

AG/RES. 2974 (LI-O/21)

INTERNATIONAL LAW^{1/2/3/4/}

(Adopted at the second plenary session, held on November 11, 2021)

THE GENERAL ASSEMBLY,

RECALLING resolution AG/RES. 2959 (L-O/20) and all previous resolutions adopted on this topic; and

HAVING SEEN the “Annual Report of the Permanent Council to the General Assembly, November 2020 – November 2021” (AG/doc.5726/21 add. 1), in particular the section on the activities of the Committee on Juridical and Political Affairs (CAJP),

I. ACTIVITIES OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

RESOLVES:

1. To instruct the Permanent Council, the General Secretariat, and the other bodies referred to in Article 53 of the Charter of the Organization of American States (OAS) to continue working on the implementation of the applicable current mandates set out in previous General Assembly resolutions assigned to the Committee on Juridical and Political Affairs (CAJP), except as stated otherwise in any resolution.

2. To urge member states to continue contributing to the attainment of the objectives established in said resolutions and to instruct the General Secretariat to provide the necessary support to those ends.

i. Inter-American Program for the Development of International Law

TAKING INTO ACCOUNT the “Biennial Report on the Inter-American Program for the Development of International Law” (document CP/CAJP-3585/21), which the Department of International Law of the Secretariat for Legal Affairs, within the framework of the Inter-American Program for the Development of International Law—as adopted by resolution AG/RES. 1471 (XXVII-O/97) and updated by resolution AG/RES. 2660 (XLI-O/11)—, presented to the CAJP at its meeting of May 20, 2021, and which concerned activities carried out for the promotion and dissemination of international law among member states in collaboration with agencies and organizations engaged in this area,

RESOLVES:

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1. Mexico once more notes with concern inconsistencies and irregularities in the report of the Secretary General on the presentation of credentials of the delegations taking part in the fifty-first regular ...
 2. Nicaragua endorses the statements made by the delegations of Saint Vincent and the Grenadines, the United Mexican States, and the Plurinational State of Bolivia rejecting the improper accreditation of ...
 3. Antigua and Barbuda considers that the Bolivarian Republic of Venezuela is not a member state of the Organization of American States since, on 27 April 2017, the Government of the Bolivarian Republic ...
 4. Saint Vincent and the Grenadines places on record its non-recognition and non-acceptance of the credentials of the purported delegation of the National Assembly of the Bolivarian Republic ...

1. To express its appreciation to the Department of International Law for its efforts in the promotion and dissemination of international and inter-American law and to request that it continue to implement the actions contained in the Inter-American Program for the Development of International Law and present a biennial report thereon to the CAJP, and to request the Permanent Council to organize a special meeting in 2022 to celebrate the twenty-fifth anniversary of the Program to enable member states to identify the Program's activities that they regard as priorities for addressing their particular needs and interests.

2. To celebrate with satisfaction the twenty-fifth anniversary of the adoption of declaration AG/DEC. 12 (XXVI-O/96), "Declaration of Panama on the Inter-American Contribution to the Development and Codification of International Law," adopted by the General Assembly in 1996, and to reaffirm, as that declaration did, that the Organization of American States is the principal and irreplaceable forum in which states, on an equal footing, adopt legal provisions in both public and private international law to govern their relations at the hemispheric level.

3. To request the Department of International Law to continue promoting technical training, cooperation, and exchange of knowledge with the ministries of foreign affairs and international development of member states, as well as their respective diplomatic academies, when so requested by the member state concerned, and to continue strengthening the cooperation and exchange activities that it has been pursuing with various academic institutions in the region for the purpose of disseminating the inter-American system.

