CJI

INTER-AMERICAN JURIDICAL COMMITTEE

OEA/Sec.General
DDI/doc. 2 /2017
January 17, 2017
Original: English/Spanish

ANNOTATED AGENDA OF THE

INTER-AMERICAN JURIDICAL COMMITTEE

90th REGULAR SESSION
Rio de Janeiro, Brazil
March 6 to 10, 2017

(Document prepared by the Department of International Law)

General Secretariat
Organization of the American States

EXPLANATORY NOTE

The Department of International Law of the OAS Secretariat for Legal Affairs of the General Secretariat has prepared this document, which includes background information to facilitate consideration of the various topics on the agenda that the Inter-American Juridical Committee will take up at its 90th Regular Session, in light of the agenda adopted in October 2016, document CJI/RES. 229 (LXXXIX - O/16).

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1. Conscious and effective regulation of business in the area of Human Rights

During its XLVI Ordinary Sessions, the General Assembly of the OAS gathered in Santo Domingo, Dominican Republic, in June 2016, adopted a mandate in the area of human rights and business. In this regard, the resolution calls on the Inter-American Juridical Committee to make a:

> Compilation of good practices, and initiatives, legislation, jurisprudence and challenges to be used in identifying alternatives for approaching the subject, to be considered by the Permanent Council within one year; in addition, request the Organs of the Inter-American System of Human Rights to provide their input and expertise to the process (document AG/RES. 2887 (XLVI-O/16).

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October, 2016), the plenary chose Dr. Villalta as Rapporteur of the topic, and she pledged to provide a report within the allotted timeframe in order to submit it to the consideration of the Permanent Council.

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2. Protection of cultural heritage assets

During its XLVI Ordinary Sessions, the General Assembly of the OAS gathered in Santo Domingo, Dominican Republic, in June 2016, instructed the Inter-American Juridical Committee to:

> Study existing legal instruments, in both the inter-American and international systems, pertaining to the protection of cultural heritage assets in order to inform the Permanent Council, prior to the forty-seventh regular session, about the current status of existing regulations in this area to bolster the inter-American legal framework in this area AG/RES. 2886 (XLVI-O/16).

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October, 2016), Dr. Hernández García offered himself to be Rapporteur and the members promptly accepted. In view of the time constraint of the General Assembly's mandate requiring that a report be issued within one year, the Technical Secretariat drafted a report called: "Support document on cultural heritage assets – Universal and Regional instruments and Bilateral examples" (DDI/doc.5/16, August 30, 2016) which will serve to the work of the Rapporteur. Additionally, the Rapporteur presented a preliminary report on the matter, document CJI/doc. 512/16.

He mentioned that many countries in the Hemisphere are parties to the most important instruments worldwide. In this respect, he described the situation using an example of the UNIDROIT Convention (that includes 37 member countries, 11 of which are in the region) regarding stolen or illegally exported cultural heritage assets.

He explained that the common object of conventions on this theme is the definition of property. He proposed drafting a practical guide allowing states to approach the subject from two perspectives: preventive and recovery. He observed that nothing comes from nowhere, as there are some guidelines in the United Nations as well as in the UNESCO (the United Nations Organizations for Education, Science and Culture).

The Chairman congratulated Dr. Hernández for his clarity in the subject covered.

Dr. Salinas joined the Chairman in congratulating the rapporteur and invited the members to provide their contributions, as time is short for producing the report. He suggested starting a workgroup to help back up the work of the rapporteur.

Dr. Villalta recalled the report on the Protection of cultural assets in situations of armed conflict (CJI/doc.451/16). She said that a report was presented showing ratifications to international treaties related to the subject (CJI/doc. 507/16).

Dr. Mata Prates also congratulated the rapporteur and proposed adopting a methodology including the distribution of the documents by e-means to facilitate interactions and analysis of the theme by other members.

Dr. Hernández García said that he expects to distribute the report before the next regular session.

3. Immunity of States

During the 81st Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2012), Dr. David P. Stewart proposed to the plenary that the Committee work on an instrument addressing the immunity of States in transnational litigation. He pointed out that in 1986 the Committee had presented a draft convention on the immunity of States that did not prosper. He also observed that the United Nations Convention on the jurisdictional immunities of States and their assets is not in force yet. Furthermore, he noted that States lacked appropriate legislation. In his explanation, Dr. Stewart described the positive implications that an instrument in that area could have for trade, in addition to providing guidelines for government officials. Dr. Fernando Gómez Mont Urueta proposed that the plenary agree to designate Dr. Carlos Mata Prates as Rapporteur for the subject: a proposal met with the plenary's approval.

At the 82nd Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2013), the Rapporteur for the topic, Dr. Carlos Mata Prates, explained that his report would be presented to the regular session of Committee in August 2013. He then engaged in a general reflection. He explained that the purpose of the Rapporteurship's work was to restrict it to States and international governmental organizations, which are subject to International Law, although he was aware that the element of immunity would pertain to institutions, officials, and places, including embassies or warships. In his presentation he noted that the treatment of acts or deeds attributable to a state cannot be tried by a domestic court of another state.

The Rapporteur expressed appreciation for the proposed *questionnaire* prepared by Dr. David P. Stewart, which was sent to the States. Furthermore, noted the important role of tribunals, citing the Law of the Sea Tribunal case between Argentina and Ghana, relating to immunity of an Argentinean warship from jurisdiction (immunity derived from the Law of the Sea Convention).

With regard to international organizations, the Rapporteur explained that immunity is conferred by rule as established in headquarters agreements. He also cited a domestic court decision concerning ALADI officials.

The Chairman asked Dr. Stewart to present his *questionnaire*. Dr. Novak urged the Rapporteur to include national practices. Dr. Gélin Imanès Collot proposed that the Rapporteur include in his document references to the 2005 Convention on Immunities of States.

Dr. Moreno Guerra proposed that elements on waiving sovereign immunity should be included and should be distinguished from cases in which sovereign immunity is maintained in order to monitor trials involving nationals. The Rapporteur cited cases in which a State by its action loses its immunity or cases in which disputes are taken to arbitration.

Dr. Stewart read his proposed *questionnaire* aloud to the plenary. The Department of International Law circulated that questionnaire to the permanent missions to the OAS, through Note OEA/2.2/26/13 of April 26, 2013.

At the 83rd Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2013), the Rapporteur for the topic, Dr. Carlos Mata Prates, was not present and no report was sent for the consideration of the Committee. Regarding the *questionnaire* Dr. Luis Toro Utillano provided an explanation on the situation of its responses. He stated that so far there had been six responses, from the following governments: Bolivia; Colombia, Costa Rica, Mexico, Panama and Dominican Republic. In addition, he consulted the Plenary whether a reminder should be sent to the States that had failed to respond. Dr. Fabián Novak suggested the issuance of a reminder involving all the themes, and that the final date for the delivery of the responses could be scheduled for December 15, 2013.

During the 84th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), the Rapporteur, Dr. Mata Prates, decided to bring forward a part of the report he was preparing, and provided some background to the Committee's work on the issue. Citing studies

conducted between 1971 and 1983, he explained that his report would build on previous work and would revisit the status of those concepts. An analysis of the replies received, from 10 countries altogether, would be included.

He concluded by explaining that based on the ten responses received, none of the States had ratified the UN Convention on Jurisdictional Immunity, and that only one had a parliamentary process underway with a view to said ratification.

During the 85th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August, 2014), Dr. Carlos Mata Prates, the Rapporteur for the issue, reviewed the background and acknowledged that one more State had responded, totaling 11 States.

Dr. Novak mentioned that both topics were very broad, so that he suggested restricting the subject for the moment to the issue of the immunity of States. He also suggested that perhaps Dr. Stewart could join Dr. Mata Prates.

The Chairman, Dr. Baena Soares, mentioned that the subject of the immunity of international organizations should not be neglected, especially the experience of the States hosting them. Additionally, the Chairman ascertained a consensus among those present about addressing the issue of the immunity of States first.

During the 86th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, March 2015), the Rapporteur for the Topic, Dr. Carlos Mata Prates, recalled that this subject has been on the Committee's agenda since August 2012 and that his role had been confined to addressing immunity of States, though no new responses to the *questionnaire* have been received from the States.

As a preliminary finding, the Rapporteur noted that a narrow concept of immunity has been established with regard to States. Notwithstanding, he explained that he would still have a methodological question about how to continue with preparing the report, inasmuch as there weren't enough responses to put together an overview of the practices in the countries of the Americas; that is, only 11 countries responded.

Dr. Hernández García advised the Rapporteur to take into consideration in his study the failure of States in the Region to sign the United Nations Convention on Jurisdictional Immunities of States and their Property (2005), and commented on the proceedings before the Federal Senate of Mexico to move toward ratification of the aforementioned Convention. He also confirmed the tendency of courts to resort to international customary practice, inasmuch as domestic law provides no legal basis in this area of law. As for practice in Mexico, not many cases of immunity of States have been brought in the country's courts; while, in contrast, there has been a higher number of cases on immunity of International Organizations.

Dr. Salinas suggested integrating the practices of the countries into a comparison, but using a theoretical basis to explain the status of the subject matter in International Law. Additionally, he recommended conducting a comparative analysis of the differences between the 2005 United Nations Convention and the 1983 Draft Inter-American Convention on Jurisdictional Immunity of the States, and then carrying out an analysis of actual practices in the States.

Dr. Hernández García suggested creating a legislative guidance on implementation of the United Nations Convention in order to explain the best way to move toward possible ratification of said instrument.

Dr. Mata Prates pointed out that the theoretical issue is not problematic; judges apply customary law, except in the United States, where a specific law has been enacted. Therefore, it is essential to know the decisions of national judges on said issues.

During a second meeting devoted to discussion of the topic, Dr. Mata Prates introduced a preliminary report titled "Immunity of States. Preliminary Outline," document CJI/doc.480/15, which includes potential findings and expected outcomes. The report traces over time the development of

immunity of States, and how it became relative, and that reflects a division between jurisdictional immunity and immunity from execution of judgment.

Dr. Correa suggested including in the Rapporteur's outline a part on responsibility of the State for damages occurring as a result of the aforementioned immunities.

Dr. Salinas asserted that the theoretical framework of said report ought to refer to the Inter-American Convention on Jurisdictional Immunity of States, and proposed that the Rapporteur indicate whether or not ratification of said Convention should be encouraged or discouraged, based on the findings of his study.

Dr. Moreno Guerra noted that it is not the Committee's mandate to urge States to ratify or not to ratify a Convention. In this regard, the contribution of the Committee is to provide guidance to address said issues, taking into account all stakeholders involved.

The Chairman reiterated the commitment of the Rapporteur to submit a report during the August meeting as a final product.

During the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2015), the Rapporteur for the topic, Dr. Carlos Mata Prates, provided a summary on the history of the Juridical Committee dealing with the topic, which originally included immunity of International Organizations. He submitted the new document (CJI/480/15 rev.1), which mentions the background history of addressing this topic in the universal system (United Nations Convention on Jurisdictional Immunities of States and Their Property - 2005) and in the Inter-American System (Draft Inter-American Convention on the Jurisdiction of States). He affirmed that these draft Conventions have not come into force in either of the two systems. This is because the United Nations Convention does not meet the required minimum number of ratifications and the Inter-American Convention has not become an international instrument.

As for the scope of immunity, he believed that the concepts have been viewed narrowly because of a distinction drawn between acts of administration and acts of authority, the latter being covered by immunity, while the former would not be. He emphasized as well that the subject of labor is an exception to jurisdictional immunity.

With regard to the *questionnaires*, he noted that responses have been received from 12 countries, eight of which reported that they have no specific legislation on this subject matter. All States made reference to standards of customary law pertaining to jurisdictional immunity. Moreover, the concept is confined to commercial activities (*jus gestioni*). The definition of said acts, in most States, is based on a particular judge's own assessment on a case-by-case analysis and not based on any specific statutory definition.

In his report, the Rapporteur expressed his intention to pursue the following courses of action: ascertain the status of the scope of said immunities; clarify the degree of consistency of each case with the Conventions adopted within the UN and the OAS; and, draft recommendations on ratification of one of the two Conventions, in order to determine a way forward (propose amendments to the American Convention, draft guiding principles, etc.).

Dr. Salinas expressed interest in the Committee's ability to add enhanced value and, therefore, the work should not be confined to just legal instruments, but should also include Court decisions and standards of customary law.

Dr. Stewart considered that the work of the Rapporteurship must aim to determine the status of prevailing law in the Hemisphere. It is not the job of the Committee to promote ratification of the Convention, even though it believes it is a worthy document. We must endeavor to produce a more detailed analysis on the situation in the countries. If it were to be established that the sphere of International Law takes precedence, there should be a way to explain this claim.

Dr. Correa confirmed the deep judicial roots of this topic and believed that efforts could involve narrowing the scope of the exceptions, in addition to providing input on the responsibility of States.

She urged the Secretariat to promote a greater response to the *questionnaires* and the Rapporteur to prepare guidelines.

Dr. Collot posited two levels of immunity (jurisdictional immunity and immunity from execution of judgment), and expressed his interest in implementation of these types of immunity in the proper way and, for this purpose, the immunities must be thoroughly comprehended. Lastly, he mentioned the need to distinguish between immunity and impunity.

