

**OPINION OF THE INTER-AMERICAN JURIDICAL COMMITTEE ON THE DRAFT  
PROTOCOL TO AMEND THE CHARTER OF THE OAS AND THE DRAFT  
RESOLUTION RELATED TO THE MODIFICATION OF THE AMERICAN  
DECLARATION OF HUMAN RIGHTS AND DUTIES:  
SITUATION OF WOMEN IN THE AMERICAS**

I. Introduction

1. The Permanent Council of the Organization of American States, by resolution CP/RES.719 (1151/98), decided to "request the Inter-American Juridical Committee to give, during its next regular period of sessions of March 1998, priority to the submission of its legal opinion regarding the draft submitted to the Permanent Council for consideration by the Coordinator on the *Situation of women in the Americas* as provided for in paragraph 4 of the preamble."

2. Likewise, said preamble sets forth that, to comply with the proposal formulated by the aforementioned Coordinator, the Permanent Council should request the Inter-American Juridical Committee (IJC) to issue, during its next regular period of sessions to be initiated during the second week of March, its qualified opinion regarding the formal legal requirements (i.e. Draft Article of the Amendment Protocol and Resolution) and the procedures that should be implemented, if any, to approve the proposal submitted by the aforementioned Coordinator.

3. The proposal basically consists of the approval of the following agreements:

"A) A Draft Resolution that could be approved at the XXVIII General Assembly in Caracas, whereby the title reading "American Declaration on the Rights and Duties of Man" is amended to read "American Declaration on the Rights and Duties of Human Persons", and to replace the term "Man" with the term "Human Person" or "Person", as applicable.

B) A Protocol of Amendment to the Charter with a single article providing that any references to the nomenclature "Man" contained in the Charter be replaced with the term "Human Person" or "Person", as applicable. Likewise, and to reconcile all agreements in force, it would be advisable to amend all Inter-American Treaties accordingly. In this sense, such amendments would be implemented as soon as all States ratify the said Protocol of Amendment."

4. The purpose of the aforementioned initiative is that the member States of the OAS legally establish, in a clear and explicit way, the concept of equality of opportunities and gender

equity, thereby laying down an internationally important precedent. The above mentioned proposal thus sets out "the opinion shared by the member States."

## II. General considerations

### a) Scope of IJC jurisdiction

5. From the foregoing it may be assumed, first, that the Permanent Council has not yet adopted any decision regarding the expression that should be used in inter-American legal instruments to which the foregoing proposal refers and, therefore, the Inter-American Committee is required to provide its opinion regarding the formal legal requirements and procedures that, when applicable, should be followed and applied.

6. Consequently, it is important to note that the responsibility of the Inter-American Juridical Committee is to provide its opinion regarding the appropriate procedure to be followed to implement any decision made by the Permanent Council and the General Assembly in respect of the proposal contained in resolution CP/RES.719 (1151/98) of the Permanent Council. In this sense, the Committee should not provide an opinion regarding the political advisability of such decision. However, it is empowered to provide an opinion regarding the viability and legal scope of same.

### b) Non-discrimination

7. In this same vein, from a legal standpoint, the inter-American legal texts do not establish any type of discrimination against women. In effect, according to the provisions contained in Article 3, paragraph 1) of the Charter of the Organization of American States "The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex, the legal instruments deriving from the Inter-American system should be applied and construed according to this fundamental principle officially reaffirmed by the American States.

8. It may also be stated that inter-American legal texts use the terms "man", "human person" and "person" interchangeably and synonymously.

9. This would be the case, for example, with paragraphs one and four of the preamble of the Charter of the Organization of American States and Articles 3, letter 1), 17, 33, 45, 47, and 95. Only in the preamble and in article 45 does the term "man" appear. In all other provisions the other terms are used.

10. The same applies to the *American declaration on the rights and duties of man*. In effect, while the term "men" and "man" is used in the title and preamble, the terms "human person" or "person" are used in the provisions. Only in Article XXVIII does the term "man" appear and Article VII refers to pregnant and nursing women.

c) Particular considerations regarding the amendment

11. It should be noted that to make a decision in this regard, consideration should be given to the historical scope that the terminology may have. For illustration purposes only, we could mention the *American declaration on the rights and duties of man* of 1948, which already includes the juridical patrimony of the Americas.

12. Likewise, in many cases, the amendment of the paragraphs of the declaration to substitute the term "human person" for the term "man" could create problems as regards the drafting of the provisions. Also, this difficulty could have other connotations depending on the official language that will be used for such modification.

