Colombia and Peru. See Law number 288 in Diario Oficial de la República de Colombia of July 9, 1996 and Law number 23506, Habeas Corpus y Amparo, December 7, 1982.
48. See *supra* note 23.
49. See *supra* note 5.
50. *Id.* article 3 (k).
51. Resolution XXX, *Final Act of the Ninth International Conference of American States*, Bogotá, Colombia. March 30 - May 2, 1948. Reprinted in *Twenty five human rights documents*, Columbia University Press, New York, 1994, page 194.
52. Resolution XXXI, *Final Act of the Ninth International Conference of American States*, Bogotá, Colombia, March 30 - May 2, 1948.

The region had to wait till 1959 to see an organ of human rights be created for the "promotion" of human rights in the region. That year in Santiago Chile due the political tension in the Caribbean region, specially in the Dominican Republic, a fifth Meeting of Consultation of Ministers of Foreign Affairs was convoked. The purpose was to analyze two situations. First the aforementioned tension and second to analyze the linkage between human rights and representative democracy.[53]

Out of it came the creation of the Commission by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs.[54] In it also decided that the Inter-American Juridical Committee should draft a convention on human rights and until this was done they decided to create the Inter-American Commission on Human Rights with the duty to promote human rights. As many commentators have noted[55] this function was rapidly expanded by the work of the Commission. The Council of the OAS was in charge of adopting a Statute for this new created body. This time it was done the 25 of may of 1960, after postponing its adoption in two instances (April 19, May 11).[56] The Commission was finally installed and ready to start its job on October 3 1960. The determination of the people in the Commission made it possible that it did not become another body just producing flyers or manuals about the Declaration. They were constantly pushing for an expansion of their functions, they finally achieved it in 1965 when in Río de Janeiro at the Second Special Inter-American Conference they obtain Resolution XII which granted much of what they wanted.[57] With this resolution the Commission was now officially a body for the protection of human rights and not only for promotion. Through it, it had the capacity to review individual claims, do country reports, do thematic reports, plan on site visits with the consent of the states,[58] etc.

53. For the OAS representative democracy was a core principle see *supra* note 5 article 3 (d).
54. Resolution VII, part II., *Fifth meeting of Consultation of Ministers of Foreign Affairs,* (Doc. C-i-468), OAS, Santiago, Chile, 1959.
55. See Faúndez, Héctor, *El sistema inter-americano de protección de los derechos humanos,* IIDH, San José, Costa Rica, 1996, page 39.
56. See Consejo de la Organización de los Estados Americanos, *Decisiones tomadas en las sesiones.* Vol. XIII, January - December 1960, OEA/Ser.G./III/C-sa-371(3), Washingnton D.C., page 38.
57. Resolution XII resolves "To authorize the Commission to examine communications submitted to it and any other available information, so that it may address to the government of any American State a request for information deemed pertinent by the Commission, and so that it may make recommendations, when it deems appropriate, with the objective to bringing about more effective observance of fundamental human rights." As cited in Farer Tom, "The rise of the inter-American human rights regime", *Human Rights Quarterly,* August, Vol. 19, Number 3, page 511.
58. The Commission first used this power in the Dominican Republic it had interpreted that since it could hold its sessions in any member state it could do an on site visit.

In 1967 the Charter was amended by the Buenos Aires protocol, among other changes it made the Commission one of the organs of the OAS.[59] Now there was no doubt concerning the legal status of the Commission. It was at least dubious that such an important body could be created by a Resolution. There was a clear risk for the existence of the Commission. The fact that its basis of creation was a Resolution made it possible to eliminate the Commission through the same procedure, this of course changed with the amendment just cited. The Commission was now a treaty body; an organ of the OAS just like any other body in the Charter. It will be in 1978 when the Convention comes into force. Until this time the Commission reviewed cases, issued reports, did on site visits, all upon the basis of the documents previously cited. Using the Declaration as it subject matter.