The Rapporteur explained that the mandate was to establish the current situation in the Hemisphere. Even though few responses have been submitted, it can be asserted that jurisdictional immunity is clearly governed by customary law on the subject matter, except in the United States, where a very comprehensive national law is in force on the subject matter. This assessment is based on rulings of national courts: national judges do not apply a statute, but rather legal precedents and, hence, the difficulty in providing a response to the questionnaire, which would require an examination of the legal precedents of each country. With regard to Dr. Collot's comment, if the country of origin declines to accept jurisdiction, a connection must be sought to the place where the events took place. Likewise, a distinction must be drawn between jurisdictional immunity and immunity from execution of judgment; the former being governed by a restrictive criterion, while in the latter, is absolute. Lastly, on the subject of international crimes, it must be taken into account that the Rome Statute does not allow jurisdictional immunity for individuals, who are responsible for the four crimes over which said Court has jurisdiction.

He suggests that the topic be left open in anticipation of further responses from the States.

Dr. Stewart asked for the *questionnaire* to also be sent to experts in the countries from which no affirmative response has been received.

The Rapporteur agreed with the suggestion of seeking out experts, who could address the topic.

During the 88th Regular Session of the Inter-American Juridical Committee (Washington, D.C., April, 2016), the Rapporteur for the Topic, Dr. Mata Prates, recalled the agreement reached at the August session of the previous year that a final report would not be adopted due to the insufficient number of responses to the *questionnaire*, and given that the practices of the States could not be determined.

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October, 2016), the Rapporteur for the topic, Dr. Mata Prates, stated that during the session held in August 2015, the Committee suggested to keep the topic in suspense because the number of responses received from States was very low. However, according to the Ministries of Foreign Affairs, this is a daily issue and some judges are beginning to consider that there is a kind of customary law in this regard.

He took up again the discussion held on the previous meeting with representatives of the Ministries of Foreign Affairs. Some legal counsels suggested drafting a guide with information on practical aspects. He proposed then to reformulate the mandate of the Rapporteurship with the aim of drafting a guide on immunity of jurisdiction and enforcement by the States.

Dr. Salinas highlighted the emphasis stressed on the topic by the legal counsels, and the convenience of hearing an opinion from the Juridical Committee on the practice of States on this issue.

Dr. Hernández García pointed out that this was a perfect opportunity for studying the topic, in view of the interest shown by the legal counsels. However, the responses from States shall not provide the perfect solution in these cases. Without referring to the nature of the document, interesting issues refer to practical guidelines used as a reference. Three topics deserve the attention of the Committee:

1. The issue concerning notices/notification;

2. Immunity from execution;

3. In labor matters to find mechanisms that allow access to justice, because immunity from execution does not mean exception of payment.

He proposed a draft guide making an inverse exercise, and before delivering it to the political organs, it would be convenient to also send it to the seven counsels that met with the Committee, thus being able to approve the final report at the end of the process.

Dr. Baena Soares was in agreement with the idea of working with the information available, and referred to the positive result of the meeting with the counsels held on the previous day. Finally, he urged the Rapporteur to draft a guide in the format of a practical response.

Dr. Correa said it would be convenient to go beyond a study on the practices of States, as this would be an insufficient limitation, taking into consideration that there is a core problem related to the need of imposing respect for international law between judges. The Committee should explain how these limits will be implemented, always respecting the independence of the courts, because in the labor area, for example, restrictions of immunity from execution are not clear enough.

The Chairman said that he was in agreement with the proposal made by Dr. Hernández García about a practical guide. He mentioned a Peruvian example, as people fail to understand immunities of individuals and the reasons for such protection.

Dr. Moreno suggested contacting the judges, in the light of the experience of the Department of International Law in the area of training, by means of cooperation agreements involving the OAS and the Juridical Committee.

The Chairman informed that the discussion appears in the previous phase, as it is like having a product and not disclosing it.

Dr. Hernández García commented that nobody would dare to amend the conventions in the sense of an exception to the immunities of jurisdiction. Therefore, it is necessary to support the practical recommendations on the guide on a basis of normative support. He also explained that his intention is to monitor progress in a practical document, based on the decisions of the domestic courts.

He proposed coordinating his work together with the work of Dr. Mata Prates, so that both guides are coherent. He finally noted that many countries do not require a law on immunities, as the convention is enough. In this regard, he is considering drafting a guide containing general principles.

The Chairman then proposed working on a practical instrument including the suggestion made by Dr. Correa and fulfilling the mandate, in all instances, with the responses of the countries that have provided one.

Dr. Salinas agreed with Dr. Hernández Garcia´s proposal, but was of the opinion that the report should determine the stage of the question, and after that drafting the guide.

Dr. Villalta observed that the meeting held on the previous day with the legal counsels has provided new light and information, and expressed her agreement with Dr. Moreno´s suggestion on the importance of training judges, together with some information about the use of immunities in El Salvador.

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4. Immunity of international organizations

During the 81st Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2012), Dr. David P. Stewart proposed to the plenary creating an instrument on immunity of States in transnational litigation. He reported that in 1986 a draft Convention on immunity of States introduced by the Juridical Committee did not go anywhere. Additionally, he noted that the United Nations Convention on Jurisdictional Immunities of States and Their Property has still not come into force. He also stressed that States do not have adequate laws on the topic. In his explanation, Dr. Stewart described the positive effects that an instrument on this subject area could have in the field of trade, in addition to serving as a guide for government officials.

The Committee has only followed up on the subject of immunity of States during the sessions explained hereafter, as of the current year.

During the 86th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, March 2015), the plenary Committee decided to divide up the treatment of the subject of immunities and appoint a Rapporteur to be in charge of immunity of international organizations. Dr. Hernández García was appointed to the position and undertook to submit a preliminary report at the next regular session.

During the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2015), Dr. Hernández García, Rapporteur for the topic, submitted his report, document CJI/doc.486/15 and thanked the Secretariat, particularly Dr. Christian Perrone, for his assistance in drafting the preliminary document to serve as the basis for the actual report (DDI/doc. 5/15).

He explained the development of the topic in the Committee and what he has done as Rapporteur since he was appointed in March of the current year. He was pleased at the decision to separate the field of immunities into two sub-topics to be addressed by the Committee: immunities of States and of international organizations. He noted that 12 responses to the questionnaire conducted in 2013 were received from the following States: Bolivia, Brazil, Colombia, Costa Rica, El Salvador, United States, Jamaica, Mexico, Panama, Paraguay, Dominican Republic and Uruguay. Based on the responses provided to the Committee, he was able to establish that only the United States and Jamaica have a national law. The majority of the countries address this issue through international instruments, mainly through headquarters agreements.

As for exceptions to immunity for acts of commerce, he remarked that his study also helped him to ascertain the use of international agreements or treaties to serve as guidelines. He also established inconsistencies among the legal precedents of the countries.

Next, he made reference to the last question on the *questionnaire* regarding provisions of law applied by the judiciary, with most States alluding to international custom, though he did not mention what he considered to be the normative content of the customary law.

He outlined as a first conclusion that it is the practice of States to deal with immunities of International Organizations on a case-by-case basis.

He also commented on the European Court of Human Rights case establishing a limitation on immunity of international organizations, clearly indicating that immunity cannot impede access to justice in light of respect for the right to due process, and the possibility of providing for reparation for damages. In the view of the Rapporteur, this decision shows that immunities of international organizations is following a parallel path to the concept of functional immunities (*rationae materiae* immunity) of States, inasmuch as it is prohibited to leave persons defenseless.

As a product of his study, the Rapporteur proposed the creation of guiding principles on the application of immunities of international organizations. He cited three possible sources of law to establish general principles: 1) national laws; 2) headquarters agreements; and 3) national legal precedents. Additionally, his study included developments on the extension of immunities in general; exceptions granted by treaty, law and jurisprudence; the scope of the limitations on commercial matters; respect for national legal order; and, remedies to cure violations.

Dr. Salinas noted that the instruments adopted by most important organizations, such as the UN or the OAS, refer to common principles; while other organizations lay out distinctions, which would require verification on a case-by-case basis. As for progressive development, he called for examining the issue of the limitations stemming from human rights, which would help to generate a new perspective on the subject matter.

Dr. Correa Palacio noted that in labor matters, the applicable judicial norm must be verified and identified. She claimed that often when damages occur, there is no person responsible against whom a case can be adjudicated and, therefore, there has to be a way to protect fundamental rights.

Dr. Villalta established that, in Central America, headquarters agreements are usually used as relevant guidance on immunities. She mentioned that in the absence of agreements, the situation is handled mostly on a case-by-case basis and that guiding principles could be useful in the practices of States.

Dr. Hernández García noted that in many aspects he concurs with the comments of the other Members and he proposed to submit a report at the next Committee meeting.

During the 88th Regular Session of the Inter-American Juridical Committee (Washington, D.C., April, 2016), the Rapporteur for the Topic, Dr. Hernández García explained that this report CJI/doc.499/16 was the result of an analysis of 15 international conventions, and took into consideration, *inter alia*, the constitution of international organizations, headquarter agreements and specific immunity-related treaties. In addition, he commented that the *rationale* underlying the report was to look for general principles to guide international organizations and countries in respect of the former's international immunities.

He said that the purpose of the study was to analyze the scope and limits of the immunities

The study enabled him to note the following common features relating to immunity in the cases reviewed: jurisdictional immunity, immunity from execution, personal inviolability, inviolability of archives, communication facility, tax exemption, migration facilities, monetary and exchange facilities, customs facilities, occupational liability in local recruitment, and waivers of immunity.

With respect to legal capacity, what the treaties had in common was that they refer to capacity to hire/enter into contracts, acquire real estate, and initiate judicial proceedings.

As regards immunity to jurisdiction, there were various degrees depending on the recipients. Generally speaking, there was immunity to any kind of judicial proceeding. A different instrument was the Agreement Establishing the Inter-American Development Bank which extends that immunity to the territory of all the member states.

Representative of International Organizations were on a pair with diplomats when it comes to immunities depending on their rank. Higher-ranking officials, such as Secretaries General and Directors General were guaranteed equivalent immunity as diplomats, whereas other staffs of international organizations were granted only functional immunity.

The inviolability of offices, archives and communication facilities was considered absolute. There were also tax exemptions and customs facilities.

In conclusion, immunities are absolute, with restrictions in only very exceptional cases. One example was payment for public utilities, although there were tax exemptions.

All the treaties provided for the option to waive immunities. One recurrent exception involved restrictions with respect to the immunities of nationals of the territory in which the Headquarters is located, they may not enjoy the same immunities are foreign nationals.

Another important point was that waiving jurisdictional immunity does not *ipso facto* imply waiving immunity from execution. Some treaties explicitly required a specific waiver with respect to execution.

Finally, some agreements contained provisions guaranteeing access to justice. Here there were two approaches. In one of them, there were rules requiring in-house procedures within the organization that enable someone who feels wronged to defend himself/herself. In the other, there were provisions allowing for resorting to domestic laws.

The Rapporteur said that the next step would be to analyze further treaties and jurisprudence regarding this subject in the countries of the region.

In another session, Dr. Salinas urged the Rapporteur to focus his study on practical aspects of limiting the immunities of international organizations. He explained that as a legal advisor to the Ministry of Foreign Affairs of Chile, the most common problem he encountered was related to labor

rights and mechanisms for settlement of disputes. He pointed out that various national courts have developed case law on the subject, and suggested that national jurisprudence on the subject be studied. He also noted that there are differences in immunities of States related to the nature of commercial transactions. In some cases, certain commercial transactions are recognized as intrinsic to the functions of international organizations, and so would be considered as administrative operations and not commercial transactions. In this area, the traditional limitations on states' immunities are not equally applicable.

Dr. Correa noted how complex the issue was. She also commented on the existence of a certain consensus among States on extending facilities and immunities on fiscal aspects. She pointed out the example of Colombia where the courts limmited immunity in areas of both tax and labor matters.

Dr. Pichardo underlined that this is a topic of interest to everyone working in the foreign ministries of governments. He recalled that the greatest problem occurred in labor matters. He suggested that the Rapporteur take into account the UN Draft Articles on the Responsibility of International Organizations.

Dr. Collot expressed doubts regarding the nature of some of the organizations referred to in the report.

Dr. Hernández García thanked the members for their comments, and especially Dr. Pichardo, for bringing up a subject that was not included in his report. Although he was of the opinion that the issue of responsibility was not part of the mandate, it is an aspect that could be taken into account, because it can give rise to use of immunity in legal claims.

He added that the treaties analyzed did not leave room to consider extracontractual responsibility of international organizations. The analysis would consist in review of the regulations of selected organizations in the region, with a view to continuing the study of national jurisprudence. He also agreed with Dr. Correa that disputes today are not confined to labor issues, and with Dr. Salinas regarding the distinction drawn between internal administrative operations and commercial acts.

He mentioned the difficulties many countries have in striking a balance between the immunities of international organizations and the rights of victims to have access to justice and reparations.

In response, Dr. Collot explained that he selected international organizations that are important in the region.

The Vice-Chairman observed that in matters related to the immunities of international organizations, unlike immunities of states, there is usually an objective element in the form of the headquarters agreement that indicates the scope of said immunities.

He mentioned two national judgments in which jurisdiction was assumed. The first had to do with a case in Brazil on labor issues, in which the country's Supreme Court assumed jurisdiction to avoid denial of justice. The second one was a case in Uruguay in which national legal actions against an international organization were allowed in order to avoid denial of justice, as in the Brazilian case. In this regard, he asked the Rapporteur if there were mechanisms in the United Nations to enable possible victims to file claims for reparations.

