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Title/Style of Cause:	Victorio Spoltore v. Argentina
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts; Paulo Sergio Pinheiro, Florentin Melendez. Commission member Victor E. Abramovich, an Argentine national, participated in neither the deliberations nor the decision in this case, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.
Dated:	25 July 2008
Citation:	Spoltore v. Argentina, Petition 460-00, Inter-Am. C.H.R., Report No. 65/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
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I. SUMMARY

1. This report addresses the admissibility of petition 460-00, opened by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”), in response to a complaint that was received on September 11, 2000 from Mr. Victorio Spoltore against the Republic of Argentina (hereinafter “Argentina” or “the State”). The petitioner alleges that the State has incurred international liability under the American Convention on Human Rights (hereinafter the “American Convention” or “the Convention”) for denial and delay of justice to the detriment of Mr. Victorio Spoltore.

2. The petition indicates that on June 30, 1988, Mr. Victorio Spoltore filed suit against his former employer for occupational sickness, alleging that he had suffered damage to his health as a result of working at that job. The petitioner indicates that the State was responsible for unwarranted delay during the labor proceedings because Labor Tribunal No. 3 did not issue the judgment denying the employer’s responsibility until nine years after the suit was initially filed. He adds that he appealed this judgment through a *recurso de inaplicabilidad* (appeal for reversal of a decision which contradicts established doctrine) and a *recurso de nulidad* (motion to vacate based on procedural violations), which three years later were resolved unfavorably for the petitioner.

3. The petitioner added that, simultaneous to the issuance of the judgment, he went before the Supreme Court of the Province of Buenos Aires to request an investigation of the delay and

negligence perpetrated by the labor court of the first instance. In response, the petitioner alleges, although the Supreme Court agreed that there had in fact been a delay of justice, it merely reprimanded the clerk of the court.

4. The State, for its part, maintains that Mr. Victorio Spoltore had not exhausted the remedies available under domestic law to correct the alleged violation, and that he should have initiated a lawsuit for economic injury against the provincial government for the alleged delay of justice caused by Labor Tribunal No. 3.

5. The State also argues that, to some degree, the delay could have been avoided if the petitioner himself had urged the case forward appropriately. The State further alleges that the special appeals filed by the petitioner with the Supreme Court of Buenos Aires Province—the *recurso de inaplicabilidad* and the *recurso de nulidad*—are not the appropriate means to claim reparations for damages caused to an individual as the result of an alleged delay by the Tribunal. The State therefore argues that the case should be declared inadmissible.

6. According to the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30 and 37 of its Rules of Procedure, and after analyzing the positions of the parties, the Commission decided to declare the petition admissible. Therefore, the IACHR has decided to notify the parties of its decision and to continue to analyze the merits of the case regarding alleged violations of Articles 8(1) (right to a fair trial) and 25 (right to judicial protection), in relation to Article 1(1) (obligation to respect rights) of the American Convention. The Commission has also decided to notify both parties of its decision, to publish this decision, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESS BEFORE THE COMMISSION

7. The petitioner filed the complaint with the Executive Secretariat of the Commission on September 11, 2000. The IACHR began to process the petition on October 6, 2003, the date on which it transmitted the relevant parts of the petition to the State and requested a response within two months.

8. In a message dated November 25, 2003, the State asked the Commission for a one-month extension for the submission of its observations. The extension of the deadline was granted on December 16 of that year.

9. On February 9, 2004, the petitioner submitted a brief indicating that the State had failed to meet the deadline as it had not yet responded to the Commission. In note SG 166 of June 17, 2004, the State submitted the information requested by the Commission. This was transmitted to the petitioner in a message dated September 2, 2004.

10. On October 8, 2004, the petitioner submitted his observations in response to the information provided by the State, which was transmitted to the State in a message dated December 7, 2004, along with a one-month deadline to submit any additional observations.

III. POSITIONS OF THE PARTIES

A. The petitioner

11. According to the petition, Mr. Victorio Spoltore filed a labor complaint on June 30, 1988 against the company Cacique Camping S.A. for occupational sickness. He argued that in his day-to-day work, his health had been damaged, causing him to retire at 70% disability. Mr. Spoltore was claiming compensation for inability to work and for moral prejudice.

12. The petitioner states that he had opened the labor complaint before Labor Tribunal No. 3 of the San Isidro Judicial Circuit under the heading "Spoltore, Victorio v. Cacique Camping S.A., occupational disease, File 12,515.