4. To welcome the commemoration of the seventy-fifth anniversary of the International Court of Justice and to highlight its work as a forum for the resolution of disputes between States, in a position of sovereign equality, which has been used on several occasions by States in the region.

ii. Private International Law

TAKING INTO ACCOUNT the rich exchange of ideas and the results of the special meeting held by the CAJP on June 3, 2021, on promotion of the study of private international law in the Americas, as well as the need to advance new developments in this area that reflect particular circumstances and specific needs in the region,

RESOLVES:

1. To request the CAJP to hold another special meeting to discuss strategies for the Organization to resume its activities in the area of codification and progressive development of private international law. To that end, to request the Department of International Law to prepare in advance a document containing the current state of the body of inter-American law in this area and proposals for possible courses of action to advance the aforementioned strategies, in consultation with member states.^{5/}

2. To request the Department of International Law, for the purpose of strengthening the study of private international law, to continue to promote greater dissemination of this subject among public officials of member states and other actors, in collaboration with private international law associations, universities and specialized institutions that work in this area, through events and activities that promote greater knowledge of the inter-American conventions on the subject and "soft law" instruments that address the most recent developments within the Organization such as international contracts, international arbitration, simplified corporations, secured transactions, and access to credit. Within the framework of those efforts, to welcome the project for the establishment of a jurisprudence database on the application of

5. The United States notes that the Committee on Juridical and Political Affairs does not have a mandate in the area of "codification and progressive development of private international law" ...

inter-American conventions on private international law initiated by the Department of International Law and the American Association of Private International Law, as presented at the special meeting of the CAJP of June 3, 2021.

3. To request the Department of International Law to explore the possibility of periodically organizing joint meetings with the areas specializing in private international law of the legal offices of the ministries of foreign affairs and other ministries of member states, in order to explore the need and possibility to advance new developments in this area, and in that regard, to request that member states continue to designate points of contact with which the Department of International Law can coordinate.

4. To request states parties to the various inter-American conventions on legal and judicial cooperation, if they have not already done so, to designate the respective central authorities for the purpose of facilitating and promoting such cooperation, or to update the information for the central authorities already designated.

5. To instruct the Department of International Law to continue working in cooperation with other international agencies such as the United Nations Commission on International Trade Law, the Hague Conference on Private International Law, and the International Institute for the Unification of Private Law (UNIDROIT), in order to generate common proposals to reactivate activities related to the study and development of private international law and to promote, within those agencies, the work that has been carried out in the inter-American system. At the regional level, to continue to work closely with the regional offices of those forums, including the Regional Office for Latin America and the Caribbean of the Hague Conference on Private International Law, in order jointly to address issues currently being discussed within the expert groups of those forums.

iii. Inter-American Juridical Committee

CONSIDERING the observations and recommendations of the member states on the Annual Report of the Inter-American Juridical Committee, contained in document CP/doc.5675/21 of February 23, 2021;

TAKING INTO ACCOUNT that during its ninety-eighth regular session held in April 2021, the Inter-American Juridical Committee approved its “Updated Principles of the Inter-American Juridical Committee on Privacy and Personal Data Protection, with Annotations” (CJI/doc.638/21) and recommended the adoption of those Principles by the General Assembly; and

RECALLING that Permanent Council resolution CP/RES. 1149 (2278/20), “Women’s Representation and Participation in the OAS,” condemns the multiple forms of discrimination and violence against women in the Hemisphere, in particular the lack of access for women to full participation in the public sphere in both representation and decision-making positions, and insists that it is the responsibility of member states to generate conditions and spur opportunities for the nomination and/or appointment of women in the organs and entities of the Organization of American States (OAS),

RESOLVES:

1. To highlight the importance of the latest contributions of the Inter-American Juridical Committee (CJI) to international law, including the “Updated Principles on Privacy and Personal Data Protection”; the “Model Inter-American Law 2.0 on Access to Public Information”; the “Report on International Law and Cyber Operations of States”; the “Recommendations for the adoption of domestic legislation regarding the regulation of fireworks and pyrotechnic articles in the Americas”; the Declaration on neuroscience, neurotechnologies, and human rights: new legal challenges for the Americas; and the

“Guide to the Law Applicable to International Commercial Contracts in the Americas,” and to request that the Department of International Law, as its technical secretariat, continue to disseminate these documents and those pertaining to other topics on its work agenda as widely as possible, including through virtual media.