Dr. Salinas explained that in the case of the alleged cholera victims in Haiti, they were not covered by the United Nations tribunal, which deals specifically with labor matters. Going back to the issue of international organizations analyzed by the Rapporteur, he supported his explanation related to the group of organizations selected for the study, since they were all international by nature.

In concluding the discussion on the issue, the Rapporteur was asked to pursue his study of the immunities of international organizations, with an emphasis on jurisprudence in the OAS Member States.

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, October 2016), the topic was not discussed.

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5. Law applicable to international contracts

At the 84th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, March 2014), Dr. Elizabeth Villalta introduced a new topic, which had not been on the agenda established in August 2013. In that connection, she presented a document entitled "Private International Law" (CJI/doc.446/14) aimed at promoting certain conferences held under the purview of the CIDIP, in particular the Convention of Mexico on the Law Applicable to International Contracts, ratified by two OAS Member States.

Among reasons for such few ratifications she cited the lack of promotion and awareness about it and the fact that back then (1994) these solutions would have been too novel; the provision for autonomous free will; and the reference to *Lex Mercatoria*. Her conclusion was that Mexico could settle many international contracts problems with the Hemisphere's own solutions.

Dr. Negro informed of the participation of them both (the Rapporteur and him) in the ASIDIP meetings, and noted that there was consensus that certain Conventions adopted by the CIDIPs, particularly the 1994 Convention of Mexico, needed reviewing. He noted the interest in having Inter-American Juridical Committee support to disseminate those conventions. Dr. Dante Negro also spoke about the last CIDIP and the impasse about consumer protection, as well as the States' lack of agreement on holding another CIDIP. He said no specific new resolution on CIDIP's had been adopted, in terms of new topics or finding a solution to the consumer issue. He said the Department of International Law had informally approached states to promote ratification of the Conventions on Private International Law.

Meanwhile, Dr. Arrighi, who has also took part in the ASADIP meetings, noted that some members of the ASADIP held senior positions with their governments and never suggested ratification of the Conventions was a priority. He added that doing protocols or amendments to conventions already signed and ratified would depend on the willingness of States Party. A review of the Convention of Mexico should therefore be proposed by Mexico or Venezuela - the only ones to have ratified it. Finally, he noted the important role played by the Inter-American Juridical Committee in creating a network of experts who supported initiatives in this area.

Dr. Salinas said what Dr. Arrighi spoke about was important to understanding why the Convention had not been ratified by a significant number of countries. He pointed out further that if consultations were to be held, they should include experts and practitioners in this field.

The Chairman said that some consensus was already developing: Firstly, on keeping the issue on the agenda for August; secondly, that a study of the convention would be useful; and thirdly, that consultations should be held with the states and experts and practitioners as well.

Dr. Collot hailed Dr. Villalta for proposing this topic. He said Dr. Villalta had touched on several concepts that were important to private international law, particularly the concept of *Lex Mercatoria*.

Dr. Villalta said that the position of the members of the ASIDIP was that the Committee could play a key role in the promotion of Private International Law. Additionally, the members of the Juridical Committee decided to change the title to "Law applicable to international contracts" instead of Private International Law."

During the 85th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Elizabeth Villalta presented another report, entitled "Law Applicable to International Contracts," document CJI/doc.464/14, which refers to all the Conventions on Private International Law adopted at the Inter-American Specialized Conferences on Private International Law (CIDIP's).

She explained that some countries indicated that the translations of the Conventions were not particularly felicitous, and that that was an obstacle to its ratification. However, she mentioned that there were ways of correcting those deficiencies, so she suggested that the Committee bring countries' attention to the mistakes.

She said the Convention needed to be more widely disseminated, especially considering the current importance of international contracts and international arbitration. The conventions on this subject could resolve many of today's legal issues, such as the free will (contractual freedom) principle. This principle had been incorporated into Venezuelan legislation and in a bill (draft law) in Paraguay. Thus, material incorporation could, she said, be the path to reception of the principles enshrined in the Convention.

Finally, she said that the benefits of the Convention included receptivity to the principles of *lex mercatoria* and various other principles developed in international forums and trade customs and practices.

The Co-Rapporteur on the subject, Dr. Collot, gave an oral presentation of his report, called "Inter-American Convention on Law Applicable to International Contracts," document CJI/doc.466/14 rev.1. He highlighted the applicable legal instruments and broadly compared the Inter-American instrument with the European Treaty. He also expounded the principles regarding determination of the consent of the parties and the equivalence or near-equivalence of the considerations. He noted that the Convention on the Law Applicable to International Contracts does not cover extra-contractual obligations derived from the performance of contracts. Accordingly, he proposed directing the discussion toward the possibility of expanding the domain of applicable law under the Convention.

Regarding the translations, Dr. Arrighi said there had been no clear indication of where errors had been committed. In his view, the problem had to do with the difficulty of reconciling the vehicles used for solutions: uniform laws and uniform conventions.

The Chairman pointed out that silence with respect to ratifying was in itself a form of political response. Dr. Salinas said that some instruments adopted in The Hague suffered the same fate as some of the Inter-American conventions, in the sense of being ratified by only a handful of States. Dr. Elizabeth Villalta pointed out that her report mentions the possibility of incorporating solutions (developed in the Convention) into domestic law, as Venezuela had done and Paraguay was in the process of doing.

The Chairman then proposed, as a way of concluding this discussion, that the Rapporteurs consult the States, including practitioners and academics, and that they come up with pertinent questions for the Secretariat to distribute in the form of a *questionnaire*. This proposal was adopted by the plenary.

During the 86th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2015), one of the Co-Rapporteur for the topic, Dr. Elizabeth Villalta submitted a new version of the report, document CJI/doc.464/14 rev.1, which incorporates actions taken in the subject matter by other international organizations, such as the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for Unification of Private Law (UNIDROIT). Additionally, the document explains the implementation process of the principles of the Inter-American Convention on the Law Applicable to International Contracts (1994 Mexico Convention), as conducted by some States in their domestic legislation, using as examples the laws of Venezuela, Dominican Republic, Panama and Paraguay.

Lastly, she released the *questionnaire* written for the States and academic experts and said that the first version of the *questionnaire* had been forwarded by the Secretariat to the Permanent OAS Missions in the second week of March and that, thus far, no State has responded.

The Chairman proposed shortening the list of questions posed to the States on the *questionnaire.*

Dr. Negro noted that this meeting provides a good opportunity to revise the *questionnaire*. He said, perhaps we could go back to the original purpose of the study, which was to understand why the Mexico Convention was not ratified by more States. As for the experts, he mentioned that we could call on the American Association of Private International Law (ASADIP) to collaborate, inasmuch as it is the ideal forum to deal with topics of Private International Law and it has offered its good offices to support the work of the Juridical Committee.

Dr. Hernández García commented that the *questionnair*e would seem to be aimed at academicians or operators of justice as opposed to States. He suggested that the Committee identify gaps in conflicts of law in order to take steps to fill them.

Dr. Stewart suggested tailoring the questions in the *questionnaire* to the relevant audience (academia, operators and States). States should be asked to give their reason for failing to ratify. Additionally, he believed it would be useful to check into the work of other organizations on the subject matter, given that other important instruments dealing with the subject of Private International Law have emerged since the time the Mexico Convention was written. It would also be useful to check into issues currently being addressed by other International Organizations in order to identify new projects for the Committee to undertake without duplicating efforts.

Dr. Arrighi recalled that the process of drafting the Mexico Convention began in the Committee. As he understands it, no distinction should be drawn between representatives of government, academicians and experts. He also suggested focusing on a new process. He noted that the CIDIP was an eminently Latin American process. The current challenge is to bring every country of the Organization into the fold in an attempt to promote private relations in the system.

Dr. Villalta explained that the *questionnaire* is useful to learn the opinions of States on the subject of international contracts. She proposed forwarding the questionnaire to the ASADIP and the Mexican Academy of Private International Law (AMEDIP).

The Chairman noticed that the Members were in agreement in shortening the *questionnaire* and, particularly, in learning the reasons for States not ratifying the Mexico Convention. Therefore, he requested the rapporteurs to shorten the *questionnaire* and that Dr. Stewart would take part in drafting a revised version. He also requested Drs. Villalta and Stewart to provide a list of topics of Private International Law, on which the Committee could focus.

Dr. Hernández García supported the Chair's suggestion and added that the questions must be aimed at learning how provisions of International Law currently in force help or hinder private relations.

Dr. Negro proposed to the plenary submitting a list of topics that are under analysis by other international forums, including the status of these studies, connections with topics previously discussed in the OAS and existing sticking points in dealing with these topics in the aforementioned forums.

The Chairman suggested that two *questionnaires* be drawn up: one on international contracts and the other on the challenges faced by the region in the field of private international law. He also requested Co-Rapporteur Villalta to disseminate the questions to the other Members prior to submitting them to the States and experts, leaving the decision on formatting and content up to them.

During the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2015), Co-Rapporteur for the Topic, Dr. Elizabeth Villalta, introduced the document "Law applicable to international contracts" (CJI/doc.487/15), reviewing the first four responses to the questionnaire sent to the States, that had been received as of then (Bolivia, Brazil, Jamaica and Paraguay). Additionally, she mentioned and thanked academicians who responded to the questionnaire: Mercedes Albornoz, Nuria Gonzales, Nadia de Araújo, Carmen Tiburcio, Sara Feldstein de Cárdenas, Cecilia Fresnedo, Sara Sotelo, Didier Opertti, José Martín Fuentes, Alejandro Garro and Peter Winship.

Dr. Stewart mentioned that academia's support of the Mexico Convention appeared to be weaker than was anticipated and he added he felt there was more of a consensus on drafting a Model Law or Guiding Principles on the subject.

Dr. Villalta proposed sending a reminder to the States that have not responded, because no time limits were established for responses. She stressed that the responses submitted by most of the experts revealed that the Mexico Convention was very forward thinking at the time it was approved, but in our times, the consensus seemed to support a soft law solution.

The Chairman noted that the consensus of the Juridical Committee would be to keep the topic on the agenda and he requested the Secretariat to send out a reminder to the States, reflecting the importance the Juridical Committee attaches to Private International Law.

At the request of Dr. Correa, the Chairman requested the Secretariat to incorporate in the multiyear agenda the topics that arose during the Meeting on Private International Law between the Inter-American Juridical Committee and the American Association that took place on Friday August 7, and was attended by accomplished professors and experts.

During the 88th Regular Session of the Inter-American Juridical Committee (Washington D.C., April, 2016), one of the Co-Rapporteur for the Topic, Dr. Villalta reminded members that at the 86th session a *questionnaire* was approved and sent out to member states and experts on the subject; replies were received from the following ten states: Bolivia, Brazil, Jamaica, Paraguay, Argentina, Uruguay, Mexico, Panama, Canada, and the United States. Additionally, a total of fifteen experts responded to the questions: Professors Mercedes Albornoz, Nuria González, Nadia de Araujo, Sara Feldstein de Cárdenas, Cecilia Fresnedo, Sara Sotelo, Carmen Tiburcio, Didier Opertti Badán, José Martín Fuentes, Alejandro Garro, Peter Winship, Diego Fernández Arroyo, Aníbal Mauricio, Dale Furnish, and Carlos Berraz. She thanked all of them for their responses.

Most States were in favor of the principle of freedom of choice. Additionally, a majority supported the choice of the place with which the contract had the closest ties, in the event that the parties themselves had not determined the applicable law or that their choice was ineffective.

In response to the question on the need for an amendment to the Inter-American Convention, most states indicated that the political context should be taken into account.

Finally, in relation to the development of the CIDIPs, most considered that more promotional work should be done. Interest was also expressed in holding a general conference to discuss the virtues of updating inter-American conventions, if necessary.

Dr. Villalta also drew attention to the response of Paraguay, which described the influence of the Mexican Convention in adopting the recent law on Private International Law.

In her analysis of the replies of academicians, the Rapporteur verified that the vast majority noted the advanced nature of the Mexican Convention for the time, and the fact that its principles were consistent with the current commercial context. She also noted that some professors indicated a certain apprehension regarding the scope of the principle of freedom of choice. With regard to the Mexican Convention, some experts expressed favorable opinions, others proposed a model law, or that the Convention be used as a reference for drawing up a guide on principles of Private International Law. On this point, some academicians suggested that a conference be held using the principles in CIDIPs to develop model laws. In addition, the Rapporteur noted that there was no participation from Central American experts.

In concluding her presentation, the Rapporteur expressed support for the initiatives and suggestions of experts in favor of disseminating and promoting the development of Private International Law in the region.

Dr. Pichardo reported that the Government of the Dominican Republic had answered the *questionnaire* and that he would check to see why the Rapporteur had not received it.

Dr. Stewart mentioned that it was his understanding that there was substantive support for the Mexican Convention, but there was no interest in developing a model law or proposing amendments to the Convention. Thus, in his opinion, the next step in this case should be a meeting of experts to work on preparing a guide of principles on the subject.

Dr. Salinas, in light of the explanations given, noted that there was not a great deal of interest in ratifying the Convention. He then stated his agreement with Dr. Stewart’s proposal to hold a meeting of experts with broad representation to prepare a guide on principles.

Dr. Hernández García noted that what had happened with that convention exemplified a pattern with international organizations, in which a theme is developed and an instrument designed, in the hope of having an impact on development of the theme domestically. In this context, he pointed out that the OAS Convention attained its objective and that it had affected and influenced internal systems in a variety of ways, as stated by the Rapporteur. He proposed that consideration be given to working on an interpretative guide, and suggested that the Rapporteur, with the support of the Secretariat, prepare a draft guide for evaluation by the members.