13. The petitioner alleges that on June 3, 1997, nine years after he had filed his complaint, a judgment was entered in the file denying that the company Cacique Camping S.A. was responsible for damages to his health. The petitioner adds that Labor Tribunal No. 3 conducted the proceedings negligently and in violation of his human rights because it did not respect the principle of reasonable time. In this regard, he points out various moments in which the Tribunal allegedly delayed the proceedings. He indicates that it took five years and five months from the time the evidentiary phase opened through the last public hearing; more than two years lapsed between the first hearing and the last one; and more than two years also lapsed between the first summons to the expert's office and the presentation of the psychological report.

14. The petitioner alleges that according to the legislation governing labor tribunals, it is the obligation of such tribunals to organize the steps needed for the case to go forward. He affirms that it is essential for the State to be proactive in moving the proceedings forward in labor trials.

15. The petitioner indicates that on September 2, 1997, to challenge the judgment of the first instance, he lodged a recurso de inaplicabilidad and a recurso de nulidad before the Supreme Court of Justice of Buenos Aires, both of which were rejected on August 16, 2000, that is, three years after he had filed them.

16. He adds that on September 16, 1997 he went before the Office of the Inspector General of the Supreme Court of Buenos Aires to lodge a complaint over the delays and negligence perpetrated by Labor Tribunal No. 3 in his proceedings. He reports that the Supreme Court held the file and did not issue a decision for almost two years. Then, on April 16, 1999, it determined that while there had been a delay, it would merely reprimand the clerk of court of the Tribunal.

17. Based on the foregoing, the petitioner argues that the State violated Articles 8 and 25, in relation to Article 1(1) of the American Convention.

B. The State

18. In its briefs, the State indicates that Mr. Victorio Spoltore did not exhaust the remedies available under domestic law to remedy the violation. He should have litigated lawsuits to determine the civil liability of the State for the harm caused. The State asserts that in order to

claim full reparations for the damages caused to the petitioner, he should have filed suit for economic injury against the provincial government for the abnormal exercise of its judicial function.[FN2]

[FN2] The State indicates that Article 1112 of the Civil Code of the Republic of Argentina specifically refers to damages caused by acts or omissions committed by civil servants in the exercise of their duties for unduly fulfilling their legal obligations.

19. The State points out that, according to national doctrine regarding civil liability, in cases in which judicial officers fail to abide by the legal obligation to administer justice, the State is directly responsible. Considering this, the State indicates that the Supreme Court of Argentina has established through its jurisprudence, general criteria that indicate under what circumstances one can file for damages from the State based on unlawful administration of justice. Nevertheless, the State clarifies that the Court has not intervened, specifically, in cases related with the alleged unreasonable duration of judicial proceedings. Based on this, the State affirms that a demand for damages from the provincial government constitutes, in the present case, the appropriate remedy to be exhausted by the petitioner.

20. The State additionally alleges that the purpose of the complaint which the petitioner lodged with the Office of the Inspector General of the Supreme Court, was an investigation of Labor Tribunal No. 3, and to impose sanctions for its negligence and delays. The State indicates that Mr. Spoltore made a mistake in the procedural path that he pursued. The function of the Supreme Court is not to adjudicate reparations to a petitioner for injuries suffered, but merely to rule on the performance of civil servants, and if necessary, determine disciplinary sanctions.

21. The State indicates that the Supreme Court of the Buenos Aires Province has acknowledged the existence of specific delays attributable to the Clerk of the Court. This is particularly true regarding the remission of cases to the Office of Expert Advice and in the preparation, signing, and sealing of official documents that should accompany the transfer of the psychological report attached to the case file. The State argues that to some degree, these delays could have been avoided if the petitioner had pushed the case forward appropriately.

22. The State also indicates that the petitioner raised the issue of an unjustified delay in the administration of justice in the two remedies that he pursued before the Supreme Court of Buenos Aires Province, seeking indemnification for damage caused: the *recurso de inaplicabilidad* (appeal for reversal of a decision which contradicts established doctrine); and the *recurso de nulidad* (motion to vacate based on procedural violations of the lower court trial). As for the *recurso de inaplicabilidad*, the State clarifies that this is a remedy whose purpose is to verify, and if indicated, correct errors of law that may have been committed by appeals courts and single instance three-judge courts when handing down a judgment. As for the *recurso de nulidad*, the State indicates that this is a remedy whereby the Supreme Court of the Province of Buenos Aires would overturn judgments that were handed down without respect for the formal requirements established by the provincial Constitution. Thus the State reiterates that in no way are these special remedies—the *recurso de inaplicabilidad* and the *recurso de nulidad*—

appropriate means of attaining reparations for damages caused by a delay of justice, as the Tribunal is alleged to have committed.