With the Convention a new organ comes in the scene, the Inter-American Court of Human Rights (the Court). As I said before I will not deal with the Court in this paper. However, the importance of the Convention for the work of the Commission is relevant. 24 countries of the 35 members of the OAS have ratified the Convention. For those that have not ratified the Convention, their relation with the Commission is governed by the Charter, the Statute and the Rules of Procedure of the Commission and, on the substantive aspect, by the Declaration. Some countries have disputed the powers of the Commission to review their situation.[60]

The functions of the Commission are set out in article 41 of the Convention[61] they are:

a) Make recommendations to state members on the measures that are necessary to live up to the obligations set out. It is sort of an advisory opinion function. But it could be used also as a technical assistance devise.

b) Elaborate studies and reports. There is no limitation on the kind of reports the Commission may prepare. Until now it has done thematic reports, country reports in the annual report and country reports after an on site visit.

c) Request information from the governments on the measures that they are adopting to conform with their international human rights obligations. This could fit in the category of collecting data proposed

59. See *supra* note 5, article 53.

60. See Inter-American Commission of Human Rights, Annual Report 1996, Report Number 51/96, Case Number 10.675, paragraph 67. Washington D.C., 1997.

61. For a general view of the inter-American system see Buergenthal, Thomas, Et. Al., *Protecting human rights in the Americas*, Kehl, Germany, 1982.

by the Chayeses model. Under Article 43 States have a duty to provide the Commission with all the necessary information that the Commission deems relevant.

d) It must also prepare a annual report to the General Assembly. The idea behind this report was to see what the Commission had done during the year. Once again the creativity of the Commission transformed this report in an instrument of protection of human rights. By including in it detailed information of the situation of human rights in different countries and the outcome of the individual claims. The General Assembly became a forum of human rights when the Commission presented its reports and a way of shaming the state that had not complied.

e) Finally, the Commission has a two claims procedure. A state to state procedure, which has never been used and an individual claim procedure that has become one of the core functions of the Commission achieving in some cases outstanding results.[62] This is a dispute settlement mechanism.

Those are the functions of the Commission one can see that many of them are part of the model of managing compliance but nevertheless the impact of these reports and of the Commission in the reality of the state members is marginal except on rare occasions. The individual complaint mechanism and the function of preparing studies and reports could be used by transnational actors to internalize these reports and decisions by the Commission.

B. The individual complaint system

The individual complaint system has the peculiarity that any one that has knowledge of a violation can submit a complaint.[63] There is no need to be a victim or be a representative of a victim. This is due to the reality of the human rights violations in the continent in where it was very difficult for the victim to present a claim. This opens the doors for NGOs and other transnational actors in a way that is unique. There are however certain requirements that must be met. First one must exhaust local remedies, the petition must be presented within the six months after the petitioner has been notified of the final judgment and that the same case must not be pending in another international dispute settlement system.[64]

62. See Inter-American Commission on Human Rights, Annual Report 1994, Report Number 22/94, Washington D.C., 1995.

63. See article 44 of the American Convention on Human Rights, in *Twenty five human rights documents*, University Press, New York, 1994, page 139.

64. *Id.* article 46.

After a procedure has been initiated there are several communications between the petitioner and the accused state. As it was said previously the Commission has started to issue and publish express admissibility reports. This would send a message that the claim is serious and it avoids that all the discussion focuses on the exhaustion of local remedies. It also contributes to elaborate clear standards for all participants to know what the rules are enhancing the level of fairness or "procedural determinacy".

After this the Commission offers to intervene between the parties to see if a friendly settlement can be reached. In the last period the Commission has been using this mechanism to try to solve the claims before it.[65] The level of success depends on the country, the Commission tries to persuade countries to comply with its findings by avoiding them the embarrassment of being signaled out in the General Assembly.[66] If these attempts fail the Commission issues a confidential report. If it finds that there has been a violation of a right protected by the Convention, it sets the measures that the state must adopt to avoid a report that would determine that it has breach its obligations under the Convention. The state has 3 months to either comply or send the case to the Court. The Commission can also, before the expiration of these 3 months, send the case to the Court. If neither the state nor the Commission send the case to the Court[67] and the state does not adopt the measures recommended the Commission issues a final report.

There has been much debate on whether this final report is binding or not on the state. This is in part because the Court in a case said that since they are recommendations they cannot be binding[68] The Court after took a slightly different stand on the issue and it said that states had to perform their obligation in good faith so they had to consider seriously the recommendations of the Commission.[69] But despite these rulings, due to the structure of the procedure, the Court can never review a final report of the Commission, so its comments are only referring to the confidential report and not the final report. Furthermore, if one reads the text of article 51 Number 2 it is written in a mandatory fashion "...shall prescribe

65. See Inter-American Commission on Human Rights, Annual Report 1996 and 1997, Washington D.C.

66. See Palabras del Presidente de las Comisión Interamericana de Derechos Humanos, Claudio Grossman, in *supra* note 13, page 158.