Dr. Moreno referred to how it had evolved since the 1990's, with the development of arbitration as a means for settlement of disputes, and the influence of the basic principles of the Mexican Convention, which are already part of the domestic legal systems in a number of countries in the Americas. In this regard, he advocated accepting the same principles of arbitration in areas of traditional justice. He pointed out that some of the countries of the region were already in the process of amending their laws in the field of Private International Law, and so he considered that it would be highly relevant to prepare a guide to benefit many.

Dr. Correa expressed her agreement with the suggestion of preparing a guide.

Dr. Villalta said that in beginning her work as Rapporteur, she had not given thought to the objective of influencing ratification of the Mexican Convention, but was focused instead on promoting the pool of Private International Law of inter-American conventions. Thus she suggested that in addition to preparing a guide, this space should be used to promote the entire system of norms governing Private International Law.

Dr. Negro indicated that the Committee Secretariat was available to support the work of preparing a guide. He said that this is an ideal example of a case where the success of a Convention is not reflected in the number of ratifications. Conventions can be influential in other ways, such as by ensuring that their principles are inserted into domestic legal systems. He further noted that many of the obstacles to possible ratification did not seem to have to do with the content of the Convention, and that it may ultimately be possible to use its principles, together with the principles derived from the Hague Conference on the subject.

In concluding this discussion, both Dr. Villalta and Dr. Moreno referred to problems in the translation of the OAS Convention that affected its ratification.

Members agreed that the next step would be to have the Rapporteurs draft a guide on principles, to be presented at the next session, with the support of the Department of International Law as the technical secretariat of the Committee. It was also agreed to designate Dr. Moreno as Co-rapporteur on this topic.

It should be noted that in the afternoon of Monday April 4, 2016, the Inter-American Juridical Committee organized a "Round Table on Private International Law" was held, with the attendance of the following accomplished professors and practitioners in the field, among others: Cristián Giménez Corte, Boris Kozolchyk, Timithy Lemay, Kathryn Sabo, S.I. (Stacie) Strong, Peter D. Trooboff, and John Kim. Additionally, there were two former members of the Inter-American Juridical Committee: Doctors Antonio Fidel Pérez and Carlos M. Vázquez.

The meeting focused on the future of Private International Law and specific issues in this field of law. The invited guests voiced their vision of how the Juridical Committee could react to the new challenges of Private International Law, particularly, the need for more flexible laws and greater implementation of existing laws. As for specific issues, they proposed several different topics for the Juridical Committee, including consumer protection and use and custom in Private International Law. The written report of the roundtable is registered as document DDI/doc. 3/16.

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October, 2016), Dr. Villalta recalled the background of discussions on the issue of international contracts and informed about the guide on international contracts drafted with Dr. Moreno. This guide is based on the main principles of the Mexico Convention on the Law Applicable to International

Contracts, on The Hague Principles on the Election of the Law Applicable to International Contracts and the most important international instruments in this field. She also reported that the responses to the *questionnaire* sent to the States were also used for the drafting of the Guide. In addition to the surveys carried out with professors and jurists of the Hemisphere that were please to support the initiative of the Committee. Dr. Moreno, on the other hand, stated that he could notice the merits of the Mexico Convention, despite its low number of ratifications. The lack of ratification of the Convention was due, in his opinion, to three causes:

- The juridical community in the year 1994 was not prepared to receive a document of that nature.
- Certain formulations were a compromise text resulting from diplomatic discussions, such as for example articles 9 and 10.
- Some of the terms were not effectively translated into English.

In this context, the Rapporteurs proposed that the Committee adopt a set of guiding principles whose purpose would be similar to that of the Convention, considering that the guide can be used as a model for domestic legislation and become an academic reference for law operators regarding the solutions proposed in the Mexico Convention, among others. In addition, the guide will facilitate interpretation and understanding of complex concepts such as autonomy of the will and therefore can be useful for judges and arbitrators to use it in their decision making processes. This can have an impact and lead to the ratification of the Convention and serve as a model to facilitate amending national laws and expand the scope of possible solutions, including the proposals of the principles of The Hague.

The Chairman congratulated the Rapporteurs for the explanation on the reasons for the lack of success of the Mexico Convention. Similarly, he expressed his support for the perspectives on the guide proposed by the rapporteurs.

Dr. Salinas questioned about the added value and relevance of a guide in the light of the principles of The Hague, considered an authority within the Organization on the subject and for that reason he found that a model law would be more advisable.

Dr. Villalta said that the added value of the guide is to expand the American regulatory system to incorporate more modern solutions in the national systems. She mentioned that during the 88th Session, in Washington, the Plenary decided to support the rapporteurs in the preparation of a guide that being the reason why they did not considered reasonable suggesting a model law.

Dr. Moreno referred to his experience in UNCITRAL where he worked on a legislative guide, a forum in which there were also doubts about the nature of the instrument. However, there is agreement that those solutions must be useful for individuals and not bind States to specific systems established in treaties, and that participants must have access to them.

The proposed guide contains the most modern solutions worldwide for international contracts, in light of the various international instruments, including the Convention of Mexico and is expected to serve the legislator, the judge, and even the arbitrators.

Dr. Mata Prates also congratulated the rapporteurs. He noted a norm inflation in the Americas, particularly in Latin America. Therefore, he considered of great value a "soft law" proposal by the Committee to be used by jurists to help interpreting and applying existing norms. In his view, drafting a guide seems to be a good methodology.

The Chairman recalled that among the documents distributed there is one on the progress of the rapporteurs, including a selection of the norms useful for the proposed guide. Rapporteurs would also need members to analyze the possible solutions presented. As no member had objected the solutions offered, he asked the rapporteurs about the elements needed to transform the project into a guide.

Dr. Moreno said that it would be important to ensure that the material presented is the best that the Juridical Committee can draft.

The Chairman asked the rapporteurs if they had received Dr. Stewart´s remarks on the document, and Dr. Moreno explained that Dr. Stewart had contributed to it.

Dr. Salinas required time to discuss the topic with specialists on Private International Law in his country before sending his comments.

Dr. Hernandez García proposed the theme to be examined together with the legal counsels in order to have their opinions and direct feedback.

The Chairman agreed to Dr. Hernández Garcia's proposal and suggested distributing a copy of the draft presented by the Rapporteurs to the legal advisors of the Ministries of Foreign Affairs.

At the end of the discussion, the plenary agreed that the Rapporteurs would submit a document at the next meeting.

On October 7, 2016, the Inter-American Juridical Committee in cooperation with the Department of International Law, the American Association of Private International Law (ASADIP in its Spanish Acronym) and the University of the State of Rio de Janeiro (UERJ in its Portuguese Acronym) organized a round table on Private International Law which gave rise to an examination of three major topics: the work of the OAS in codifying and promoting Private International Law; international consumer protection; and international contracts.

The plenary of the Committee participated in this event, which featured presentations by accomplished national and foreign professors, members of the Committee and officials from the Department of International Law, who were joined by about one hundred students. Among the invited Professors we may highlight the following: Mercedes Albornoz (Center for Economic Research and Teaching - CIDE); Claudia Lima Marques (Federal University of Rio Grande do Sul - UFRGS); Juan José Cerdeira (University of Buenos Aires); Verónica Sandler (University of Buenos Aires); Marilda Rosado (UERJ); Raphael Vasconcelos (UERJ); Nádia de Araújo (Pontifical Catholic University of Rio de Janeiro). Lauro Gama (Pontifical Catholic University of Rio de Janeiro); and Luciana Klein (Pontifical Catholic University of Campinas).

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6. Representative democracy

During the 85th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2014), Dr. Salinas suggested including "Representative Democracy in the Americas" as a new topic for the Committee's agenda, in keeping with talks held with the OAS Secretary General, Mr. José Miguel Insulza, at the start of said working meetings. The proposal involves a study to consider the progress achieved by the Organization on this subject matter. Dr. Salinas' initiative was supported by the plenary, and he was appointed the topic Rapporteur.

During the 86th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, March 2015), the Rapporteur, Dr. Hernán Salinas, presented his report titled "Representative Democracy in the Americas: First preliminary report," registered as document CJI/doc.473/15. He pointed out that the report is of a preliminary nature and the purpose thereof is to participate in the Inter-American Democratic Charter, based on a suggestion of the Secretary General during his visit to the Committee at the previous meeting in August 2014. He explained that the report is based on two premises: 1) There is no distinction between the principles of the Inter-American Charter and the principle of non-intervention, as it is a fallacious dichotomy; and 2) the topic encompasses both original democracy and comprehensive and substantive democracy.

As for the major challenges posed by the Inter-American Democratic Charter, the Rapporteur highlighted a few challenges of a preventive nature. In this regard, he proposed further empowering the Secretary General through, among other things, the ability to eliminate the consent of the State for the Secretary General to act under Article 110 of the OAS Charter. All of this would enable early warnings or monitoring mechanisms to be put into place. He also mentioned several different proposals, which would include formulating annual reports; general assessments; creating a position

of special rapporteur for democracy or a high commissioner; strengthening the support capacity of the Organization; and, preparing a compendium of best practices.

In the view of the Rapporteur, it would be appropriate to institutionalize the mechanism of good offices and more precisely define in what circumstances democracy would be in jeopardy, inasmuch as a lack of precision in the terms fosters subjectivity in decision-making on when the Organization is able to act.

Another challenge pertains to the capacity to accede to the Inter-American Democratic Charter and, in particular, the bodies of government that would be in a position to set the established proceedings into motion. A broad interpretation of the reference to "government" could provide for the ability of other branches of government such as the legislative body or the judiciary to do so.

Additionally, he called into question the use of suspension as a punishment provided for in the Inter-American Democratic Charter, and proposed giving broader leeway to attempt other alternatives before resorting to suspension.

Dr. Baena Soares noted that the topic involves ongoing attention by the Organization, which it has been receiving since approval of resolution AG/RES. 1080 (XXI-O/91), "Representative Democracy." He warned, however, that we must proceed with caution. As an introductory comment, he remarked that despite the importance of the political agreement achieved with the Inter-American Democratic Charter, it has a lower hierarchical rank than the OAS Charter.

Prevention is of the essence and it must emanate from within a country, it cannot be imposed through multilateral instruments. There is no specific recipe to defend democracy. The OAS's role in prevention is the support it can offer the States. Prevention is a domestic function of each State and educating new citizens is the way to ensure democracy for the future.

The Chairman agreed that the topic of democracy has consistently been on the Committee's agenda. He also mentioned that the Inter-American Democratic Charter must be analyzed in conjunction with the other instruments in order to have the full picture, including resolutions approved by the Juridical Committee.

Dr. Mata Prates supported Dr. Baena Soares' ideas and points. He disagreed with the use of the phrase "partial cession of sovereignty," in view of the fact that sovereignty is never ceded by the State. Another point of concern is the tendency to increase the powers of the Secretary General, because in his view, the OAS Charter strikes the proper balance in this regard and it is unwise to change it. Lastly, he remarked that the subject of early warning depends on how this legal concept is defined, as it is quite a broad concept *a priori*.

Dr. Villalta recalled that the Inter-American Democratic Charter was approved at a specific point in time and that the States had been pressured to work fast in light of the September 11 attacks in 2001.

Dr. Hernández García noted that Article 110 of the OAS Charter already grants implicit powers to the Secretary General as to peace-keeping in the Region and he provided the context of his vision in the context of the impeachment proceedings of President Fernando Lugo of Paraguay. He explained that the Permanent Council did not reach a specific conclusion. However, acting under the implicit powers afforded to him under said Article of the OAS Charter, the Secretary General conducted an *in loco* visit, which gave rise to a compelling report, thus providing for enhanced guarantees to deal with this type of situation.

Dr. Hernán Salinas's comments reflected the opinions of other Members on the need to proceed cautiously and take into consideration other pertinent legal instruments. As for the powers of the Secretary General, he asserted that it is an issue that warrants further clarity and, therefore, he highlighted the different positions expressed during the current theoretical discussions.

When the discussion concluded, the Chairman requested the Rapporteur to take note of the proposals and to present a new version of his document at the next session.

During the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2015), Dr. Hernán Salinas, Rapporteur, recalled that in the previous regular session he had presented a preliminary report "Representative Democracy in the Americas: First Preliminary Report" (CJI/doc.473/15) on the status of the topic throughout the Hemisphere. The debate within the Committee made it possible to ascertain that there is no consensus to amend the OAS Charter or the Inter-American Democratic Charter; and that efforts should be focused on preventive aspects.

As a methodology, he reported that we should be comparing democracy protection norms with other systems, such as UNASUR, the Council of Europe and European Union, in addition to conducting a study on how domestic norms have performed.

He mentioned the need for the Technical Secretariat to provide support in order to carry out this study. Particularly, there is a need to learn how the OAS mechanisms work to verify which norms do the best job in the area of prevention and best help at maintaining the democratic structure.

He further suggested thinking about the role of the Secretary General under Article 110 of the OAS Charter and see if it is possible to assign a more active role for him in these matters. Lastly, he proposed to analyze the system of sanctions that is triggered when disruptions occur to the democratic order.

Dr. Baena Soares noted that the best way to prevent and avoid such disruptions to the democratic order is to enable citizens to express in a timely fashion their disagreement with the system or their situation. Consequently, the study must include topics of domestic order and he suggested reviewing the institutional mechanisms to prevent assaults on democratic order set forth in the Constitutions of the States.