23. The State reiterated that the petition contains no elements of fact or law that would imply a violation of the rights or guarantees recognized by the Convention. Not only did the petitioner fail to make proper use of the remedies available under domestic law, but the facts alleged in his complaint fail to substantiate his petition. Therefore, the State requested that the Commission declare the petition inadmissible.

IV. ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

24. The petitioner is entitled under Article 44 of the American Convention to lodge complaints before the Commission. The petition states that the alleged victim is someone in whose regard Argentina has undertaken to respect and guarantee the rights established in the American Convention. As for the State, the Commission notes that Argentina has been a State Party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to review the petition.

25. The Commission has competence *ratione loci* to review the petition because it alleges violations of rights protected by the American Convention that occurred within the territory of a State Party to it. The Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was in effect for the State when the violations alleged in the petition occurred. Finally, The Commission has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention requires that in order for a complaint lodged with the Inter-American Commission under Article 44 of the Convention to be admissible, all remedies available under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to ensure that the State involved has the opportunity to resolve controversies within its own legal framework.

27. In the instant case, the petitioner argues that he duly exhausted the internal remedies with the filing of the *recurso de inaplicabilidad* and *recurso de nulidad* before the Supreme Court of the Province of Buenos Aires. For its part, the State argued that the petitioner should have filed an action for damages and, moreover, that the remedies he filed were not the appropriate ones to claim reparations for the supposed delay.

28. Regarding this, the Commission notes that there is no disagreement between the parties as far as the labor proceeding having been culminated in all instances. Additionally, both parties concur that, in the course of the labor proceeding, the petitioner presented briefs complaining about the delay before the judge of the first instance and, subsequently, he alleged excessive delay in the processing of his case in the special appeals for inapplicability and nullity. Furthermore, the petitioner filed a complaint before the Control Authority of the Supreme Court Justice of Buenos Aires (Inspección General de la Suprema Corte de Justicia de Buenos Aires), which recognized the delay caused by Labor Tribunal #3 and, consequently, issued a disciplinary sanction consisting of a rebuke of the secretariat of the labor tribunal.

29. The Commission observes that, according to the labor legislation that governs the province of Buenos Aires, the special remedies *recurso de inaplicabilidad* and *recurso de nulidad*, are the only ones that can be filed against final judgments delivered by the labor tribunals. Considering this, the Commission takes note that Mr. Spoltore tried in the procedural avenues that were available to him to seek the appropriate resolution to his labor proceedings. The petitioner waited nine years for a court of the first instance to resolve his case, filing, within this proceeding, complaints regarding the delay; subsequently, he waited three years for rulings to be issued on the *recurso de inaplicabilidad* and *recurso de nulidad* and, simultaneously, he filed a complaint with the Control Authority of the Supreme Court Justice of Buenos Aires, which spent two years on its resolution. Faced with these circumstances, it is not reasonable to ask, as a precondition for admissibility, that he file a new remedy, with all of the instances, in order to remedy the delay in the proceedings of his labor complaint.

30. In virtue of the fact that the principle complaint filed focuses on the delay caused by the State in the substantiation of the labor proceedings initiated by a petition filed by the petitioner, and the alleged denial of justice suffered by the petitioner, the *recurso de inaplicabilidad* and the *recurso de nulidad*, as well as the administrative complaint, are *prima facie* the appropriate remedies and they satisfy to the necessary extent the requirement of exhaustion of domestic recourses stipulated in Article 46.1 of the American Convention.

31. It should be noted that the Inter-American Court has repeatedly ruled that in the case that “a State alleging non-exhaustion has the burden of indicating which domestic remedies should be exhausted as well as their effectiveness.”[FN3] In the present case the State argues that the remedy that should be exhausted is an action for damages from the government of the province of Buenos Aires, for the alleged delay of Labor Tribunal No. 3. However, the State has not presented any evidence to the Commission that has demonstrated that this would be the appropriate recourse to hold the State responsible for an allegedly unreasonable duration of a judicial proceeding. The Commission, following an analysis of the norms, jurisprudence, and Argentinean doctrine, observes that the action for damages has not been shown to be viable, in practice, to repair the damage caused by the State in cases specifically dealing with procedural delay, but is rather a theoretical possibility suggested by a collection of doctrines but never developed by the laws or jurisprudence of the Supreme Court of Argentina.

