Chapter 8

The Reports of Fact-Finding Bodies

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The drawing up of a report is, in each instance, a practical matter, depending on the fact-finding body in question, its constitutive instrument, rules of procedure, or terms of reference, and the particular case or situation investigated. The following, brief survey, will attempt to illustrate how the drawing-up of reports has been approached in practice by previous or existing fact-finding bodies in the field of human rights. The following categories of reports will be discussed: (a) Reports on petitions; (b) reports on situations; and (c) reports if friendly settlement has been reached.

I Reports on Petitions

Under Article 31 of the European Convention on Human Rights, if the European Commission fails in effecting a friendly settlement with respect to a petition submitted to it, it should draw up a “Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the Report.” The Rules of Procedure of the Commission provide that when it considers its draft report, it should adopt, in the first place, the parts of the Report in which it establishes the facts and sets out the submissions of the parties. It should then deliberate and vote on whether the facts found disclose any violation by the State concerned of its obligations under the Convention. In the absence of a special decision by the Commission, only those members who have participated in the deliberations and vote referred to above are entitled to express their separate opinion in the Report.

Rule 52 of the regulations states that the Report shall contain:

(a) a description of the parties, their representatives and advisers;
(b) a statement of the proceedings followed before the Commission;
(c) a summary of the submissions of the parties;
(d) a statement of the facts established;
(e) the opinion of the Commission, with an indication of the number of members forming the majority, as to whether or not the facts found disclose any breach by the State concerned of its obligations under the Convention;
(f) the reasons upon which that opinion is based;
(g) any separate opinion of a member of the Commission;
(h) any proposal, which the Commission may consider appropriate for submission to the Committee of Ministers under Article 31, paragraph 1 of the Convention.\(^1\)

The report should also contain the names of the President and the members participating in the deliberations and should be signed by the President and by the Secretary.

In contrast to the above-mentioned, explicit, provisions in the European practice, Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights provides simply that the Human Rights Committee shall forward its views on a petition to the State party concerned and to the individual. The rules of procedure of the Committee do not provide any further guidance.\(^2\) However, the views so far adopted by the Human Rights Committee have followed a pattern in which elements such as those mentioned in rule 52 of the regulations of the European Commission on Human Rights are often present. Article 50 of the American Convention on Human Rights states that if a friendly settlement has not been reached on a petition, the Inter-American Commission shall draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties shall also be attached to the report.

II Reports on Situations

The International Law Association’s Minimal Rules of Procedure for International Human Rights Fact-Finding Missions provides in rule 22 that after concluding their investigations, members of a fact-finding mission should draw up a set of preliminary findings and submit these, together with supplementary questions where appropriate, to the state concerned, giving it an opportunity, within a reasonable time, to present comments and/or to rectify the matter investigated. Thereafter, “a final report shall be prepared by the chairman reflecting the consensus of the fact-finding mission. In the absence

1 Cf. Rules 50 and 51 of the Rules of Court of the European Court of Human Rights.
2 Rule 94 (2).