Dr. Moreno Guerra noted that the topic is related to how easy it is for citizens to demonstrate their disagreement with the system or their situation. He believed that speaking about representative democracy is a pleonasm. He also urged the Rapporteur to examine in his study how participatory democracy is addressed. He noted that today democracy is synonymous with voting. However, we must find a space for the common citizen to be able to participate. He recalled that historically the original options in Latin America were either monarchy or presidentialism.

He mentioned that the will of the people must also be able to revoke the term of a President, because those who are eligible to choose a president must also be eligible to recall him or her. Accordingly, we should not speak of disruption of democratic order, when presidents are recalled from office.

He suggested to the Rapporteur to include parameters to review whether a government is democratic and how to maintain or recall the president. He indicated that the topic cannot be limited to the legal authority of the Secretary General.

Dr. Salinas clarified that the mandate is limited to implementation of the Inter-American Democratic Charter. He stressed that the Charter is not only linked to the topic of origin, but also to the exercise of democracy. He recalled that Article 3 of the Inter-American Democratic Charter contains certain elements that make it possible to consider whether a country is truly democratic.

Lastly, the Rapporteur deemed it important to establish that preventive measures must serve to maintain democratic institutions.

The Vice Chairman thanked the Rapporteur in advance for the report of the Rapporteurship that he will present at the next session, noting that the Democratic Charter sets forth the minimum structure required for a State to be regarded as democratic. He mentioned that the Democratic Charter is an important instrument, but it does not have as high a rank as the OAS Charter. As to the comparative methodology, he recalled that Inter-American history and doctrine should be taken into account on the topic.

During the 88th Regular Session of the Inter-American Juridical Committee (Washington D.C., April, 2016), the Rapporteur, Dr. Salinas, presented his second report on representative democracy

(document CJI/doc. 501/16). In his verbal presentation, he commented on his preliminary report, which had been presented during the 86th Regular Session in March 2015, and contains a descriptive analysis of the practice as it related to the Inter-American Democratic Charter, bearing in mind certain preponderant elements such as non-intervention, the validity of the Charter's mechanisms (without amendment or reform of the instrument), and the principle of integral protection. Additionally, he mentioned the two phases of the mechanism, on the one hand, preventive, and on the other hand sanctionatory.

The Rapporteur then explained that this second report sought to address the preventive mechanisms via the principles set forth in Articles 17 and 18 of the Inter-American Democratic Charter. He further addressed the prerogatives of the Secretary General to act preventively and avert a rupture in democratic order pursuant Article 110 of the OAS Charter incorporated through the Cartagena Protocol of 1995. At the same time, Dr. Salinas confirmed that there should be no confusion regarding the norms, but that the challenge lay in determining the scope of the Secretary General's actions. Accordingly, he proposed looking for tools that could be provided to the Secretary General in this area.

Dr. Salinas discussed two items: (1) Early warning mechanisms; and (2) follow-up mechanisms on democratic order in the region. For these mechanisms to be able to allow for a framework of action for the Secretary General, a unit could be created to compile and receive information. Within this framework there could also be ad hoc rapporteurs to encourage the upholding of democratic order. In fact, he discouraged the creation of independent structures as they could pose obstacles to the actions of the Secretary General or operate according to different visions. One alternative could be the adoption of a peer-review mechanism, like that of United Nations Human Rights Council.

In conclusion, Dr. Salinas observed that while sufficient mechanisms existed in the framework of the Organization's functions, tools also had to be created for use by the Secretary General. He wrapped up by proposing a third report that would seek to analyze sanctioning and non-preventive mechanisms.

Dr. Arrighi indicated the Inter-American Juridical Committee's reports were of absolute importance given that they served as the basis for advising OAS organs when it came to defending democratic order in the countries of the region. At the same time, he stressed the importance of the base texts as well and noted that the solution to some of the difficulties might be found in existing norms, without having to seek out solutions in the Inter-American Democratic Charter alone. There were a series of norms about democracy adopted in 1985, in addition to a provision of the OAS Charter - Article 2(b) - which stipulated that one of the purposes of the OAS was to promote and consolidate representative democracy. These instruments could help to address some of the gaps in the existing body of rules to defend democratic order. Dr. Arrighi pointed out that this latter provision was the one that made implementation of the electoral observation missions possible. In this regard, if an instrument declared something to be a function of the Organization, this would include all organs thereof, equally including the General Secretariat. Accordingly, the Secretary General would be able to work on those topics.

Dr. Arrighi further referred to another important instrument in this area - Resolution 1080 -, which contained broader language in that it empowered the General Assembly to take whatever measures it deemed appropriate in accordance with international law. In the case of Haiti, this made it possible to continue recognition of the government in exile as well as efforts, together with the United Nations, to implement progressive measures for the return of democratic order.

The Democratic Charter limits the possibilities for action of the Organization's organs, leaving such responsibility to the governments given that they are the ones charged with authorizing any actions decided. Moreover, all decisions fall to the General Assembly or Permanent Council, in other words, to the representatives of the governments.

Regarding electoral missions, requests had to be made by governments and by means of written agreements. Thus, the obstacles or restrictions lay precisely there, in the need for government involvement.

In his opinion, Resolution 1080 follows a more subtle logic than that of the Democratic Charter, where it is all or nothing, with no other options—where a rupture in order occurs, the State is the one left out. There are no nuances; it is not possible to negotiate with anyone. In the case of Honduras, for example, all State organs were excluded from the negotiation process; this, in contrast with the case of Haiti, where the exiled government continued to enjoy recognition and was able to take part in the negotiations.

The second problem lies in the fact that this type of blanket clauses, namely "all or nothing," had been taken up again by other regional bodies like MERCOSUR, UNASUR, the Ibero-American union, CELAC, etc. This distinction was seen in the case of Paraguay, where there was tension between the OAS and the positions of UNASUR and MERCOSUR.

Dr. Hernández García suggested that discussion on the topic be divided into two parts: (1) The role of the Secretary General (his express and inherent powers); and (2) the actors, subjects of collective measures.

As to the first point, Dr. Hernández García noted that it would be important to learn what limits legal, or in its absence then political, were imposed to the Secretary General acting in defense of representative democracy. Perhaps the Secretary General's framework for action in electoral missions could serve to verify such limits. He cited the fact that electoral missions were firstly an initiative of Secretary General Baena Soares, which were followed by a resolution adopted by the General Assembly, underling the fact that a Secretary General's initiative ended up being regulated by the most senior organ of the Organization. He noted that the resolution established two limits: that the resolution established two limits: First, it expressed the will of the States (they had to consent to electoral missions); and then, the limits imposed by finances—everything had to be done through voluntary contributions. He observed how important the authority inherent to the Secretary General was, given that the General Secretariat is an organ of the Organization. Nevertheless, it should be shown the extent to which the Secretary General is able to discharge his executive functions without limitations.

For its part, the second topic refers to the role played by the definition of each State organ. Dr. Hernández García agreed with Dr. Arrighi about the fact that the Democratic Charter was addressed to governments as both active and passive subjects. Additionally, once a breakdown in democratic order occurred, representation before the Organization was barred. In this sense, it was worth wondering whether the Democratic Charter was directed at States as a whole, wherein the executive branch acted as representative to the Organization. Here was where the question posed by the Secretary General regarding a definition for the term "government" in the Democratic Charter took on renewed significance. He suggested that the provisions of the Charter needed to be explained further and that a determination had to be made as to whether this was a weakness of the Charter or if it was simply the best that could be managed as a political agreement.

Dr. Correa alluded to the prerogatives of the Secretary General with regard to electoral observations in connection with a Member State and recalled the task entrusted to them by Secretary General Almagro with respect to determining the scope of Article 20 of the Inter-American Democratic Charter. Her understanding was that the provisions of the Democratic Charter were restrictive in nature. It is enough to read Article 20 which limits the authority of the Secretary General to the authorization of the States. The Democratic Charter's vision did not appear to provide an opportunity for broader development of the powers of the Secretary General. In addition, the Inter-American Commission and Court could play a role in cases of human rights violations. In this context, the functions of the Secretary General had to be examined in terms of the body of rules that make up the Organization and not just the Inter-American Democratic Charter.

Similarly, Dr. Arrighi agreed with Dr. Hernández García with respect to the consequences of regular electoral missions. When Secretary General Baena Soares began the electoral missions, the

States cut funding. He observed that every year the States seemed surprised that such norm existed, but thus far, they had never amended it.

In 2005, the subject of early warnings was proposed and the General Assembly stated that these would constitute interference in domestic affairs and therefore suggested that this matter be treated with great caution.

As to the notions of State and of government, Dr. Arrighi recalled that when it came to imposing sanctions, the entity suspended is the government, as in the cases of the TIAR (Inter-American Treaty of Reciprocal Assistance) and Cuba. It was the same as what was understood with Resolution 1080. In the Democratic Charter the idea was to be more extreme, and as was evident in the case of Honduras, those who ended up suffering were students who had been awarded scholarships for the Rio Course who could not attend the Course and the opposition which was unable to take its complaints to the OAS, etc. No dialogue was permitted with anyone.

What is concerning is the notion that the Democratic Charter trumped all other norms; as is the idea that it prevails over the OAS Charter. The Democratic Charter is a General Assembly resolution and not a treaty.

The Vice-Chairman noted that many of the matters debated here were directly linked to requests by the Secretary General and suggested that the rapporteur take into account the observations made by the members.

Dr. Salinas thanked everyone for their comments, noting his agreement with Dr. Arrighi with respect to the sphere of action the OAS Charter granted to the Secretary General and that at no time did the Democratic Charter override the OAS Charter, which contained broader authority. He likewise agreed with Dr. Hernández García that the limitations were more political than legal in nature - though they might have legal aspects - and thus, to find them, verification of the practice had to be done. Accordingly, the Juridical Committee should propose realistic solutions or solutions with certain political feasibility. Lastly, he announced that the next report would address the issues raised by the Secretary General.

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October, 2016), Rapporteur Dr. Salinas, presented his new report, (document CJI/doc.506/16), which aims to facilitate understanding and clarify requirements for the application of the preventive measures of Chapter IV of the Inter-American Democratic Charter.

The report confirms the existence of privileges of the Secretary General to act according to the Inter-American Democratic Charter, and, in this sense, suggests tools for action, provided there is the necessary political will. In this regard, the Rapporteur proposed two types of tools: one of them involving immediate action and the other referring to follow-up activities (also embodying a preventive role).

In particular, he suggested creating a unit within the General Secretariat to deal with early warning mechanisms to gather information and provide access to the various sectors of the countries (different State powers and civil society organizations), thus creating a feedback mechanism to facilitate determination of actions to be conducted by political bodies. The early warning system would then work under the supervision of the Secretary General.

In addition, he proposed inter-State reporting allowing peer assessments in order to facilitate monitoring the situation of democracy in the Hemisphere. In all cases, these mechanisms would provide information to all sectors of the state and access to civil society to the system of protection of representative democracy.

In the second part, the report analyzes the relevance of having a definition of the situations in which the Democratic Charter can be activated, such as in the case of threats, disruption and breakdown of democracy. The need of having rigid definitions that could limit the application of the Democratic Charter was dismissed.

Then the report refers to the need to establish criteria or guidelines on essential elements and fundamental components of the exercise of democracy, as set out in Articles 3 and 4 of the Charter, starting with the practices of the Organization and the proposals of authors. Practice indicates that the action established in article 20 is essential for privileging the diplomatic action prior to any penalty. Criteria are established in relation to Articles 18, 20 and 21 of the Democratic Charter. The conclusions include examples that help to determine each of the situations, having as a standard the degree of involvement articles 3 and 4 of the Democratic Charter. While each situation should require a case study, these criteria could help bodies to make decisions.

Dr. Baena Soares referred to the difficult balance between prevention and intervention in the domestic affairs of States. He dismissed the idea of “an early warning system”, the first difficulty being that of defining the notion of warning. As for periodic reports, he stated that this idea contains interventionist elements. Finally, he noted the difficulties imposed on the international community by *inter pares* reports, as this would imply a risky debating exercise.

Dr. Carlos Mata commented that the title of the document should reflect its contents, which refers to the powers of the Secretary General. With regard to content, the proposals presented in the second part do not suggest amendments to the Democratic Charter, and therefore it would appear that the contribution only refers to the interpretation of the Charter. As regards the reference to "impeachment coups” (which in Uruguay are called political trials) should be clarified what is meant by it. At the end of the conclusions, one should not "insinuate" but rather propose a criterion because the question must be seen as a contribution to the Organization. If the question involves the creation of a new body within the General Secretariat, further explanations should be given, taking into consideration the principle of non-intervention. He did not consider relevant the creation of an organ based on the justification given. At the OAS, it should be careful when creating an organ with the proposed duties. Finally, he said it was important to emphasize the role of the Committee in providing added value to the OAS activities.

Dr. Villalta requested clarification in relation to the description presented at the final section regarding the breakup of the democratic order, as it was not clear if the circumstances mentioned explain such a breakup by themselves.

The Rapporteur, Dr. Salinas, thanked for the opinions and proceeded to answer the consultations and observations. His language is cautious as he is the Rapporteur and because, at the end of the session, he expects the plenary to decide. As regards the distinction between prevention and intervention, this is explained by the juridical duty of the States in favor of human rights and of representative democracy. The collective action of the Organization within the juridical framework in the Democratic Charter is not an intervention, and therefore the establishment of tools and mechanisms of prevention does not imply that there is intervention, because at the end, the political organs will act, in view of the information that can be remitted by these tools of the Organization. There is a fine line here, but the Organization has the powers to determine class action. The Secretary General should be well informed to submit a theme to the attention political organs. The inter-pairs action is a mechanism of technical information that is not aiming to issue political criticism. In this respect the Rapporteur inquired why a difference is being made between democracy and human rights, and if information is already accepted with reference to promotion of human rights, why is it opposed to start-up reports on about democracy?

