Chapter Eleven

Monitoring Compliance with the Decisions of Human Rights Courts: The Inter-American Particularism

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I. Introduction

A peculiar feature of the practice of the Inter-American Court of Human Rights (IACtHR) is its role in supervising the implementation of its decisions. The Court considers that an inherent aspect of its judicial function is to engage in compliance monitoring. This supervisory role is interesting in many respects, particularly because it raises a series of questions that lie at the heart of the tension between diplomatic (or political) and judicial means of dispute settlement. As a general matter, there seems to be a correlation between the relative increase in the Court’s activity and the decreasing role played by the body to which this supervisory function was legally devolved, namely the General Assembly of the Organisation of American States (OAS). Most often, this body only takes note of the Court’s reports and, in rare cases, calls on Member States to comply with the Court’s decisions. This relatively passive attitude may have repercussions on the Court’s authority, which could be negatively impacted if a State does not comply (or delays compliance) with a judgment and no action is taken by the General Assembly. This explains, in part, why the Court considers its involvement in implementation matters as an inherent part of its function. This said, the Court’s new activity has also a major drawback. It has led to a radical increase in the Court’s workload, which in turn may affect the effectiveness of the overall judicial system if the Court does not receive sufficient financial resources.

On a more fundamental level, the pro-activeness of the IACtHR reveals an institutional gap within the OAS system that the Court has sought to fill but that, in practice, may prove to be beyond what Member States are ready to bear. In this context, this chapter argues that the role of the General Assembly of the OAS in supervising compliance with the Court’s decisions should be strengthened.

This institutional evolution thus outlined reveals tensions between the diverse actors involved in the settlement of human rights disputes within the OAS system. On the one hand, Member States of the OAS appear in different capacities before OAS organs, usually the political organs, but also as defendant States in cases before the IACtHR (II). On the other hand, the IACtHR itself seeks to enhance the effectiveness of the human rights system by adopting progressive methods that may not receive effective support by the political organs of the OAS (III). This dialectic sheds light on the recent developments within the OAS system in connection with the enforcement of decisions rendered by the IACtHR (IV).

II. The Ambivalent Role of States in the Human Rights System

Modern international systems for the protection of human rights focus primarily on the actions of States with respect to individuals within their territory or under their control. The three main regional systems for the protection of human rights – the African, European and Inter-American systems – have developed in this respect various procedures – most prominently judicial bodies for the settlement of disputes – with the aim of fostering greater respect for human rights and creating an impetus for achieving democratic governance. The central role played by States reveals at the same time the limits of such an approach.