67. One of the mayor criticisms to the Commission is that it has never set clear criteria for making the decision to send or not a case to the Court. See Méndez in *supra* note 13.

68. Inter-American Court of Human Rights, *Caballero Delgado v Colombia*, Judgment December 8 1995, San José, Costa Rica, paragraph 67.

69. Inter-American Court of Human Rights, *Loayza Tamayo v Peru*, Judgment September 17 1997, San José, Costa Rica, paragraph 81 and 80.

a period within which the state is to take the measures..." in Spanish it says "debe", this is clearly mandatory language.

Even when one can say that the use that the IDB could give to such a report is not important this should not lead to the conclusion that they are useless for it. The cases brought before the Commission usually represent a pattern of systematic or endemic violations in the region. An individual case may show the IDB the way abstract problems of governance are in reality. It also provides it with the opportunity to think of solutions that are viable in reality.

C. The country reports

The instrument of country reports has been one of the fundamental functions of the Commission since its creation[70] for the protection of human rights in the region. There are two ways how the Commission issues a country report. First in its annual report it includes in a chapter a review on the situation of the respect of human rights in a country and the other through a report after it has done a on site to that country.

The Commission derives the power to issue reports on human rights situation in a country from the Convention in article 41, from the Statute in article 18 and from article 63 of its Regulations.

This practice was interrupted in the 1995 report because the Commission considered that it was necessary to review it and consider clear criteria for deciding which member states it would examine.[71] Acknowledging that there could be undermining of its legitimacy if it seemed that in deciding to do a country report it was been biased.

The Commission explained, in retrospective, the reasoning behind the past decisions to include country reports in its annual report. It said that it was in order to follow up on the situation of human rights on countries it had effectuated an on site visit. Being of the view that the Organization needed to be constantly updated on the situation of human rights of those countries.

The Commission finally decided on four criteria for selecting the states that would be reviewed. Namely,

"1. States which are ruled by governments which have not been chosen by secret ballot in honest, periodic and free popular elections in accordance with accepted international standards.

70. See Cançado Trindade, Antônio, "El sistema de protección de los derechos humanos (1948 - 1995) in Bardonnet, Daniel and Cançado Trindade, Antônio, *Derecho internacional de los derechos humanos,* IIDH, San José, Costa Rica, 1996. Also Medina Quiroga, Cecilia, *The battle of human rights,* 1988.

71. See *supra* note 63, Chapter V, Human rights development in the region. Introduction.

2. States where the free exercise of rights contained in the American Convention or Declaration have been effectively suspended, in whole or part, by virtue of the imposition of exceptional measures, such as a state of emergency, state of siege, prompt security measures, and the like.

3. Where there are serious accusations that a state is engaging in mass and gross violations of human rights.

4. States that are in a process of transition from any of the above three situations".[72]

The decision of the Commission to expose the criteria has to be welcomed. It enhances the level of fairness of the system and strengthens the level of legitimacy of the Commission. It also allows other actors, such as IDB, to rely on them since it will know why the Commission has decided to issue a report on that country and not on another and therefore avoiding suspicions of discriminatory treatment. It is clear that a product of a discriminatory practice would be less reliable than one of a fair and impartial one. It will also clarify for the IDB or whoever uses the report, what it can find in it and what it will not.

In the year 1996 there was a report on Colombia, Peru, Guatemala and Cuba. According to a user and commentator of the system the reactions of Colombia and Guatemala were reasonable. Çuba reacted in private because of its suspension from the Organization and Peru said that they felt discriminated.[73] In its latest Annual report the Commission has decided to issue a report on Cuba, Guatemala, Haiti and Peru. It probably left out Colombia since it is preparing a specific country report after an on site visit.

The second way the Commission issues a report on a country is after it has done an on site visit to a country. The first of those visits was done to the Dominican Republic, the Commission interpreting that it had the power to do so because it could hold meetings in any of the state members. After that visit concluded it issued a report. The decision to have a on site visit can be either because the state invites the Commission out of its own initiative or because the Commission has an important reason to do it. For example it is receiving to many claims of mass violations of human rights or it has never visit that country.