As regards the title of the report, he requested not to limit it to the powers of the Secretary General, because the report seeks to strengthen implementing the Charter, and the mechanisms of Chapter IV. The preventive action must be reinforced, without amending the instrument, improving the criteria of the situations allowing enforcement of the instrument.

As for political judgments, the report refers to those cases in which the Constitution or the procedures determined by the law are not respected, as explained in footnote 57. With relation to the description of Article 21, the Rapporteur verified a massive infringement of human rights that implies giving place to a “rupture of the democratic order”

Dr. Baena Soares alluded to the interventionist demonstration in the Dominican Republic in the 60's - last century - and asked to not create new ghosts.

The Chairman observed that the observations made deserve further reflections, both by the rest of the members and the Rapporteur, about the final objective of the work and the direction that he should focus on. In this respect, he consulted with the Rapporteur.

Dr. Salinas confirmed the need for a larger reflection from all the Committee members in view of conceptual differences. He also observed that the membership renewal next year will have the effect on the continuation of the theme. For which it would be important pursuing this discussion and define the work objective. He proposed preparing a new synthesis of the work carried out to improve understanding among new members.

The Chairman appreciated core differences that go beyond personal precisions. For this reason he suggested not forcing a decision from the Committee, but instead allowing a reflection considering the elements on the table, while recalling importance of submitting a product useful to the General Assembly, agreed by all. He asked the Rapporteur to present a report with the background information on this subject.

7. Guide for the application of the principle of conventionality

At the 87th Regular Meeting of the Inter-American Juridical Committee held in Rio de Janeiro in August 2015, Dr. Ruth Correa Palacio introduced the document "Guide for the Application of the Principle of Conventionality (Preliminary Presentation)" , document CJI/doc. 492/15, with a view to its inclusion as a new item on the Committee's agenda.

From the methodological standpoint, she suggested the following steps: send the States a questionnaire to gain insight on the status of the issue from states' point of view; and review decisions adopted by the Inter-American Court of Human Rights and domestic courts.

Dr. Baena Soares expressed concern over the recurring problem of states' lack of response to the Committee's questionnaires.

Dr. Salinas commented on the enforcement of human rights treaties, whose nature precludes their automatic enforcement; he said that there were considerations involving respect for national sovereignty, for example, that have to be taken into account. He noted for the record the fundamental value of that doctrine and recalled the issue of the Protocol of San Salvador and the necessary distinction with respect to its enforcement, given the principle of conventionality. Lastly, he mentioned that the issue of questionnaires was important, but that many states were averse to engage in such exercises. He suggested shortening the questionnaire.

Dr. Moreno Guerra congratulated the Rapporteur for starting from the premise that the constitution cannot be above treaties. If a state has constitutional problems with a particular treaty, it should not accede to it. He acknowledged the relevance of the proposed questions, including the references to the conventions on torture and forced disappearance.

Dr. Stewart mentioned that treaty implementation should take into account all OAS member states. Second, he urged being sensitive to the particular situation of each state. Finally, he mentioned that in the common law system international treaties are not directly enforceable but require laws or a written rule to enable their implementation.

Dr. Collot suggested that the comparative law methodology be used in Dr. Correa's study.

Dr. Mata Prates said that the first issue to be discussed concerned the principle of conventionality. That entails considering the significance of provisions contained in international treaties, as well as the implementation of the decisions of the Inter-American Court of Human Rights. The latter, necessitates a determination as to whether the *considerando* clauses (preambular paragraphs stating grounds) of a decision impose additional obligations.

Dr. Correa noted that there is nothing ideological about this study; its aim is to examine the status of the matter; moreover, the questions are not designed to analyze the scope of domestic

obligations. She also said that she intended to reduce the number of questions and clarify any that have prompted additional queries. She stressed that her study does not cover social and economic rights because their incorporation in her country would require mechanisms other than human rights instruments, owing to their different nature.

Acting as Chair, Dr. Mata Prates noted for the record the agreement of the members and moved to approve the item's inclusion on the agenda of the Inter-American Juridical Committee and designate Dr. Correa as its Rapporteur.

On October 2, 2015, the Secretariat of the Juridical Committee, in accordance with the Committee's request, distributed the questionnaire (document CJI/doc.492/15 rev.1) to the member states of the Organization.

At the 88th Regular Meeting of the Inter-American Juridical Committee held in Washington, D.C., in April 2016, Dr. Correa, the Rapporteur for the item "Guide for the application of the principle of conventionality" presented document CJI/doc. 500/16 and reviewed the background on the subject.

She explained that the report was divided into two main parts: the first deals with the concept of conventionality control, while the second sets out her conclusions based on the responses of the five countries that had answered the questionnaire distributed by the Committee Secretariat (Chile, Colombia, Jamaica, Mexico, and Peru). She mentioned that Guatemala had also answered the questionnaire but its response was not included because it had arrived after she submitted her written report.

With regard to the first part, she highlighted the scope ascribed to the principle by the Inter-American Court of Human Rights based on the following assumptions: either human rights conventions are incorporated into a country's legal system, or convention provisions are observed by the country's judges. She also pointed out that there is a distinction between enforcing convention provisions and the effect that may be accorded to the principle of conventionality.

She noted that conventionality control occurs when a domestic legal provision is rendered ineffective by a treaty-based provision.

She said that conventionality control is usually identified with constitutionality control, since most countries in the Americas incorporate treaty-based provisions on human rights into their domestic system of laws at the constitutional level, falling in step with the conventional block. In that context, such rights also enjoy constitutional rank and can be used to interpret, amend or remove lesser legal provisions, or make them unenforceable. She stressed that such issues have to do with the way in which states express their sovereignty and, therefore, should be taken into account in preparing the guide.

Among the responses received thus far, she noted that all of the countries that had replied were parties to the American Convention, which was not necessarily to say that they had accepted the jurisdiction of the Court. She further noted that, as a rule, in the countries reviewed lawmakers were not taking steps to incorporate the treaties into their domestic legal systems by or assigning them the rank of law, or that of constitutional provision in the case of countries that adopt the constitutional block. In this regard, she emphasized that constitutionality control systems have not been an obstacle to conventionality control, regardless of whether the country has adopted consolidated or diffuse constitutionality control. She also indicated that she had found that the enforcement of international standards serves as justification for domestic judgments, and that there was a perceptible intention on the part of states to apply international standards at the domestic level based on criteria established by the Inter-American Court.

By way of a general conclusion, she observed that it is important to have more information with which to prepare the guide. In that connection, she thanked the Committee Secretariat for its efforts to encourage responses from states on the subject and she asked that another reminder be sent out.

Dr. Salinas urged the Rapporteur to address two issues in her report: (1) the effectiveness of human rights laws and their implementation in the domestic system of law; and (2) the interpretation of

constitutional provisions in the light of convention norms, and whether or not the interpretation of the Inter-American Court of Human Rights should be enforced, taking precedence over constitutional norms. He said that the guide should clarify the issue of conventionality control, not so much from the point of view of compliance with the provisions of treaties, but rather with regard to the interpretation of domestic laws in the light of conventions and the interpretations of the Inter-American Court of Human Rights.

Dr. Pichardo referred to the positive contribution that a guide would make in terms of facilitating the efforts of countries to meet their international obligations.

Dr. Stewart observed that the concept is not very well known in the common law tradition. In that regard he asked the Rapporteur if the principle applies only to those countries that have accepted the jurisdiction of the Court and if the principle should be understood as imposing additional obligations; that is, in the sense of making binding the opinions of interpretative international bodies, such as the Committee against Torture. In his opinion, states could take the comments of such international bodies into consideration, but not regard them as binding, despite the fact that some members of such committees regard them as compulsory and binding. As he understood the presentation, the doctrine of conventionality control was apparently even stronger and entailed a treaty-based obligation to give enforce the interpretations of the Inter-American Court of Human Rights.

Dr. Correa said that Dr. Stewart's questions went to the heart of the matter under consideration and were precisely what she sought to verify in her research. In fact, she stated that she had observed in the Inter-American Court's jurisprudence statements that attribute to the "authorized judicial interpreter"—which in the case of the American Convention on Human Rights would be the Court itself—authority to enforce its decisions and interpretations in all states parties to the Convention, whose standards afford the minimum of protection that is needed. She also mentioned certain pronouncements by the Inter-American Court that would appear to establish an enforcement obligation for all OAS member states, even ones that are not parties to the American Convention, in cases that concern interpretations in relation to the limits and legal effects of *jus cogens*, bearing in mind the *erga omnes* nature of the rights enshrined by this principle.

Dr. Salinas suggested that these obligations be are compared with principle of the margin of appreciation that derives from state sovereignty.

Dr. Correa called upon her fellow members of the Committee to assist the authorities in their respective countries in responding promptly when the Committee Secretariat sends out another reminder about the questionnaire.

At the 89th Regular Meeting of the Inter-American Juridical Committee, held in Rio de Janeiro in October 2016, the Rapporteur, Dr. Correa, referred to a study carried out by the Inter-American Institute of Human Rights on the subject of conventionality control (Self-training manual for justice operators on enforcement of conventionality control), which has many merits since it explains how the concept evolved in the Inter-American Court of Human Rights.

She also mentioned the importance of receiving states' responses to the questionnaire in order to understand the scope of the principle and the context of its application. She noted that the Committee had only received 10 replies and that the responses of the states of some of the members of the Committee were still pending.

She explained that the purpose of the study is to draft a guide to assess the scope of the issue and states' concept of it.

The Chair mentioned that the following year he would give a course on implementation of the judgments of the Inter-American Court at The Hague Academy of International Law, which had led him to investigate the subject. He also said that he was advising on a doctoral thesis precisely on the subject of conventionality control, the conclusions of which found that there are three different postures that states adopt: (1) compliant; (2) opposed – the Court lacks the authority; and (3) uncertain whether in favor or against.

He said that it is not possible to expect uniformity with regard to what the Court imposes.

He urged the Rapporteur to continue her work despite not having received more responses from states. The 10 responses would allow her to start her report on the subject and begin exploring the lay of the land. He suggested that her report at the next meeting cover the reactions of states to the judgments enforced by the Court.

Dr. Salinas noted that the issue of conventionality control is connected with the interpretation of the American Convention. He inquired which states had responded and if they included states parties to the Convention. If so, he agreed with the Chair and asked if it would be possible to have a report for the next meeting.

Dr. Hernández García noted that a guide for the implementation of this principle would be very important for all states. He explained that there is a directive from the Supreme Court of Mexico that was mandatory for the country's courts and indicated that all courts must judge based on the *pro homine* principle. He said that the challenge for the Rapporteur is to determine the scope of international human rights law. The directive is very broad as it implies the principle of *ex officio* application in addition to the need to rely on the standards underpinning all the court's jurisprudence, which seems excessive. Although the State is bound and the judiciary is part of the State, the Mexican State should not take part in the development of standards in which it has not played a role. He said that a collegial discussion of the topic could allow the Juridical Committee to adopt conclusions. Finally, he said that he had attended several seminars in which many experts confessed not to understand the foundations of the principle, particularly those from countries of an Anglo-Saxon legal persuasion. Therefore, a guide would be useful to clarify them.

Dr. Mata Prates acknowledged the complexity of the issue and agreed with the opinion of the other members in favor of developing a guide, given its usefulness. He mentioned having attended a seminar on the subject in Uruguay, but from the perspective of constitutional law. In that context, a multitude of opinions were put forward on the subject. For that reason, he said that it was well-nigh impossible to set out a single position on the part of states, since the response was closely bound up with the jurisprudence of each country. Hence, the vital importance of Dr. Correa's work for explaining the various interpretations of the concept of conventionality control.

Dr. Villalta mentioned that protection standards should be sought, not only in the American Convention, but also in other human rights treaties. She recalled the Court's advisory opinion in the Avena case, in which it found that the rights to consular protection contained in the 1963 Vienna Convention had the character of human rights and, therefore, fell under the jurisdiction of the inter-American system.

Dr. Correa emphasized that the Court had decided that the rationale for its decisions should be used to interpret treaty provisions in justifying decisions at the domestic level. She said that the states that had replied were Argentina, Chile, Colombia, Ecuador, Guatemala, Jamaica, Mexico, Panama, Paraguay and Peru. In the case of Jamaica, she said that the response noted that the country did not accept the jurisdiction of the Court, despite being a party to the American Convention. Regarding the issue mentioned by Dr. Villalta, she explained that, in part, the study serves to verify all the elements of the principle's scope. The Court, for example, makes the principle of conventionality control binding upon all states simply by virtue of having signed the American Convention. She expressed concern in that regard, given that the judges' background is in domestic law, not treaty law. She said that it is important to have the opinion of non-signatories of the American Convention; or of countries, such as Jamaica, that are signatories but are not subject to the jurisdiction of the Court. She agreed with working with the information that had been made available but said that it was very important to have the responses of the other States so that a single standard could be advanced, given that this was a self-imposed mandate of the Committee.

Dr. Salinas reiterated that a conceptual definition should be the starting point of the study. He also recommended distinguishing as a separate matter the implementation of the Court's interpretation from the enforceability of treaties in the field of international law. He considered of the essence

knowing the concept because if it is restrict it to the Court's interpretation, then states parties, particularly those subject to the jurisdiction of the Court, will be taken into account, without having a complete overview.