2. To adopt the “Updated Principles on Privacy and Personal Data Protection” and to request the Department of International Law to disseminate them as widely as possible.^{6/}

3. To request the CJI to continue making progress with its agenda and to renew the invitation to member states to comment in a timely manner and to the extent that their possibilities allow on requests for information from the CJI in order to facilitate the preparation of the reports contained in that agenda.

4. To request the CJI to consider more topics concerning the analysis of private international law on its work agenda in order to reactivate activities related to the development of this area at the regional level and, if necessary, to propose to the General Assembly the updating of some of the legal instruments in this area and/or propose new convention or protocol texts that may be submitted for consideration by the General Assembly that reflect the practice of States and the particular circumstances and specific needs of the region in relation to private international law and new communication technologies and transmission of data and information.

5. To recognize the need to move forward with the administrative and budgetary strengthening of the CJI to ensure that it can fulfill the multiple mandates that it receives, and to reiterate to the General Secretariat the request that it reinstate the position of executive secretary of the CJI or establish alternative means for such administrative and budgetary strengthening.

6. To request the CJI to continue cementing its collaboration with different international organizations, academia, and civil society, highlighting the importance of continuing to strengthen exchanges with the legal offices and counsels of ministries of foreign affairs in member states in order, thereby, to gather the opinions of member states on developments in the work of the CJI and, at the same time, to thank the member states whose legal counsels participated in the joint meeting with the CJI held in August 2021.

7. To amend Article 5 of the Statutes of the CJI to incorporate gender parity, such that it reads as follows:

In the election of the members of the Committee, gender parity and an equitable geographical representation shall be taken into account, insofar as possible. No two members may be nationals of the same State.

iv. Justice Studies Center of the Americas

RECALLING that Permanent Council resolution CP/RES. 1149 (2278/20), “Women’s Representation and Participation in the OAS,” insists that it is the responsibility of member states to generate conditions and spur opportunities for the nomination and/or appointment of women in OAS organs and entities,

RESOLVES:

6. The United States remains concerned that the “Updated Principles on Privacy and Personal Data Protection” includes many concepts drawn from privacy regimes established outside of the Americas, ...

1. To amend Article 11 of the Statute of the Justice Studies Center of the Americas to incorporate gender parity, such that it reads as follows:

Article 11

[...]

The Board of Directors should reflect the various legal systems in the Americas and, to the extent possible, different sectors of the legal affairs community. It shall be endeavored to ensure gender parity in the election of its members.

v. International Law in Cyberspace

REAFFIRMING the applicability of international law to cyberspace and the importance of implementing voluntary, non-binding norms for responsible State behavior in cyberspace, as adopted by the United Nations in the consensus reports of the Group of Governmental Experts and Open-Ended Working Group on developments in the field of information and telecommunications in the context of international security; and

RECALLING the report of the CJI titled “Improving Transparency: International Law and State Cyber Operations” (CJI/doc.615/20 rev. 1),

RESOLVES:

1. To take note with satisfaction of the course proposal prepared by the Department of International Law at the request of the CJI on “International Law and Cyber Operations,” and to request that it undertake the training activities requested by member states in that regard.

2. To request the General Secretariat, the Inter-American Telecommunication Commission, the Inter-American Committee against Terrorism, and the Inter-American Defense Board to coordinate actions to support the efforts of member states and offer them assistance in implementing the framework adopted by consensus through the pertinent United Nations resolutions for responsible state behavior in cyberspace.

3. To request the Department of International Law to disseminate as widely as possible and foster reflection on the CJI report “Improving Transparency: International Law and State Cyber Operations,” including through the organization of a course for public officials from member states that so request.

vi. Promotion of the International Criminal Court^{7/}

EMPHASIZING the universality of the Rome Statute as an instrument to put an end to impunity and of the International Criminal Court (ICC), as the first and only permanent, independent, impartial international criminal court that investigates, tries, and punishes those responsible for the most serious crimes against the international community, such as genocide, crimes against humanity, war crimes, and the crime of aggression;

7. Although the United States is not a party to the Rome Statute, we underscore our firm and deep commitment to justice and accountability, particularly for the worst crimes known to humanity. ...

