

REASONED VOTE OF DR. LUIS HERRERA MARCANO

**ON THE OPINION TO THE DRAFT PROTOCOL
ON REFORM OF THE OF OAS CHARTER AND THE
DRAFT RESOLUTION TO AMEND THE AMERICAN DECLARATION OF THE
RIGHTS AND DUTIES OF MAN:
SITUATION OF WOMEN IN THE AMERICAS**

I have voted in favor of the opinion issued by the Juridical Committee since I agree in general with the legal considerations expressed therein. In my judgment, however, the Committee should have addressed certain other aspects that I consider important and which would have helped to enrich it.

The fight for equal rights and equal treatment of women, in which all of the American States have participated and are taking part, has fortunately made significant strides in recent years although the battle is far from won.

Discrimination against women is not limited to discrimination at law, which fortunately has now been virtually eliminated, but includes de facto discrimination embodied in traditions and attitudes, sometimes subconsciously, which apart from being offensive to women, translates in practice into discriminatory conduct.

Some of these attitudes are expressed in language. In recent years, efforts to eliminate discriminatory connotations of words in common use have made perceptible progress to the extent that neutral expressions, lacking any sexist connotation, have often successfully replaced traditional expressions.

One striking case is the use of the term "man" in contexts in which both men and women are being referred to. This use, although formally correct from a linguistic standpoint and in terms of its legal consequences has been virtually replaced in the language by the term "person" or, in certain cases, "human person", to the extent that the use of the term "man" in this context is falling into disuse and may even in some cases have an offensive connotation.

It is essential to bear these considerations in mind in order to appreciate the legal nature of the proposed amendments. Although from a strictly formal standpoint, it involves an amendment to legal texts, in substantive terms the aim is not to amend the content or the sense of these texts but rather to replace expressions that have fallen into disuse with expressions that, at the present time, have the meaning that was precisely what the authors of these instruments intended.

From this perspective, then, I feel that it is necessary to make a few observations on the following points:

1. Amendment to the American Declaration of the Rights of Man. I concur that a Resolution of the General Assembly is sufficient to introduce the proposed amendment. I feel, however, that since it does not modify the sense or the effect of the document, it is juridically irrelevant whether or not it is approved by consensus.
2. Reform of the Charter of the Organization of American States. I concur with the Committee's Report on the procedure that needs to be followed. I believe, however, that other measures could be adopted concurrently as noted since it means adopting a Resolution.
3. Amendment of other inter-American treaties. I understand that the amendment being proposed is not limited to the inter-American treaties on human rights but extends to all treaties in which the term "man" is used in the sense previously mentioned. I also understand that the term "inter-American treaty", in light of previous Resolutions adopted by the General Assembly, needs to be understood as all treaties of which the General Secretariat of the Organization of American States is the depositary.

I concur with what the Committee has said regarding the use of the amendment procedures provided in each treaty and, in the absence of any specific provision, of the procedures established in the customary international law, set out in the corresponding provisions of the Vienna Convention on the Law of Treaties.

Notwithstanding the wording of the point 4 below, I feel that the same strictly legal effect may be achieved under a single inter-American treaty that provides for the modification of all other treaties, with the admonition that, with respect to each specific treaty, the amendment would not give rise to legal effects until the amending treaty was ratified by all States parties to the treaty in question.

4. Possibility of an interpretative resolution of the General Assembly. I concur with the Committee's opinion on the need for the General Assembly to adopt a Resolution formally declaring the interpretation that needs to be given to the term "man" in the aforesaid context. I feel, however, that: (a) the resolution needs to include in the considerations a reference to the change in the use of language and its significance in the fight for equal rights and equal treatment for women; (b) it needs to be expressed more clearly and precisely and indicate, in the first paragraph of the resolution, that "in all those cases in which an inter-American treaty or a resolution or other document emanating from the Organization of American States contains the term "man" used to designate both men and women, it must be read as "person" or "human person", depending on the context. The same wording needs to be used in the second paragraph of the resolution; (c) the Resolution could contain a third paragraph providing that the Secretary General should proceed to make the appropriate substitution in the wording of decisions or other documents emanating from bodies of the Organization in publications or in reproductions of such publications in the future; (d) the resolution could also include a fourth paragraph to instruct the Secretary General that all publications or future certification of the Charter of the Organization of any inter-American treaty containing the term "man" used in

the sense aforesaid, should include a note indicating that that term is to read “person” or “human person” depending on the context.

5. Additional alternative. It is my opinion that, if unanimous approval is given, or a resolution by consensus, that is without legal objection being expressed by any member State, it could go still further and provide by a resolution of the Assembly that the proposed substitution be made in the Charter and all other inter-American treaties provided that the same resolution clearly indicates that it is a change in the language that does not affect the sense of the text, in order to prevent any attempts in the future of using this as a pretext for introducing modifications to the substance of treaties in force. I admit that this last point could be controversial.

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