Dr. Hernández García referred to Dr. Correa´s remarks and explained that it was important to have a practical, accessible, and readable document on which they could then offer considerations, which should cover three levels:

1. Link to the jurisdiction of the Court;

2. Link to the regulatory contents of the American Convention; and,

3. Unenforceability of the domestic provision vis-à-vis the international rule.

The President consulted the Rapporteur on ways to avoid the final report being regarded as an extension of powers that do not belong to the Inter-American Juridical Committee, but to the Inter-American Court.

Dr. Correa said that as the document was developed it would be necessary to take the precautions to avoid any clash of competencies. However, she said that the objective is to harmonize criteria for applying principles.

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8. Considerations reflection on the work of the Inter-American Juridical Committee: compilation of topics of Public and Private International Law

During the 86th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, March 2015), the Members of the Juridical Committee decided to begin a process of reflection with a view to improving its performance for the Organization and the States. It asked Dr. Correa Palacio to compile a list of topics suggested by members to serve as a basis for the drafting of the multiyear agenda, taking into consideration the needs of the Organization and the States as a whole.

During the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August 2015), the space for reflection that began at the previous session carried on. On that occasion, Dr. Correa Palacio introduced document CJI/doc.484/15, "Considerations on the Work of the Inter-American Juridical Committee: compilation of topics of interest," which covers three focuses of work: 1) procedural work; 2) substantive work; and 3) topics suggested by other Committee Members. The first group includes considerations of a procedural nature of the Inter-American Human Rights Protection System, which emerge from dialogue held with the President of the Inter-American Court of Human Rights. She also encouraged inclusion of concerns expressed by Secretary General Luis Almagro regarding the issue of access to justice and equity.

After brief discussions on the proposal made by Dr. Correa, the topics agreed upon were in summary the following: 1) drafting a preliminary plan for the next session (April 2016); 2) presenting to the political bodies of the OAS a list of topics that are expected to be addressed in the long term; and 3) appointment of Dr. Correa Palacio as Rapporteur for the Topic.

During the 88th Regular Session of the Inter-American Juridical Committee (Washington D.C., April, 2016), the Rapporteur for the Topic, Dr. Correa, presented document CJI/doc. 484/15 rev.1 and resumed the discussions on the matter

Dr. Correa recalled the concern voiced by Committee Members about setting themselves a medium - and long-term agenda. She then pointed out the existence of whole spheres of International Law, such as Private International Law and Human Rights Law, where there are numerous international treaties that, in practice, have not been implemented. She suggested that the Committee should conduct studies in order to understand the reasons why not all States accede to or ratify those treaties. She also alluded to the possibility of holding events of outreach such as the previous day's Round Table, attended by members of government bodies and of civil society.

Finally, she referred to some of the issues discussed on the meeting with experts on Private International Law (Washington D.C., April 4, 2016), such as the continuation of the Committee's work on Simplified Joint Stock Companies, the compilation of commercial practices, and drafting guidelines on Private International Law.

Dr. Salinas commented that the Juridical Committee was by nature a consultative body and should thus serve the interests of the Organization and the Member States. Accordingly, he pointed out that creating guidelines for the implementation of international treaties should be a principal work of the Committee. Second, he recalled that the Committee's work had to be in sync with the Region's interests. As a working procedure, he suggested consulting ministries of foreign affairs and international law associations and asking for their opinions. Third, Dr. Salinas noted that the agenda proposed by the Rapporteur focused mainly on human rights issues and that it involved some overlap with other OAS organs.

Dr. Hernández García recalled the agreements reached at the last CJI session in August 2015 and suggested that points 1 and 3 (drafting a preliminary plan and nominating the Rapporteur) had been complied with, but that it would be good to have the basis for an agenda plan.

He urged the Chairman to meet with the delegations of the countries attending the regular session of the General Assembly, which would take place in July in the Dominican Republic. He also reminded the plenary about the suggestion of meeting with the legal advisers in the ministries of foreign affairs. Both opportunities could result in important feedback.

He expressed concerns of addressing sensitive Human Rights without incorporating issues relating to Public and Private International Law.

Dr. Villalta stated that in her opinion two topics were especially important: compilation of commercial practices and international law guidelines.

Dr. Moreno also congratulated the Rapporteur. He noted that the current political environment was very different from that of the 1970s when the Committee first embarked on its codification of private international law. Today the world needs universal and global solutions. Another change had been the development of alternative sources of law. As an example of that, he cited The Hague Principles on Choice of Law for International Contracts.

The Vice-Chairman pointed out that the institutionalization of International Law was now based of areas of specialization, as illustrated by international organizations, such as the World Trade Organization (WTO) and the World Health Organization (WHO), and others. He also agreed with what Dr. Moreno had had to say on seeing how arbitration awards were reached in the International Centre for Settlement of Investment Disputes (ICSID).

He noted that the job of the Juridical Committee should be to serve as a "coordinator" of studies or proposals put forward by other international organizations.

A criterion for selecting issues to work on should be usefulness for the States and for the Organization. In his view, the Committee should perform a pro-active function of notifying States of what the Juridical Committee can -- and wants to - do.

Dr. Salinas proposed having a draft work plan and multi-year agenda ready for the next session.

Dr. Arrighi stated that in his view the Inter-American Specialized Conference on Private International Law process, as practiced thus far, had run its course. He noted, too, that the CIDIPs had emerged as a substitute for the quest for a general codification when the latter had proved unable to resolve the problems that arose some 30 or 40 years ago (e.g., the Bustamante Code). The CIDIPs were designed to establish specific codifications. That had been an eminently Latin American project. The final moment for CIDIP had come with the discussion of consumer rights issues which had mixed public law and private law with mandatory rules, with States governed by civil law and common law. Given that scenario, the CIDIP was not permitted to handle the topic.

In Dr. Arrighi's opinion, we were in a third period in which coordinated efforts were needed to forge instruments that were more democratic, more flexible, and in sync with the global nature of today's problems. As for specific issues, it would be important to resume examination of consumer rights and to address the legal repercussions of environmental protection, which also figured on the Secretary General's agenda.

Dr. Moreno asked whether the subject of torts had already been taken up by the Juridical Committee and what the current status was on that issue.

Dr. Villalta commented that that had been the first subject assigned to her as Committee Rapporteur. She explained that during CIDIP-VI, the subject had been suggested by Uruguay, but no consensus had been reached regarding it during the negotiations. As a result, it was suggested that the Juridical Committee look into it, the idea being that, after working on it, the CJI would draw up a convention or model law.

Dr. Arrighi explained that the Committee had the faculty to suggest topics on its own initiative, so that Dr. Moreno could resume his examination of that substantive issue.

Dr. Hernández García proposed that Dr. Correa consider giving a presentation on the outcomes of the Committee's reflections on topics for the agenda during the meeting with the states' representatives on the CAJP. He agreed with Dr. Arrighi's assessment that the Committee had competence to choose topics on its own initiative. He also concurred with Dr. Salinas' idea of allotting time and setting deadlines for that work.

The Vice-Chairman noted that it would be important to have a provisional agenda to present to the Secretary General and the CAJP.

Dr. Correa proposed focusing on a provisional agenda of substantive issues.

It is worth mentioning that the activities and meetings hold in Washington, D.C. during the 88th Regular Session allowed the Committee to receive suggestions for topics for a possible multi-year agenda. Valuable inputs were obtained from the realization of the roundtable with experts on Private International Law, the meeting with the Secretary General, and the participation of members in a meeting before the Committee on Political and Juridical Affairs.

During 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, October 2016), Dr. Correa, as Rapporteur of the topic, mentioned considerations of the Committee members about proposals for new topics received during the last two years, with the aim of preparing a multi-annual agenda.

She highlighted that the list presented in her first report, document CJI/doc. 484/15 rev.1, is a compilation of the topic already mentioned and that Members should use it only as a reference.

She informed that the following themes are still included in the proposal of pluriannual agenda, and that they had been suggested by the members of the Committee:

Soon afterwards, she listed the topics that emerged from the meeting of International Private Law held on the occasion of the 88th Regular Session in April 2016, in Washington, D.C.:

1. Commercial usage and customs;
2. Electronic commerce;
3. Compilation of commercial customs/usage;
4. Rights of consumers;
5. E-commerce;
6. E-payments;
7. Online Resolution of Disputes, the CNUDMI/UNCITRAL principles;
8. Law conflicts in cross-bordering topics;

9. Revision on the perspective of the Americas on the Hague Conference proposed Draft text on recognition foreign decisions;
10. Revision of the themes approved in the CIDIPs;
11. Take up again the discussion of the theme on simplified stock societies/companies.

Dr. Correa explained that all the topics suggested at the meeting with the representatives of the juridical counsellors of the Ministries of foreign Affairs held on 5 October, 2016, are already included in the above list. However, are repeated below for practical purposes:

1. Immunity of jurisdiction;
2. Notices/Notifications;
3. Alternative mechanisms;
4. Arbitration as an alternative means for the resolution of disputes;
5. Presumption in favor of the immunity of States;
6. Law of the Sea.

The Chairman pointed out that this final list of topics is essential to make discussions easier and to determine priorities regarding the topics to be addressed.

Dr. Salinas proposed the following criteria order for the following topics:

1 mandates of the General Assembly;

2 equilibrium between International Public Law and International Private Law;

3 taking into account the suggestions and remarks presented by legal counsels; and,

4 assessing the juridical nature of international instruments.

The topic mentioned by Dr. Galindo should be included in the list of themes to be addressed by the Committee, under the coordination of Dr. Correa. Dr. Galindo is the legal counsel for Brazil in the field of inter-institutional agreements.

The Chairman proposed members to reorganize the suggestions provided by Dr. Ruth Correa in different areas such as: human rights, democracy, and international private law, among others. In addition to grouping the topics by areas, priorities should be also established.

Dr. Hernández Garcia proposed developing the topics within a time-framing program, in order to submit a better finished result to the General Assembly. Dr. Salinas added the following criteria to those detailed above:

1 Precision is a must when themes are formulated. For example, in the area of the rights of indigenous peoples, that offers varied facets in view of its widespread nature. This is why the definition of areas/parts to be studied is needed, in addition to their different aspects;

2 themes should be practically useful;

3 Taking into consideration the expertise of each member in order to provide contributions and also to strengthen the result of the work carried out, taking into account the theme´s sophistication;

4 avoid duplicating the work with the results of other forums. For example, the topic on public/government procurement has already been addressed in depth by the CNUDMI;

5 studies must be useful for the OAS, and provide added value to the work of the organization.

6 always bear in mind the availability of human and economic resources of the Committee.

He concluded highlighting four topics that were mentioned by the legal advisers that should be included in the list of topics to be addressed under Dr. Correa´s supervision:1) Executive and inter-institutional agreements; 2) cybercrimes 3) protection of marine environments; and 4) the role of the reservation observatory in the area of treaties – list of instruments approved and reservations presented.

It was suggested to the Secretariat to present these lists for the evaluation of the Committee, determining which reservations or declarations, in their opinion, are not in agreement with the purpose and aim of the treaty.

In a following meeting, the Chairman referred to the list of topics for the multi-annual agenda of the Juridical Committee with the priorities according to consensus that had been drafted on previous sessions. He further recalled that the suggestions made during the meeting with the representatives of the legal counsels of the Ministries of Foreign Relations of the member countries have been included. In this context, he presented the following three-part list:

Mandates of the General Assembly:

- Protection of cultural heritage, and
- Companies, the environment and human rights.

Private International Law topics:

- International Consumer Protection;
- Alternative means for the resolution of disputes (online resolution of disputes and others); and,
- Commercial usage and customary law.

Public International Law topics:

- Immunity of States;
- Immunity of International Organizations;
- Protection of the marine environment and liability of States;
- Cybersecurity; and,
- Legal nature of international interinstitutional agreements.

The Chairman commented that in the area of Private International Law some of the topics appear to be too broad, such as the one on commercial usage and customary law. He also mentioned that new topics 2 and 3 in the area of Private International Law and 3, 4 and 5 in the field of Public International Law. He then proposed the Committee to focus especially these new themes.

Dr. Salinas asked to address the topic on the effects of inter-institutional agreements.

Dr. Moreno stated that these new issues on Private International Law are a follow up on the study on international law, applicable to contracts and consumer law. On the subject of alternative means, they are indeed more specifically related to the issue of consumer rights.

The Chair asked whether the issue of commercial customs and practices would be linked to the issue of international contracts. Then, Dr. Moreno explained that in fact it is a continuation of the discussion presented in the Mexico Convention. He suggested formulating the issue as follows: Principles, customs, usage and practices in international recruitment.

Dr. Salinas said he was doubtful if these two issues on Private Law are immediate. If in fact they are, there may be an imbalance between public and private international law.

The President recalled that, according to the agreement of the members, the issue of International Contracts must be approved in March, and that there will be room for another topic on Private International Law.

Dr. Villalta stated that the working agenda now has two items of Private International Law on it, and that these items address complex matters and, therefore she suggested leaving pending for a later date the analysis of new initiatives.

Dr. Moreno explained that the outcome of the discussion on these two issues on the agenda could lead to new topics. He also noted that the Vienna Convention on the International Sale of Goods creates an opening for non-state rights and for *lex mercatoria*. Therefore, when the current study ends, the Committee should pay attention to such controversial issue. He considered of utmost importance

trying verifying how national solutions are handled in order to see how commercial usage and trade customs in the regions are expressed.