TAKING NOTE of the most recent developments within the ICC, including the election of a new prosecutor and six new judges, as well as the “Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System”;

REAFFIRMING the primary responsibility of states to investigate and prosecute those responsible for the above-mentioned crimes and their commitment to support the ICC by upholding and preserving its principles, integrity, independence, and impartiality, particularly from actions by states that would limit its actions, those of its officials, and those who collaborate with it, so that it can fulfill its mandate; and

RECOGNIZING the importance of the “Exchange of Letters Between the International Criminal Court and the General Secretariat of the Organization of American State for the establishment of a Framework Cooperation Arrangement” signed in 2011, the cooperation agreement signed by the Inter-American Commission on Human Rights and the ICC in 2012, and the “Memorandum of Understanding between the International Criminal Court and the Inter-American Court of Human Rights” signed in 2016, as well as the need for effective and comprehensive cooperation between States, international and regional organizations, and civil society to strengthen the ICC,

RESOLVES:

1. To reiterate its support for the International Criminal Court (ICC), which acts in favor of the common commitment to combat impunity for the most serious crimes of concern to the international community, in accordance with the Rome Statute, complementary to domestic criminal jurisdictions.
2. To welcome the new prosecutor and the six judges of the ICC elected for the 2021-2030 term.
3. To encourage those member states that have not yet done so to consider ratifying or acceding to, as appropriate, the Rome Statute of the ICC and its Agreement on Privileges and Immunities.
4. To urge member states that are party to those instruments to adopt, in accordance with their domestic law, the necessary measures to ensure their full and effective implementation.
5. To call upon those member states that are parties to the Rome Statute and urge those member states that are not parties, as well as international and regional organizations, to strengthen cooperation and assistance with the ICC in keeping with applicable international obligations, particularly with regard to arrest and surrender, production of evidence, protection and transfer of victims and witnesses, and enforcement of judgments, in order to avoid impunity for those responsible for committing the crimes over which it has jurisdiction.
6. To express its satisfaction with the cooperation between the OAS and the ICC in the area of international criminal law, to urge the General Secretariat to continue strengthening that cooperation within the sphere of its competencies, and to request the Permanent Council, within the framework of the CAJP, to hold, in the second half of 2022, a technical working meeting for member states to discuss measures that could strengthen cooperation with the ICC, particularly within the framework of the Review Mechanism to evaluate the recommendations contained in the “Final Report of the Independent Expert Review of the International Criminal Court and the Rome Statute System.” The ICC, international organizations, academia, national authorities, and civil society will be invited to cooperate and participate in that working meeting.

FOOTNOTES

1. ... session of the General Assembly of the Organization of American States (OAS), which result in acts contrary to international law.

In light of the foregoing, the Government of Mexico wishes to state that the accreditation of delegations participating in the General Assembly represents (1) an act of a declaratory nature whose validity issues from the membership granted to the State concerned; (2) is limited to the material scope of the participation of that delegation in the work of the corresponding body; and (3) does not accord special rights to any government or State in contravention of the provisions of the Charter of the OAS or international law.

The accreditation of any person claiming to represent the Venezuelan State in the framework of the OAS is an act in breach of international law, since the Bolivarian Republic of Venezuela denounced the Charter of the Organization in April 2017, with the result that said Charter ceased to have any effect on that from April 2019 onwards. The legal relationship that Venezuela retains with the Organization is limited, according to the provisions of Article 143 of the Charter, to international obligations pending fulfillment.

The recognition of governments is a sovereign act of States, not of international organizations. The OAS does not possess, nor can it arrogate to itself, powers of collective recognition enforceable as to membership, and therefore any act with such a purpose is beyond the scope of its competence and is null and void.