The traditional procedure of the on site visit is that the Commission first will get assurance from the Government that it will enjoy freedom of

72. See http://www.cidh.oas.org/annualrep/96eng/96ench5.htm

73. See González, Felipe, "Informe sobre países, protección y promoción." In *supra* note 13, page 503.

movement and to meet with any individual or group that it desires. It usually meets with members of Congress from the different political parties, with union leaders, with human rights NGOs, with judicial branch, with ombudsperson if such institution exists, with victims, if it has cases of that country it will try to hold a meeting with the parties, etc.

The most recent report of this kind is the one on Mexico.[74] In it analysis the situation of human rights in Mexico, it reviews the situation of each of the rights protected by the Convention and examines how they are protected in Mexico. The report on Mexico is particularly interesting since it incorporates a reference on economic, social and cultural rights given specific recommendations to the State on how to deal with these rights.[75] The reports after an on site visit could be particularly useful for the IDB since the level of detail that these reports contain is much higher than a chapter V report in a Annual report. A general problem of the Commission is that the quality of the reports will vary considerably depending on the capacity of the Commission's Legal Counsel.

D. Thematic Reports

From 1994 the Commission began to include thematic reports. In that occasion the report was one of the agreements included in a friendly settlement of an individual case.[76] That report was on the compatibility of the desacato laws, that grant an special level of protection from criticism to public official punishing that offense with a higher penalty than a common defamation crime. Since than all annual reports have included thematic reports on different subjects. They will focus on a specific area that is of special concern for the Commission in 1995 it was on women's rights. 1996 it was conditions of detention in the Americas, women's rights and the situation of migrant workers and their families and in 1997 it was on women's rights and the situation on the rights of migrant workers and their families. These reports could also be useful for the IDB.

IV.
A Possible Partnership between the Commission and the IDB

The IDB like any international financial institutions has become very influential in the determination of the policies of governments, they have become "policy makers".[77] The IDB has a power that the Commission will

74. See http://www.cidh.oas.org/countryrep/Mexico98en.
75. *Id.* Chapter XI.
76. See *supra* note 60.
77. See Bradlow, Daniel and Grossman, Claudio, "Limited Mandates and Intertwined Problems," in *Human rights quarterly*, Vol. 17, Number 3, 1995.

never posses. Namely, it can deny financial resources to a country. It decides to whom it will provide with this good. Unlike the other international financial institution, in its articles of agreements there is no prohibition that could impede the IDB to take into consideration the human rights situation when providing a loan.[78]

The IDB was created in December of 1959 with the purpose of contributing "to the acceleration of the process economic development of the member countries..."[79] even when at first sight it is clearly economically oriented the decision to consider the situation of human rights can fit in that purpose. Authors like Amartya Sen have tried to make economists understand that the situation of human rights does have an impact in the economic situation of countries.[80] This is being recognized by the international financial institutions, especially by the World Bank.[81] But the IDB, trough the concept of governance, has also started to get involved on issues that it would usually not even consider such as the situation of women in the Americas.[82] The President of the IDB has recognized the importance of the concept of human rights.[83] As the IDB gets involved in more projects of modernization of the state and on issues of development it will have to consider the situation of human rights in those countries even if it tries to avoid the name of human rights it cannot avoid them. The complex reality of the region and the intertwined problems[84] will make that the IDB will regularly be facing human rights problems.

This is were I see a possible partnership between the Commission and the Bank it must be remembered that when the Council of the OAS created the IDB it determined that it would be an independent body but it would try to collaborate with other institutions of the OAS.[85] The mutual benefits that both institutions would gain is obvious, the IDB would obtain reliable information on the situation of human rights in countries that is considering financially. The Commission on the other hand would gain probably a higher level of compliance. By the dialogue in which the IDB

78. The IMF for example has to respect the political and social policies of its member states. See *supra* note *Id.* page 417.
79. Agreement Establishing the Inter-American Development Bank, article I section 1.
80. See Sen, Amartya , *On economic inequality,* Oxford, New York, 1997.
81. See World Bank, *Development and human rights: the role of the World Bank,* Washington D.C., 1998.
82. See *supra* note 13, Exposición de la Profesora Rebeca Cook, page 114.
83. See the speech the President gave to the VII Submit of the Americas in http://www.iadb.org/EXR/Speeches/Demoet.htm
84. See *supra* note 77.
85. See OEA, Consejo de la Organización de los Estados Americanos, Vol. XI, Enero-Diciembre de 1958, page 133.

would engage with government officials it would influence the level of compliance with the Convention. This would contribute to internalize the norm at the political level. But also at the grass root level, the IDB is financing many social projects where local communities are the beneficiaries.