The Chairman said he was in agreement with Dr. Moreno´s proposal. As regards the search for balance between Private and Public International Law, he urged to take into account the specializations of each one of the members of the Juridical Committee.

Dr. Stewart asked about the purpose of the study, taking into consideration the rather broad reach of the notion of *lex mercatoria*. He also asked for additional explanations about the topic on institutional agreements, translated to English as "*juridical nature of interinstitutional agreements*".

The President explained that this issue had been brought up by the representatives of the legal advisors of the Ministries of Foreign Affairs and mentioned as one of their most pressing problems. He explained that various organs of governments are signing agreements with entities from other States that often create or infringe international obligations.

Dr. Moreno explained that this is also an issue of Private International Law.

Dr. Mata Prates agreed with the usefulness of a guide on practices on interagency agreements for the foreign ministries of the countries. He explained that in Uruguay there is a draft decree on procedures explaining how to process these arrangements internally, and that it highlights a relationship between public international law and domestic law.

The President recalled that the legal advisor of the Ministry of Foreign Affairs of Paraguay mentioned having worked on a document with guidelines for Paraguay´s internal agencies. This means that together with the Uruguayan decree and with the practices in other countries, there would be elements for working on a guidance document. Furthermore, according to his point of view, legal advisory bodies would be grateful to receive a work of this kind.

Dr. Mata Prates stated that a project had been developed in his country but has not been approved so far, showing the complexity of the matter. He mentioned the internal discussion during the process of approval of the decree. State power companies have warned that if permission needs to be secured every time they sign an agreement of this kind, this could affect the operation of the power system in the country.

The President thanked Dr. Prates for the accurate account of the situation. He said that the problem might be even more complex because some ministries believe they also have the right to sign treaties. However, that is not in accordance with international law in the light of the Vienna Convention on the Law of Treaties, regarding agreements concluded by people with no legal standing. He gave the example of a Peruvian case in which the Ministry of Commerce needed to amend its organic law in order to allow them to sign international treaties.

Dr. Collot mentioned that there are two very important issues in the proposed Agenda: cyber-security and immunities of international organizations. He explained that some people benefit from immunities, and that in this respect is important to understand the possible liability mechanisms. He exemplified by a real case, where a member of an international organization killed a person while driving a car with the logo of the organization. He sought protection under the immunity of the organization. The case was judged and a penalty imposed on the organization, having also its accounts under embargo. However, it never went beyond, and finally the Haitian government intervened and compensated the victim; hence the importance of concentrating on procedures.

Regarding the topics of Private International Law, Dr. Collot stressed the importance of the means for alternative solutions. On the subject of commercial usage and custom, he referred the online system called Legal Data, comprising most commercial instruments with reference to the laws of many countries, totaling 244 instruments (representing about 10% of all trading instruments worldwide). He was also of the opinion that this theme is too broad, and proposed separating it into specific topics.

Dr. Moreno said that regarding the subject of customary practices and usage he was in agreement with its inclusion. However, he proposed that the specific approach or scope of the work or methodology be determine in the future.

Dr. Villalta mentioned that in many Central American countries mayors or heads of department were also signing international agreements. In Nicaragua, for example, a law on border security was passed, as they signed agreements even on border matters. The procedure is forcing the Ministries of Foreign Affairs to review all agreements.

The Chairman requested the Secretariat to present a final list of approved topics.

Thereafter, Dr. Negro presented the final list of topics. He explained that the document would be entitled: List of new topics, and would comprise the following:

1. Topics of Private International Law:

- Resolution of disputes on consumer issues; and,

- Principles, usage, customs and practices in international procurement.

2. Topics of Public International Law:

- Protection of marine environment and State responsibility;

- Cyber security; and,

- Legal standing of interinstitutional agreements of an international character.

The Chairman asked the Members if they wished to make any comment. Dr. Salinas suggested adding the expression "and its effects" after the expression "legal standing" in the last issue of Public International Law.

Dr. Moreno asked if the topic of institutional agreements was to be included within the categories.

Dr. Mata Prates explained that there is no obstacle to any member being rapporteur of the subject so it was not necessary to change the list.

As there were no other objections, a list of new issues was approved in two areas:

1. Topics of Private International Law:

- Resolution of Disputes on consumer issues; and,
- Principles, usage, customs and practices in international procurement.

2. Topics of Public International Law:

- Protection of the marine environment and State responsibility;
- Cyber-security; and,
- Legal standing and effects of interinstitutional agreements of an international character.

The Department of International Law has elaborated a document with the list of new topics, document DDI/doc.1/17.

9. Online settlement of disputes arising from cross-border consumer transactions

Documents

CJI/doc. 498/16	Private International Law: Consumer Protection (Presented by Dr. David P. Stewart)
CJI/doc. 504/16	Private International Law: Consumer Protection (Presented by Dr. David P. Stewart)
CJI/doc. 508/16	Consumer Protection in Caribbean Community Law Thoughts about the Revised Treaty of Chaguaramas (RTC) (Presented by Dr. Gélin Imanès Collot)

During the 88th Regular Session of the Inter-American Juridical Committee (Washington D.C., April, 2016), Dr. Stewart submitted the document entitled "Private International Law: Consumer Protection", CJI/doc. 498/16, whereby he proposes to add to the Committee's agenda the issue of consumer protection, considering the continued interest that States and Private International lawyers have in this issue, as attested in the roundtable held on April 4th, 2016. In this regard, he proposed to revisit the matter in order to make a contribution which may result in an analytical guide, principles or recommendations.

Dr. Moreno supported Dr. Stewart's initiative and stated that there have been major developments on the issue internationally in the last ten years since the proposal of the Convention on Consumer Protection, which was examined at the CIDIP-VII.

Dr. Villalta also supported Dr. Stewart's proposal, and suggested working on the preparation of a guide.

Dr. Salinas concurred with respect to the importance of the issue, but opposed deciding on the nature of final instrument to be drafted at this time without holding further discussions on the issue. He suggested that Dr. Moreno join the project as a Rapporteur, given his specialization in Private International Law.

Dr. Correa concurred in supporting the inclusion of the issue on the Committee's agenda. Indeed, she noted that several of the issues proposed at the roundtable are related precisely to consumer protection.

Dr. Collot also expressed his interest in participating in the discussion of the issue and in confirming the role of the CARICOM countries.

Dr. Hernández García joined the consensus that was formed with regard to the inclusion of the issue on the agenda for the next session, to be held in October 2016, and supported the appointment of Dr. Moreno as Rapporteur together with Dr. Stewart.

Dr. Moreno stated that he accepted the task of joining the team of Rapporteurs and suggested including Dr. Villalta, who expressed her thanks and her interest in participating as a Rapporteur.

The Vice-Chairman recalled the events of the CIDIP-VII with regard to consumer protection, and therefore agreed that it was advisable to draft a set of guiding principles at this time. Immediately thereafter, the inclusion of the issue on the agenda was approved, as well as the appointment of the four Rapporteurs: Moreno, Villalta, Stewart, and Collot. Dr. Villalta observed that the presence of the four Rapporteurs allows for all of the regions of the Americas to be represented. The Rapporteurs agreed to submit a document in the next session with their views on the matter.

During the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro., October, 2016), Dr. Stewart submitted a new document entitled "Private International Law: Consumer Protection", CJI/doc. 504/16. Dr. Collot on his turn, presented document "Consumer Protection in Caribbean Community Law: Thoughts about The Revised Treaty of Chaguaramas (RTC)", CJI/doc. 508/16. In order to facilitate discussion of the topic, the Committee created a working group during the second week of its session, made up of the four Rapporteurs, who after several meetings submitted a draft resolution on international consumer protection urging the States to establish mechanisms of international coordination and cooperation, in addition to recognizing the need for consumer protection. This proposal also includes a new mandate to continue to address this topic on the Committee's agenda from the standpoint of "online settlement of disputes arising from cross-border consumer transactions." The plenary accepted the resolution unanimously and decided to forward document CJI/RES. 227/16 (LXXXXIX-O/16) to the Permanent Council.

10. Guide for the protection of stateless persons

At the forty-fourth regular session (Asuncion, Paraguay, June 2014) the General Assembly issued a new mandate and instructed the Inter-American Juridical Committee to draft, in consultation with the Member States, "a set of Guidelines on the Protection of Stateless Persons, in accordance with the existing international standards on the topic", AG/RES. 2826 (XLVI-O/14).

During the 85th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, August, 2014), Dr. Carlos Matta Prates was designated rapporteur for the topic.

At the 87th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, August 2015), the Inter-American Juridical Committee adopted the report entitled Guide on the protection of stateless persons (CJI/doc.488/15 rev.1) through resolution CJI/RES. 218 (LXXXVII-O/15).

At the 89th Regular Session of the Inter-American Juridical Committee (Rio de Janeiro, Brazil, October 2016), Dr. Mata Prates, who acted as rapporteur of the theme in the past, provided some remarks to the comments submitted to the report of the Committee on the protection of stateless persons by the United Nations High Commissioner for Refugees (UNHCR).

Dr. Mata Prates reported that after approval of the report of the Committee, the UNHCR started to analyze the document and the result of the analysis are the comments forwarded. He observed that there are two possible approaches to the theme: one academic and one practical, and that the second in particular is the approach adopted by the Committee. In this regard, almost all the references made by the UNHCR are included in the report. However, he expressed interest in adding a chapter to the report introducing suggestions of goods practices for the States. He recalled that the conclusions adopted by the Juridical Committee establish that the existing norms are sufficient, and that they need implementation.

He also stated that the UNHCR document refers to several instruments that are not binding, but that are merely "*soft law*", citing as example the UNHCR Manual of Procedures, the declarations at the regional and universal level in the core of the Regional Agency, decisions and sentences of the Inter-American Court and decisions of the Inter-American Commission, He suggested that the Committee could add to the report some directives making reference to the UNHCR manual as well as to guiding criteria for the States, such as the decisions and rulings of the inter-American system for the promotion and protection of human rights.

It must be noted that on October 13, 2016, the Committee was visited by Drs. José Murillo and Juan Ignacio Mondelli of UNHCR, with whom the plenary held a rich exchange on the Guide to the protection of stateless persons.

In light of the aforementioned developments, Dr. Mata Prates presented a revised version of the report approved by the plenary of the Committee in the previous year, CJI/doc. 488/15 rev.2.

The Rapporteur mentioned the norms that should be incorporated to the report of the Committee while urging their ratification and implementation:

- 1954 Statute of Stateless Persons;
- 1961 Convention for the reduction of statelessness; and,
- American Convention of Human Rights (Article 25).

Should these norms be applied, the situation of stateless persons should be resolved in the existing cases, considering that these norms are sufficient enough to resolve the problem.

In addition, he addressed some aspects of the UNHCR for reducing statelessness, which could be included in a chapter of the guide addressing the orientation towards the level of "strategic framework". This may be explained because they are *lege ferenda* for indication of good practices for States.

Dr. Mata Prates noted that the UNHCR's comments are of a different nature when compared to the guide approved by the Juridical Committee, taking into account that the instrument adopted by the Committee is related to existing *lege lata* elements. Finally, he expressed appreciation for the references

to the Inter-American human rights protection system, noting in this regard that it is not a matter of lege lata, but rather involves indicators on how States could develop protection.

The Chairman noted that in the light of the amendments to the UNHCR model law in November, it would be interesting to check how this is implemented, so that the Rapporteur may include these amendments in his report. He also stated that it is important to include the resolution of the June 2016 General Assembly in Santo Domingo, within the norms to be taken into consideration, because the resolution deals with prevention and promotional measures. Lastly, he asked to consider the judgment of the Court regarding the situation of Dominicans of Haitian descent and Advisory Opinion No. 21.

Dr. Villalta thanked the Rapporteur and asked about the facts generating the highest number of stateless in the Americas.

Dr. Stewart was also grateful to the Rapporteur, and asked about the suggestion to create a specialized organ to assist cases of statelessness. He proposed reformulating the criteria, recommending that States take concrete steps to resolve the situation of statelessness, which may or may not include setting up of a new organ.

Dr. Mata Prates thanked Dr. Stewart for his suggestion not to mention the UNHCR, in which case it may be suppressed.

As regards the comments of the Chairman, as we approach the date for the UNHCR meeting with the aim of updating its model law, there would be no inconvenience in waiting for the results of said meeting in order to include the status of the question after introducing the amendments.

Regarding a second issue, he reported that he was not in favor of adding a resolution of the General Assembly, as he was of the opinion that States are aware of its contents already.

In addition, the question of referring to one or two decisions of the Inter-American Court has the inconvenience of “freezing” the document in time and disclosing the name of the State affected that was ruled a negative decision, may place the Committee in an uncomfortable situation.

Regarding the theme mentioned by Dr. Villalta, although the reasons that explain the phenomenon of stateless persons are extremely complex, the definition given by article 25 of the American Convention of Human Rights is very precise.

The Chairman proposed the following in terms of actions regarding the topics mentioned by Committee members:

- It was agreed to pay attention to the result of the UNHCR meeting and introduce and update them when necessary;
- Include the resolution adopted by the General Assembly in Santo Domingo;

- In matters involving decisions, introduce a determination in relation to the cases addressed by the Court, both decisions as well as consultative opinions, making a distinction between penalties and responsibility of the State vis-à-vis the criteria issued by the Court, in order to alleviate the rapporteur´ concerns; and,
- Clarify the issue raised by Dr. Stewart regarding the setting up of a new organ.

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