[FN3] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 88; Fairén Garbi and Solís Corrales Case, Preliminary

Objections. Judgment of June 26, 1987, Series C No. 2, para. 8; Godínez Cruz Case. Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, para. 90; Case of Gangaram-Panday. Preliminary Objections. Judgment of December 4, 1991, Series C No.12, para. 38; Neira Alegría et al. Case. Preliminary Objections, Judgment of December 11, 1991, Series C No.13, para. 30; Case of Castillo-Páez. Preliminary Objections. Judgment of January 31, 1996, Serie C No. 24, para. 40; Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996, Series C No. 25, para. 40; Exceptions to Exhaustion of Domestic Remedies (Art. 46(1), 46(2)(a) and 46(2)(b). (American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11.

32. Firstly, there does not exist in the Province of Buenos Aires a regulatory law that specifically establishes the possibility of an action for material damages for cases of procedural delay. [FN4] Nevertheless, Article 166, paragraph 4 of the Constitution of the Province of Buenos Aires establishes the duty of the province to create a system of complaints for delay in the justice system and in Article 15 of the same document there is mention of the duty of the judiciary to process cases in a reasonable time period[FN5], these provisions have not materialized into the creation of a concrete remedy, action, or measure – be it an action for damages or otherwise – to repair civilly the damage caused by delay in the processing of judicial proceedings.

[FN4] Constitution of Buenos Aires. Article 166 No. 4. "The law shall establish un expedited complaint process for delay of justice". The mechanisms developed have been of a disciplinary nature none of them of a civil one.

[FN5] Constitution of Buenos Aires. Article 15. "Cases should be decided within a reasonable time period. Delay in delivering a judgment and undue delays that are repeated, constitute a serious fault."

33. Secondly, and as the State itself maintains, there does not exist in the Jurisprudence of the Supreme Court of Argentina cases in which, in the processing of an action for damages, there has been a ruling regarding the concept of the responsibility of the State for the procedural delay of a case.[FN6]

[FN6] Nevertheless, the Supreme Court of Argentina has developed in its jurisprudence general principles that allow the invocation of the responsibility of the judiciary in cases of wrongful sentencing and unjust preventative imprisonment, Regarding this it is possible to consult the Case "Mattei" of November 29, 1968, judgment 272:188; Case "Pileckas" of May 12, 1977, judgment 297:486; Case "Mozzatti" October 17, 1978, judgment 300:1102.; Case "Berel Todres" November 11, 1980, judgment 302:1333.; Case "Firmenich" July 28, 1987, judgment 310:1476.; Case "Polak" October 15, 1998, judgment 321:2826.; Case "Kipperband" of March 16, 1999, judgment 322:360.

34. Thirdly, although within Argentinean doctrine various authors have attempted to invoke the responsibility of the judiciary for an unreasonable duration[FN7], this possibility is still only in the sphere of theoretical discussion and has not materialized in practice.[FN8]

[FN7] In various cases, and as raised by the State, attempts have been made to infer this possibility from the general principle of responsibility of the State for the actions or omissions committed by civil servants in the exercise of their functions established by Article 1112 of the National Civil Code which indicates that “The actions and omissions of public servants in the exercise of their functions, for not complying but in an unlawful way with the legal obligations charged to them, are included in the regulations of this title.”

[FN8] In various cases, and as raised by the State, attempts have been made to infer this possibility from the general principle of responsibility of the State for the actions or omissions committed by civil servants in the exercise of their functions established by Article 1112 of the National Civil Code which indicates that “The actions and omissions of public servants in the exercise of their functions, for not complying but in an unlawful way with the legal obligations charged to them, are included in the regulations of this title.”

35. In consideration of this analysis, the Commission finds that the State did not successfully demonstrate that the action for damages was the appropriate one to establish the alleged responsibility of the State for the unreasonable duration of judicial proceedings. In its Advisory Opinion No. 9/87, the Inter-American Court indicated, referring to the requirement of previous exhaustion of domestic remedies, that “it is not sufficient that [the remedy] be provided for by the Constitution or the law or whatever may make it formally admissible, but rather it is required to be appropriate to establish whether a violation has been caused to human rights and to prove whatever be necessary to resolve it.” [FN9] As has been established, the action for damages appears to be theoretically possible according to Argentinean doctrine, but not feasible given jurisprudential practice.

[FN9] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27.2, 25 y 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6,1987. Series A No. 9, Para. 24.

36. As follows from the analysis, the Commission concludes that Mr. Spoltore pursued the appropriate procedural avenues for the case being processed and, considering this, it should be noted that both the Commission and the Court have expressed that “the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.” [FN10] The IACHR observes that, following the recorded delay in the labor proceeding, it would not be reasonable to demand that the petitioner exhaust an additional series of remedies. This would presumably subject him once again to waiting within a system that has already delayed the analysis of the merits of his case.