Both institutions have started to create links between them,[86] the IDB is willing to finance certain promotional projects of the Commission. Even though this is important and another contribution to the internalization process, it seems that it would be have a higher impact in the policies of government toward human rights is the IDB took into consideration the different reports that the Commission issues.

To see if this partnership is possible and if it occurring now I consider the 1997 Annual report of the Commission and see the projects that are being fund by the IDB in those countries on which the Commission has examined the human rights situation.[87]

In relation with Guatemala the Commission affirms that the situation of due process and fair trial is of concern. The IDB is financing a project on the Reform of the Administration of Justice. Unfortunately that information cannot be reviewed so it is not possible to assess if there is a similar judgment of the situation and therefore the resources are being allocated properly to solve the problem that the Commission has seen as important for the enjoyment of the rights protected in the Convention.

Another right that is of concern for the Commission in Guatemala is freedom of expression. Even when the Commission recognizes improvements they take into consideration the fact that newspaper are threaten and there are cases of murder of journalist. The IDB is not financing any project on freedom of expression.

The Commission manifests its concern on the fact that women are underrepresented in the political sphere. A similar concern exist in the IDB, it is financing a project on the role of rural women in the consolidation of democracy. I faced the same problem than with the Administration of justice project. After this rather superficial survey of how both institutions are dealing with Guatemala it seems that there is much room for a partnership between these two institutions.

The next country in the Commissions annual report is Haiti. The IDB is also financing projects in this country. However the focus of both institutions seems rather different. IBD seems to focus on its traditional

86. See *supra* note 13, Exposición del Embajador Donaldson, page 110.

87. All the information regarding this section on Annual Reports of the Commission and the Projects financed are taken from the Web page of both institutions.

mandate. Most of the projects that it is financing are of an infrastructure character. However there is an interesting project that focuses on decentralization. The report of the Commission focuses on administration of justice and the situation of the prison. This situation is a rather extreme one, so it does not help to see the possible ways in which such a partnership could work. Having said that there are areas in which some collaboration could be seen, for example the decentralization project of IDB is trying to strengthen local institutions among them should be included courts and tribunals.

The last country on the Annual Report of the Commission is Peru. The concerns of the Commission in this country are conditions of detention, torture, impunity, the attacks against freedom of expression and on general problems of the rule of law. The IDB is financing at least 47 projects in Peru, of them only one is concerned with one of the concerns of the Commission, namely, administration of justice.

V.
CONCLUSION

After reviewing the Commission in light of the three theories of compliance it seems that the Commission has much to do in order to have a higher impact in the reality of the states of the region. Many of the factors that could produce such a change are beyond its capacity. The different actors must play their role in order to have a significant change in the region.

The NGOs should engage in a serious effort to invoke nationally in their daily jobs the reports of the Commission. They should call to the attention of judges and the media the reports that the Commission has issued on the situation of human rights in their countries. The different agencies that are involved in technical assistance in relation with the Convention should also consider disseminating in those sessions the reports of the Commission, making the participants discuss and understand them.

The IDB can play a significant role in making states take seriously the reports of the Commission, it can also benefit from the expertise of the Commission. The Commission in order to be considered seriously by the IDB and the states must be professional when preparing a report and should rise the level of its staff.

The Commission has taken serious measures to become a more fair body however there are still areas in which it could provide more transparency enhancing this way it legitimacy in the eyes of states and the victims.

I believe that the Commission has come a long way since it was created by a resolution, it has enhanced its legitimacy by becoming a treaty body, also its policy of more transparency contribute to this. It has become a professional organ, resisting political pressures and being committed to its mandate of defending human rights in the region. The Commission should explore possible partnerships with all organs that may allow it to expand it field of influence, this will be in the interest of the people for which this body was created.