Therefore, so long as any person remains accredited as Representative of the Bolivarian Republic of Venezuela to the OAS based on ultra vires acts, Mexico will continue to participate and exercise its prerogatives and rights within its organs, agencies, and entities; however, that should not be construed as acquiescence in the recognition of any government.

Accordingly, Mexico declares that it will exercise its right to maintain or suspend diplomatic relations with any country, without qualifying the right of any nation to accept, keep, or change its governments or authorities and without that impacting its participation as a member state of the OAS, nor does it represent any recognition of governments of the Hemisphere.

Consequently, Mexico reserves the right to question the validity of acts and decisions emanating from the organs, agencies, and entities of the Organization when they are contrary to international law, and to express that such acts and decisions are not enforceable upon it where they overstep the scope of competence of the Organization, without prejudice to its rights and obligations as a member state of the Organization.

2. ... persons attempting to usurp the legal representation of the Bolivarian Republic of Venezuela and the legitimate government of President Nicolás Maduro Moros. We request that this rejection be registered in all documents to be discussed at this fifty-first regular session of the OAS General Assembly.

3. ... of Venezuela properly notified the Secretary General of its denunciation of the Charter of the Organization of American States, in accordance with Article 143 of said Charter, which ceased to be in force with respect to the Bolivarian Republic of Venezuela, which ceased to belong to the Organization on 27 April 2019.

Antigua and Barbuda did not support resolution CP/RES. 1124 (2217/19) of April 9, 2019, which sought to appoint Mr. Gustavo Tarre as the National Assembly's representative to the OAS and did not accept the credentials of the officials intending to represent the Bolivarian Republic of Venezuela at the forty-ninth, fiftieth, and fifty-first regular sessions of the General Assembly.

Therefore, Antigua and Barbuda notifies all member states and the General Secretariat of the Organization of American States that until further notice, it will not consider itself bound by any declaration or resolution of the fifty-first regular session of the General Assembly or any future declarations or resolutions of any council or organ of the Organization that includes the participation of any person or entity purporting to speak for, or act on behalf of, the Bolivarian Republic of Venezuela and/or in which an absolute or two-thirds majority vote is attained with the participation of a purported representative of the Bolivarian Republic of Venezuela.

4. ... of Venezuela. In 2017, the duly elected government of the Bolivarian Republic of Venezuela submitted to the Organization of American States its written denunciation of the Charter of the Organization of American States and, in keeping with the provisions of Article 143 of the said Charter, ceased to be a member of the Organization.

Saint Vincent and the Grenadines did not support resolution CP/RES. 1124 (2217/19) of April 9, 2019, which, in a procedural travesty, seated the purported representative. Saint Vincent and the Grenadines therefore advises this General Assembly that, until further notice, it reserves its full rights with regard to being bound by any declaration or resolution emanating from this fifty-first regular session of the General Assembly or any future declarations or resolutions of any council or organ of the Organization when these include the participation of any person or entity purporting to speak for, or act on behalf of, the Bolivarian Republic of Venezuela, and whose vote enables the attainment of a majority.

5. ...as this paragraph suggests. While the Inter-American Juridical Committee has a mandate “to promote the codification and progressive development of international law” (Article 99 of the OAS Charter), that body is a technical body, unlike the CAJP, and has been given the “broadest possible technical autonomy” (Art. 102 of the OAS Charter). Accordingly, any activities in this area should be undertaken, if at all, by the CJI, not the CAJP.

6. ...many of which are inconsistent with privacy rules and principles that exist under U.S. law. Additionally, the United States remains concerned that the “Updated Principles on Privacy and Personal Data Protection,” if adopted broadly, could unduly restrict cross-border digital commerce and stifle innovation.

7. ... The United States recognizes that the International Criminal Court can play a meaningful role in bringing those responsible for the worst atrocities to justice. To that end, we have provided - and continue to provide - specific support to the ICC in connection with certain investigations and prosecutions, consistent with U.S. law and policy. The United States understands that any OAS support rendered to the ICC would be drawn from specific-fund contributions rather than the OAS regular budget.