13. Notwithstanding the foregoing, it should be noted that the intention and scope of these instruments was not to exclude women through references to the male gender, and although legally it may not be necessary to alter the terms of these instruments, the rule of interpretation itself that includes both the male and female gender may be perceived by some favoring men over women. Consequently, it is not the rule of interpretation that creates the problem but its continued use in contemporary practice.

III. Procedures

a) American Declaration on the Rights and Duties of Man

14. It is obvious that the amendment of the *American declaration on the rights and duties of man* adopted at the Ninth American International Conference by means of an *in itself* non-binding resolution would require the issuance of a resolution by the General Assembly of the OAS.

This should not involve any particular formality, but it would be desirable if it were approved by consensus of all members of the OAS General Assembly.

15. The aforementioned requirement would be of utmost importance due to the fact that a resolution of this type would "reaffirm" the existing right, but not constitute by itself a main source for the applicable international law. In this regard, it should be borne in mind that, as expressed in the *Basic documents pertaining to human rights in the inter-American system* updated in May, 1996, and edited by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, "the American states recognize that when the state legislates in this field, it does not create or concede rights, but rather recognizes rights that existed prior to the formation of the state, rights that have their origins in the very nature of the individual."

16. Therefore, to avoid any misinterpretation regarding the scope of the eventual amendment, said Resolution should be unanimously approved so that it may be opposable to all States in the inter-American system.

b) OAS Charter

17. As regards the amendment of the *Charter of the Organization of American States* for the above mentioned purpose, Article 142 of same states that "amendments to the present Charter may be adopted only at a General Assembly convened for that purpose. Amendments shall enter into force in accordance with the terms and the procedure set forth in Article 140".

18. On the other hand, Article 140 states that "the present Charter shall enter into force among the ratifying States when two thirds of the signatory States have deposited their ratifications. It shall enter into force with respect to the remaining States in the order in which they deposit their ratifications".

Thus, the enforcement of an Amendment Protocol to the Charter should follow the provisions of Article 140 of the same. The use of a procedure different to the one established in the Charter would result in the need to amend the provisions contained in said Article.

c) Inter-American legal instruments

19. The amendment of all other inter-American legal instruments to substitute the term "person" or "human person" for the term "man" should be carried out in accordance with the provisions contained in the same or as per the provisions contained in the *Vienna convention on treaties law* (Articles 39 through 41).

20. For example, the amendment of the *American convention on human rights and the respective protocols* would be implemented according to Articles 76 and 77. Thus, it would also be necessary to amend, for example, the *Inter-American convention to prevent and sanction torture* and the *Inter-American convention on forced disappearance of persons*.

IV. Interpretative resolution

a) Scope

21. Notwithstanding the above, that is, together or in a parallel way to the amendment of the aforementioned legal texts, and based on the consensus regarding the spirit and scope of the provisions contained in the said texts, there would be no legal impediment for the General Assembly of the OAS to approve, also formally by consensus, a resolution stating that the States of the Inter-American System understand and apply all international legal texts referring to human rights, in the sense that, on no account and under no circumstances, may they discriminate against women, but rather, the purpose and object of the said texts is to reaffirm equality of opportunities and gender equity within the framework of mutual obligation that nature has established between men and women.

22. The scope of the foregoing Resolution would be that assigned by the *Vienna convention on the law of treaties* to a faithful interpretation, thereby preventing any misinterpretation and, also, the said resolution would constitute a formal declaration issued within the framework of the gradual evolution of the International Law in the Americas.

b) Text

23. To facilitate an understanding of the foregoing, the following is a transcription of the formal Draft declaration on women in inter-American conventions:

**DRAFT FORMAL DECLARATION ON WOMEN  
IN THE INTER-AMERICAN CONVENTIONS**

THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES,

HAVING SEEN the provisions of letter 1) of Article 3 of the *Charter of the Organization of American States* and the *American declaration on the rights and duties of man of 1948*:

BEARING IN MIND that the object and aim of all Inter-American legal texts referring to the rights of a human person have been to consider the same as an individual with equality of opportunities and grant the same fair treatment to all members of the human race, without such instruments being construed or applied under any circumstances in a manner that discriminates against women; and

ON THE OCCASION OF THE 50<sup>th</sup> Anniversary of the *Charter of the Organization of American States*,

RESOLVES:

1. To formally proclaim that all conventions or inter-American legal provisions on the rights of the human person have been and should be construed and applied by the member States of the Organization of American States, and by the latter and its bodies, in the sense that they establish equality of opportunities and gender equity, especially in respect of women; thus, under no circumstances the said Inter-American legal instruments may legitimately be construed or applied in any other manner.

2. To urge the Member States to ensure that, all future Inter-American legal instruments referring to the rights of persons and, particularly, to the rights of women to which they are a party, clearly and expressly reflect the above interpretation.

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