[FN10] I/A Court H.R, Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C, No. 1, paragraph 93; I/A Court H.R, Fairén Garbi and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, paragraph 92; I/A Court H.R, Godínez-Cruz Case. Preliminary Objections. Judgment of June 26, 1987. Series C., No. 3, paragraph 95.

37. In light of the above analysis, the Commission concludes that Mr. Victorino Spoltore invoked the remedies provided for in the legal system of the State, and therefore, the petition fulfills the requirements established in Article 46 of the American Convention.

2. Time limit for lodging a petition

38. According to Article 46(1) of the Convention, in order to be admissible a petition must be lodged within the time limit of six months from the date when the alleged victim received notification of the final judgment in the national legal system.

39. In this case it must be recalled that once the petitioner received the judgment rejecting his labor claim, he filed two motions before the Supreme Court of Buenos Aires on September 2, 1997: the recurso de inaplicabilidad and the recurso de nulidad. These were both denied on August 16, 2000. The Commission observes that since the petition was received in its Executive Secretariat on September 5, 2000, the deadline set in Article 46(1)(b) of the American Convention was met.

3. Duplication of proceedings and res judicata

40. Article 46(1)(c) of the Convention establishes that admission of a petition is contingent upon the requirement its subject matter not be “pending in another international proceeding for settlement,” while Article 47(d) stipulates that the Commission may not admit a petition that is “substantially the same as one previously studied by the Commission or by another international organization.” In the instant case, the parties do not allege nor can it be gleaned from the record that either of these circumstances of inadmissibility exists.

4. Characterization of the facts alleged

41. Article 47(b) of the American Convention provides that petitions which do not state facts that tend to establish a violation of the rights guaranteed by the Convention shall be declared inadmissible.

42. In the instant case, at this stage of the proceedings it is not appropriate for the Commission to determine whether or not the alleged violations of the American Convention actually occurred. The IACHR has conducted a prima facie evaluation and determined that the petition raises allegations which, if proven, may tend to characterize possible violations of the rights guaranteed by the Convention. In this regard, the Commission has competence to analyze the complaint, in light of Articles 8(1) and 25 of the American.

43. From the information and arguments presented by the petitioner, it is seen that the main complaint regards the excessive time taken to conduct the trial of the petitioner's labor suit, which was filed on June 30, 1988 against his former employer, Cacique Camping S.A. The Commission observes that the judgment was not handed down by Labor Tribunal No. 3 until June 3, 1997, which is nine years after the suit was filed.

44. The Commission also notes that on September 16, 1997, Mr. Spoltore lodged a complaint with the Supreme Court of Buenos Aires accusing Labor Tribunal No. 3 of negligence and unnecessary delay; this matter was resolved on April 16, 1999. Furthermore, on September 2, 1997, the petitioner filed the domestic remedies contemplated in Argentine legislation to dispute a judgment by a labor court. These were decided on August 16, 2000. Upon reviewing these time frames, the Commission observes that more than 12 years transpired between the time that the labor suit was filed and the time that the Argentine legal system issued its final ruling.

45. It should be pointed out that in its decision of April 16, 1999, the Supreme Court of Buenos Aires had concluded that two irregularities existed regarding the time it took to conduct the trial. The Supreme Court indicated that "... from what is reflected on the record ... it can be proven that the following irregularities existed: I) Delay in remitting the case to the Office of Expert Advice ... and II) delay in the preparation, signing, and sealing of the notification documents." For this reason, the Supreme Court determined to "reprimand the Clerk of Court of Labor Tribunal No. 3 of San Isidro." [FN11]

[FN11] This ruling is annexed to the petition.

46. The Commission notes that if the information and arguments presented regarding the excessive time that transpired during the labor proceedings are proven, they may constitute a violation of the right to prompt recourse to judicial protection established in Article 25 of the Convention, and of the right to a fair trial established to Article 8(1). These will be evaluated in the merits phase.

47. Consequently, the Commission concludes that in this case the petitioners have lodged complaints which, if they meet other requirements and are proven to be true, may tend to establish violations of rights protected by the American Convention; to wit, those set forth in Articles 8(1) (right to a fair trial), and 25 (right to judicial protection), in relation to Article 1(1) (obligation to respect rights).

V. CONCLUSIONS

48. The Commission concludes that it is competent to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention.

49. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to the alleged violations of rights protected under Articles 8(1) and 25, in relation to Article 1(1) of the American Convention.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 25th day of the month of July, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts; Paulo Sérgio Pinheiro, and Florentín Meléndez, members of the Commission.